

FOR THE PROTECTION OF BICKER DROVE LIMITED

1. The provisions of this Part of this Schedule apply for the protection of Bicker Drove, subject to paragraph 2, and unless otherwise agreed in writing between the undertaker and Bicker Drove.

2. —(1) In the event that Bicker Drove:

(a) no longer has an interest in the Bicker Drove land; or

(b) is no longer proceeding with the Bicker Drove Project,

Bicker Drove must notify the undertaker as soon as reasonably practicable.

(2) The provisions in this Part of this Schedule cease to apply in the case of any event listed under paragraph 2(1)(a) or (b) above.

(3) Regardless of the remaining provisions of this Part of this Schedule the undertaker shall not be permitted to:

(a) exercise powers of temporary possession pursuant to article 32 or article 34 over the Bicker Drove land without the written consent of Bicker Drove Limited (not to be unreasonably withheld or delayed), and in any event such possession cannot be over an area greater than 30 metres in width;

(b) acquire permanent land rights pursuant to Part 5 of the Order over the Bicker Drove land over an area greater than 12 metres in width without the written consent of Bicker Drove Limited; or

(c) exercise powers pursuant to the Order so as to extinguish Bicker Drove Limited's interest in the Bicker Drove land.

Interpretation

3. In this Part of this Schedule—

“apparatus” means the battery energy storage or other infrastructure owned, occupied or maintained by Bicker Drove on the Bicker Drove land for the purposes of the Bicker Drove Project;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

“Bicker Drove” means Bicker Drove Limited (company number 15674780) whose registered office address is at 20 St. James's Street, 7th Floor, London, United Kingdom, SW1A 1ES;

“Bicker Drove interface area” means the area notified by the undertaker to Bicker Drove in accordance with paragraph 4;

“Bicker Drove land” means Plot 18-11;

“Bicker Drove Project” means the proposed 1.2GW Battery Energy Storage System development subject to planning permission reference B/25/0224 located on land near Boston, Lincolnshire (as amended by any amendment permissions));

“Bicker Drove stand-off area” means the Bicker Drove land within the Order limits, other than the Bicker Drove interface area;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, is to require the undertaker to submit for Bicker Drove's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Bicker Drove; construct, use, repair, inspect, renew or remove the apparatus;

“plan” and “plans” includes sections, drawings, specifications, designs, design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the Bicker Drove interface area or Bicker Drove stand-off area (as applicable); and

“specified works” means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is will or may be situated over, or within 15 metres measured in any direction of any apparatus of Bicker Drove and within the Bicker Drove interface area or Bicker Drove stand-off area (as applicable).

Notification of route within the Bicker Drove land

4. —(1) As soon as is reasonably practicable after the undertaker has identified the area of land required for the authorised works within the Bicker Drove land and in any event no later than three years from the date this Order takes effect, the undertaker must notify Bicker Drove in writing of the confirmed location of the Bicker Drove interface area (the “Route Confirmation Notice”).

(2) The Route Confirmation Notice must include a plan sufficient to identify the Bicker Drove interface area.

(3) From (and including) the date the Route Confirmation Notice is given -

- (a) the area identified in the Route Confirmation Notice shall constitute the “Bicker Drove interface area”; and
- (b) the Bicker Drove land, other than the Bicker Drove interface area, shall constitute the “Bicker Drove stand-off area”;

for the purposes of this Part of this Schedule.

(4) The undertaker may, if reasonably required, issue a revised Route Confirmation Notice to vary the Bicker Drove interface area, provided that any revised notice is given as soon as is reasonably practicable and before the commencement of any specified works within any newly identified part of the Bicker Drove land. Any revised Route Confirmation Notice shall take effect from the date it is given and the Bicker Drove interface area and Bicker Drove stand-off area shall be construed accordingly.

(5) For the avoidance of doubt, the giving of the Route Confirmation Notice (or any revised Route Confirmation Notice) does not disapply or vary the undertaker’s obligations in paragraph 5 (*retained apparatus within the Bicker Drove interface area: protection*), including consultation and notice periods prior to commencing specified works within the Bicker Drove interface area.

Retained apparatus within the Bicker Drove interface area: protection

5. The undertaker must consult with Bicker Drove on the plans and formulation of the proposed method of working and timing of execution of any specified works within the Bicker Drove interface area, not less than 56 days prior to such works commencing and have regard to reasonable representations received from Bicker Drove made at least 28 days prior to such works commencing.

6. Where, as a direct result of the specified works within the Bicker Drove interface area, Bicker Drove requires any diversion or protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such diversion or protective works must be carried out to Bicker Drove’s reasonable satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which diversion or protective works are required and Bicker Drove shall give notice of its requirement for such works within 28 days of the date of first being consulted in accordance with paragraph 5.

7. The undertaker must give to Bicker Drove not less than 28 days' written notice of its intention to commence the construction of any specified works within the Bicker Drove interface area and, not more than 14 days after completion of their construction, must give Bicker Drove written notice of the completion.

8. Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any specified works within the Bicker Drove interface area, a new method of working and plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

9. The undertaker must at all reasonable times during construction of any specified works within the Bicker Drove interface area allow Bicker Drove and its servants and agents reasonable facilities for inspection of such specified works.

Retained apparatus within the Bicker Drove stand-off area: protection

10.—(1) Not less than 56 days before the commencement of any specified works within the Bicker Drove stand-off area, the undertaker must submit to Bicker Drove a plan of the works to be executed and seek from Bicker Drove details of the extent of their assets within the Bicker Drove stand-off area. In relation to the specified works within the Bicker Drove stand-off area the plan to be submitted to Bicker Drove under paragraph 10(1) above must include a method statement which shows and describes—

- (a) the exact position of the specified works within the Bicker Drove stand-off area;
- (b) the level at which the specified works within the Bicker Drove stand-off area are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal within the Bicker Drove stand-off area including details of excavation, positioning of plant;
- (d) the position of all apparatus within the Bicker Drove stand-off area;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus within the Bicker Drove stand-off area;
- (f) any intended maintenance regimes within the Bicker Drove stand-off area;
- (g) an assessment of risks of rise of earth issues within the Bicker Drove stand-off area; and
- (h) a ground monitoring scheme within the Bicker Drove stand-off area, where required.

(3) The undertaker must not commence any specified works within the Bicker Drove stand-off area to which sub-paragraph 10 applies until Bicker Drove has given written approval of the plan so submitted.

(4) Any approval of Bicker Drove required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in subparagraphs (5) or (7); and
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraph 10 applies, Bicker Drove may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus within the Bicker Drove stand-off area and Bicker Drove must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under paragraph 10(1) has been submitted to Bicker Drove.

(6) Works executed under sub-paragraph 10 must be executed in accordance with the plan, submitted under paragraph 10(1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and Bicker Drove and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by Bicker Drove for the alteration or otherwise for the protection of the apparatus within the Bicker Drove stand-off area, or for securing access to it, and Bicker Drove will be entitled to watch and inspect the execution of those works within the Bicker Drove stand-off area.

(7) Where Bicker Drove requires any protective works within the Bicker Drove stand-off area to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Bicker Drove's satisfaction prior to the commencement of any specified works within the Bicker Drove stand-off area (or any relevant part thereof) for which protective works are required and Bicker Drove shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of the works within the Bicker Drove stand-off area for which a plan has been submitted for specified works within the Bicker Drove stand-off area (or part thereof), a new plan for such works, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(9) The undertaker will not be required to comply with paragraph 10(1) where it needs to carry out emergency works within the Bicker Drove stand-off area as defined in the 1991 Act but in that case it must give to Bicker Drove notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

Acquisition of land within the Bicker Drove interface area and the Bicker Drove stand-off area

11.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus within the Bicker Drove stand-off area belonging to Bicker Drove or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus, within the Bicker Drove stand-off area, belonging to Bicker Drove otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) Any agreement or consent granted by Bicker Drove under paragraph 10 (*retained apparatus within the Bicker Drove stand-off area: protection*) or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under paragraph 11(1).

(3) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest in the Bicker Drove interface area or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Bicker Drove Limited in the Bicker Drove interface area otherwise than by agreement

Cooperation within the Bicker Drove stand-off area

12.—(1) Where in consequence of the proposed construction of any part of the authorised works within the Bicker Drove stand-off area, Bicker Drove makes requirements for the protection or alteration of apparatus under paragraph 10 (*retained apparatus: within the Bicker Drove stand-off area: protection*), the undertaker shall use reasonable endeavours to coordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Bicker Drove's undertaking and Bicker Drove shall use reasonable endeavours to cooperate with the undertaker for that purpose.

(2) . The undertaker must-

- (a) ensure that its design and programming of the authorised development does not materially delay or materially increase the cost of the Bicker Drove Project;
- (b) undertake consultation with Bicker Drove Limited on detailed design and programming of works for the authorised development and ensure that the plans as submitted for approval under the requirements do not unreasonably impede or interfere with the construction of the Bicker Drove Project;
- (c) have regard to the anticipated programme of works for the Bicker Drove Project and facilitate a co-ordinated approach to construction programming, land assembly, and the carrying out of works in connection with the authorised development and the Bicker Drove Project; and

- (d) provide a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development.

(3) For the avoidance of doubt whenever Bicker Drove's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

13. If in consequence of the exercise of powers granted under this Order access to the Bicker Drove land is materially obstructed, the undertaker must provide such alternative means of access to the Bicker Drove land as will enable Bicker Drove to construct, operate, maintain and decommission its apparatus no less effectively than was possible before such obstruction.

Expenses

14.—(1) Save where otherwise agreed in writing between Bicker Drove and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to Bicker Drove within 30 days of receipt of an itemised invoice or claim from Bicker Drove all charges, costs and expenses reasonably and properly incurred by Bicker Drove comprising the review of plans under this Part of this Schedule.

(1) Notwithstanding any other provision of this Part of this Schedule, Bicker Drove shall not be entitled to recover more than once in respect of the same loss, cost, expense, or liability arising out of or in connection with any matter for which the undertaker is liable under this Part of this Schedule or any related agreement.

(2) For the avoidance of doubt, where Bicker Drove is entitled to recover any sum under more than one provision of this Part of this Schedule or any related agreement in respect of the same loss, cost, expense, or liability, Bicker Drove shall only be entitled to recover such sum once.

Indemnity

15. (1) Subject to sub-paragraphs (1) to (5), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the specified works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus within the Bicker Drove land, the undertaker will bear and pay within 60 days of receipt of an invoice or claim from Bicker Drove the cost reasonably and properly incurred by Bicker Drove in making good such damage.

(1) The fact that any act or thing may have been done by Bicker Drove on behalf of the undertaker or in accordance with a plan reviewed by Bicker Drove pursuant to paragraph 4 or in accordance with any requirement of Bicker Drove or under its supervision will not (unless sub-paragraph (2) applies), excuse the undertaker from liability under the provisions of paragraph 15(1) unless Bicker Drove fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(2) Nothing in paragraph 15(1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Bicker Drove, its officers, servants, contractors or agents; or
- (b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(3) Bicker Drove must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability, compromise or demand must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

WITHOUT PREJUDICE

(4) Bicker Drove must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(5) Bicker Drove must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within Bicker Drove's reasonable ability and control to do so and if reasonably requested to do so by the undertaker Bicker Drove must provide an explanation of how the claim has been minimised, where relevant.

Arbitration

16. Any difference or dispute arising between Bicker Drove and the undertaker must, unless otherwise agreed in writing between Bicker Drove and the undertaker, be determined by arbitration in accordance with article 45 (arbitration) of the Order.