



Frodsham Solar

Applicant's Version of Protective Provisions for Liverpool Bay CCS Limited (without prejudice)

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**Planning Act 2008; and Infrastructure Planning
(Applications: Prescribed Forms and Procedure) Regulations**



Revision P01

SCHEDULE [●]
PROTECTIVE PROVISIONS

PART [●]
FOR THE PROTECTION OF LIVERPOOL BAY CCS LIMITED

Application

1.—(1) Subject to sub-paragraph (2), the following provisions will have effect for the protection of LBCCS, unless otherwise agreed in writing between the undertaker and LBCCS.

(2) None of the following provisions apply where the laying down of pipelines pursuant to the Runcorn Spur Pipeline Planning Permission has not begun within the Order limits prior to the authorised development being begun.

(3) The consent or approval of LBCCS where required by this Part of this Schedule is not required where the construction of development pursuant to the Runcorn Spur Pipeline Planning Permission within the Order limits has not completed prior to the authorised development being begun.

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of LBCCS to enable LBCCS to carry on its undertaking in a manner no less efficient than previously;

“apparatus” means any carbon dioxide pipes, pipelines and ancillary items including, , cathodic protection cables, cable trays, fibre optic cables and power cables, leak detection sensors and marker posts or other apparatus belonging to, or maintained by, LBCCS for the purposes of LBCCS’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of LBCCS for the purposes of LBCCS’s undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

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

“commence” and “commencement” in this Part of this Schedule includes any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground conditions, the receipt and erection of construction plant and equipment, and intrusive investigations for the purpose of assessing ground conditions;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by LBCCS (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“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, must require the undertaker to submit for LBCCS’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;

“LBCCS” means Liverpool Bay CCS Limited (Company Number 13194018) whose registered office is at Eni House, 10 Ebury Bridge Road, London, England, England, SW1W 8PZ;

“LBCCS’s undertaking” means the construction, operation and maintenance of CO2 transportation network infrastructure;

“maintain” and “maintenance” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of LBCCS: retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“Runcorn Spur Pipeline Planning Permission” means the planning permission granted (whether on appeal or otherwise) pursuant to the planning applications submitted by LBCCS to Cheshire West and Chester Council (application reference 25/02108/FUL) and Halton Borough Council (application reference 25/00293/FULEIA) for the Runcorn spur pipeline;

“rights” includes rights and restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised works or activities (including maintenance) undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker; and
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise.

Protective works to buildings

3.—(1) The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus (unless the obstruction or rendering less convenient of such access is required by the undertaker in order to prevent a breach of the Order or to enable the efficient and economical execution of the authorised works) without the written consent of LBCCS (which must not be unreasonably withheld) and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of LBCCS or any interruption in the transportation of carbon dioxide by LBCCS, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by LBCCS in making good such damage or restoring the said transportation; and, subject to sub-paragraph (2), will pay compensation to LBCCS for any

expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs sustained by it.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of LBCCS or its contractors or workers; and LBCCS will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by LBCCS, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

4.—(1) Prior to the carrying out or maintenance of any part of the authorised works (or in such other timeframe as may be agreed between LBCCS and the undertaker) that are subject to the requirements of this Part of this Schedule and which affects the provisions of any enactment or agreement regulating the relations between LBCCS and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker and LBCCS must act reasonably to enter into any necessary agreement, with such terms and conditions as may be agreed between LBCCS and the undertaker both acting reasonably, and it will be the responsibility of the undertaker to procure and/or secure the consent to and entering into of any deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works that may be required.

(2) Any agreement or consent granted by LBCCS under paragraph 7 or any other paragraph of this Part of this Schedule will be taken to constitute agreement under sub-paragraph (1).

(3) Where an undertaker acquires the freehold of any land which is subject to any LBCCS right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 5 do not apply, the undertaker must, unless LBCCS agrees otherwise—

- (a) retain any notice of LBCCS's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of LBCCS's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of LBCCS's easement, right or other interest in relation to such acquired land.

Removal of apparatus

5.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 4, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of LBCCS to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the satisfaction of LBCCS (acting reasonably) and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to LBCCS advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order LBCCS reasonably needs to move or remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to LBCCS to its satisfaction (taking into account paragraph 6(1) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by LBCCS in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by LBCCS in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by LBCCS in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, LBCCS may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between LBCCS and the undertaker or settled by arbitration.

(5) LBCCS must, after the alternative apparatus to be provided or constructed has been agreed or settled, and subject to the prior grant to LBCCS of such facilities and rights as are referred to in sub-paragraph (2) or (3) to LBCCS's satisfaction, acting reasonably, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for LBCCS facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and LBCCS and must be no less favourable on the whole to LBCCS than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by LBCCS.

(2) If the facilities and rights to be afforded by the undertaker and agreed with LBCCS under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to LBCCS (in LBCCS's opinion, acting reasonably) than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject will be referred to arbitration in accordance with paragraph 13 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to LBCCS as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of LBCCS

7.—(1) Not less than 30 days before the commencement of any specified works the undertaker must submit to LBCCS a plan and, where the specified works involve the construction and use of roads and if reasonably required by LBCCS, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to LBCCS under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;

- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until LBCCS has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of LBCCS given under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions; and
- (b) must not be unreasonably withheld or delayed.

(5) For the purposes of sub-paragraph (4)(b) it will be deemed to be reasonable for any approval to be refused if LBCCS considers that the specified works would—

- (a) cause material interference with or material risk of damage to its apparatus; or
- (b) prevent access to its apparatus at any time, unless the prevention of such access is required by the undertaker in order to prevent a breach of the Order or to enable the efficient and economical execution of the authorised works.

(6) In relation to any work to which sub-paragraphs (1) and/or (2) apply LBCCS may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with—

- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and LBCCS; and
- (b) all conditions imposed under sub-paragraph (4)(a), and LBCCS will be entitled to watch and inspect the execution of those works where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

(8) Where LBCCS requires any protective works 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 LBCCS's reasonable satisfaction.

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 30 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) As soon as reasonably practicable after any ground subsidence event identified by an expert appointed by the undertaker and LBCCS jointly to be attributable to the authorised works (including such an event attributable to its maintenance)—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) LBCCS retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 8.

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to LBCCS notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) Sub-paragraph (13) at all times.

(12) In this paragraph, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances

then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

(13) At all times when carrying out any works authorised under the Order the undertaker must comply with HSE's "HS(~G)47 Avoiding Danger from underground services".

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to LBCCS on demand all charges, costs and expenses reasonably anticipated or reasonably and properly incurred by LBCCS in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (c) the approval of plans;
- (d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (e) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (f) any watching brief pursuant to sub-paragraph 7(7).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

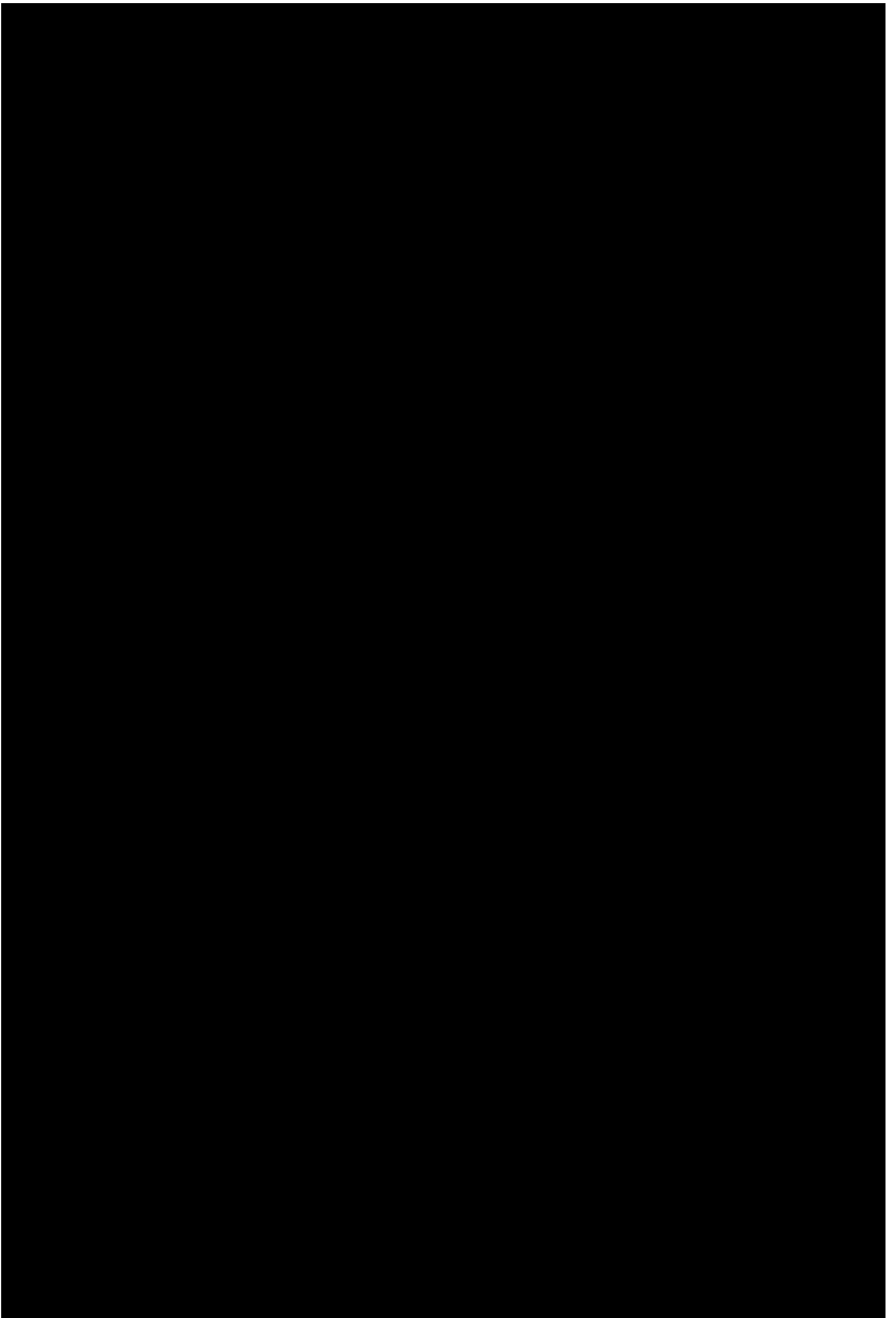
- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 13 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to LBCCS by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to LBCCS in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided



Enactments and agreements

10. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and LBCCS in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

11.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or LBCCS requires the removal of apparatus under paragraph 5(2) or LBCCS makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker must use its reasonable endeavours to co-ordinate 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 LBCCS's undertaking and LBCCS must use its reasonable endeavours to co-operate with the undertaker for that purpose, including providing the undertaker with as-built drawings of its apparatus upon request.

(2) For the avoidance of doubt whenever LBCCS'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, LBCCS's consent must not be unreasonably withheld or delayed.

Access

12. If in consequence of any agreement reached in accordance with paragraph 4(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable LBCCS to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

13. Any difference or dispute arising between the undertaker and LBCCS under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and LBCCS, be determined by arbitration in accordance with article 42 (arbitration).

Notices

14. Notwithstanding article 45 (service of notices), any plans submitted to LBCCS by the undertaker pursuant to paragraph 7(1) must be sent via email to notices.lbccs@eni.com and sent to the General Counsel Department at LBCCS's registered office or such other address as LBCCS may from time to time appoint instead for that purpose and notify to the undertaker in writing.