

FAO [REDACTED]
Head of Planning
Department of Energy Security and Net Zero
3-8 Whitehall Place
London
SW1A 2AW

22nd June 2026

Dear [REDACTED]

One Earth Response to Invitation to Comment Letter from Secretary of State dated 21 May 2026

Planning Act 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010

Reference: EN010159

The Applicant has noted the 'Secretary of State's Invitation to Comment' letter dated 21 May 2026 and has provided information on the below matters which the Applicant considers should be of assistance:

- > Updates to the Funding Statement
- > JG Pears Update – Land Rights Update
- > The Crown Estate – Section 135 Consent Update
- > Exolum Pipeline System Limited – Update
- > Network Rail Infrastructure Limited – Framework Agreement Update
- > Northern Powergrid (Yorkshire) Plc – Update
- > Trent Valley Internal Drainage Board – Update
- > National Grid Electricity Transmission Plc – Update
- > P & L Farming Partnership Limited – Update

These matters have been addressed in turn below.

Funding Statement Updates

An updated Funding Statement [EN010159/APP/4.2.3] was submitted to PINS on 16 June 2026. The updates reflect name changes to entities referred to within the Funding Statement.

Land Rights - JG Pears Update

In response to the submission dated 14 May 2026 made by Squire Patton Boggs (UK) LLP on behalf of J G Pears Group, the Applicant disagrees with the narrative provided with regards engagement and attempts to enter into a voluntary agreement.

The Applicant has been engaging with J G Pears Group since July 2021 in relation to interactions between their interests and has, since January 2025, been endeavouring to negotiate a commercial agreement to acquire an easement for grid connection works on land owned by J G Pears Group.

The history and status of the negotiations is set out in the Land Rights and Negotiations Tracker [REP9-014], which was accurate as at the end of Examination. Following Examination, the Applicant has continued to seek to engage with J G Pears Group and made a subsequent commercial offer to them. As such, in addition to important ongoing commercial discussions, commercial offers were put forward by the Applicant on:

- > 17 February 2025: Cable Easement HOTs issued, offer rejected by JG Pears
- > 25 November 2025: Increased Cable Easement Offer, offer rejected by JG Pears
- > 12 June 2026: Increased Cable Easement Offer, offer rejected by JG Pears

JG Pears Group has also made two commercial offers to the Applicant, one on 31 October 2025 (as per the Land Rights and Negotiations Tracker) and most recently on 12 June 2026. Both offers are commercially unacceptable to the Applicant as they do not reflect the valuation advice it has recently received.

The Applicant has therefore demonstrably made reasonable efforts to negotiate the acquisition of land rights by agreement, in accordance with established guidance and practice. To date, a voluntary agreement has not been possible, with the issue remaining between the parties being one of land valuation rather than the principle of grant/acquisition.

The Applicant has made its case for compulsory acquisition in its Statement of Reasons (REP9-010). For the reasons set out in that document, the rights sought over the Order land are for the purposes of, to facilitate or are incidental to, the Proposed Development and are no more than are reasonably necessary.

There is a compelling case in the public interest for the powers to be granted, given the meaningful and timely contributions offered by the Proposed Development to UK decarbonisation and security of supply. The need and critical national priority for the Proposed Development is clearly set out in NPS EN-1, NPS EN-3 and NPS EN-5.

The Applicant considers that the very substantial public benefits to be derived from the proposed compulsory acquisition would decisively outweigh any private loss to J G Pears Group, who (if powers were granted) would remain eligible for compensation in accordance with established valuation principles.

Whilst the Applicant will continue to engage meaningfully with J G Pears Group to seek a voluntary arrangement (noting the most recent meeting took place on 17 June 2026), to date the parties have been unable to reach a mutually acceptable commercial position.

There is therefore a real possibility that the exercise of compulsory acquisition powers, if granted, will be necessary in order to enable the timely delivery of the One Earth Solar Farm.

In this context, the Applicant acknowledges that J G Pears Group will be entitled to claim compensation in accordance with the compensation code, noting that where agreement as to valuation cannot be reached, the matter of the quantum of compensation may be referred to the Upper Tribunal (Lands Chamber).

The Crown Estate – Section 135 Consent Update

Heads of Terms in respect of a voluntary agreement have been agreed and will shortly be circulated for signature. Legal representatives will now be instructed to formalise the Option agreement.

The legal representatives acting for The Crown Estate Commissioners have confirmed that The Crown Estate Commissioners are now in a position to grant s135 consent and that, subject to The Crown Estate's final internal authorisation process, the s135 consent documentation will now be issued for execution. This update has been agreed between the legal representatives acting for The Crown Estate and the Applicant. The Applicant notes the timescales and the s135 consent will be submitted to the Secretary of State as soon as possible.

Exolum Pipeline System Limited – Update

Protective provisions for the benefit of Exolum Pipeline System Limited and associated commercial negotiations have been agreed and were provided to the Planning Inspectorate on 27th January 2026. For completeness, the agreed protective provisions are re-attached at **Appendix A**.

Northern Powergrid (Yorkshire) Plc – Update

Protective provisions for the benefit of Northern Powergrid (Yorkshire) Plc and associated commercial negotiations have been agreed. The agreed form of protective provisions to be included within the draft DCO have now been provided at **Appendix B**.

Trent Valley Internal Drainage Board – Update

On 22 June 2026 the Applicant received comments from the Trent Valley Internal Drainage Board on the draft protective provisions. The Applicant is seeking to progress negotiations as soon as possible and will provide an update to the Secretary of State as soon as agreement on protective provisions is able to be confirmed.

National Grid Electricity Transmission Plc – Update

Protective provisions for the benefit of National Grid Electricity Transmission Plc and associated commercial negotiations have been agreed. The agreed form of protective provisions to be included within the draft DCO have now been provided at **Appendix C**.

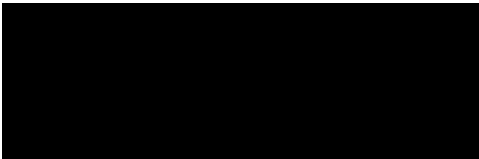
P & L Farming Partnership Limited – Update

The position on overage relating to land owned by Harworth Estates (Agricultural Land) Limited (“Harworth Estates”) has now been agreed. The Option is in agreed form, and P&L Farming Ltd’s legal representatives are reviewing the final option lease agreement. Negotiations have now entered the standard sale and purchase process for matters of this nature, which typically takes 8 to 12 weeks. The Applicant continues to progress the matter and is seeking to complete the agreements within 8 weeks from 15 June.

The Applicant will provide an update separately on Network Rail Infrastructure Limited and Railway Paths Limited by the end of Wednesday 24 June 2026 as requested.

We would be grateful if you could please confirm receipt of this letter in response to the SoS letter dated 21 May 2026. If we can be of further any assistance, please do not hesitate to contact us using the details provided below.

Yours sincerely,

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One Earth Project Lead

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Appendix A Exolum Protected Provisions

PART X

FOR THE PROTECTION OF EXOLUM PIPELINE SYSTEM LTD

Application

- 1 For the protection of Exolum the following provisions, unless otherwise agreed in writing at any time between the undertaker and Exolum, have effect.

Interpretation

- 2 In this Part of this Schedule, the following terms have the following meanings—

“Additional Rights” means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of retained Apparatus including any restrictions on the landowner and occupiers for the protection of the retained Apparatus and to allow Exolum to perform its functions.

“Alternative Apparatus” means alternative apparatus adequate to enable Exolum to fulfil its functions as a pipeline operator in a manner no less efficient than previously.

“Alternative Rights” means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of Alternative Apparatus including any restrictions on the landowner and occupiers for the protection of the Alternative Apparatus and to allow Exolum to perform its functions.

“Apparatus” means the pipeline and storage system and any ancillary apparatus owned and/or operated by Exolum and includes:

- (a) any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;
- (b) any ancillary works, all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers;
- (c) such legal interest, and benefit of property rights and covenants as are vested in in respect of these items;

and, where the context requires, includes Alternative Apparatus.

“Exolum” means Exolum Pipeline System Ltd (company number 09497223) whose registered office is 1st Floor 55 King William Street, London, England EC4R 9AD and for the purpose of enforcing the benefit of any provisions in this Schedule, any group company of Exolum Pipeline System Ltd and in all cases any successor in title.

“functions”: includes powers, duties and commercial undertakings.

“in”: in a context referring to Apparatus in land includes a reference to Apparatus under, over or upon land.

“parties”: means the undertaker and Exolum and "party" shall be construed accordingly.

“Plan”: includes all designs, drawings, sections, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to allow Exolum to assess the relevant works to be executed and in particular must describe:

- (a) the exact position of the works as proposed to be constructed or renewed;

- (b) the level at which the works are proposed to be constructed or renewed;
- (c) the manner of the works' construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of the affected Apparatus and any other apparatus belonging to another undertaker that may also be affected by the Restricted Works;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such Apparatus;
- (f) any intended maintenance regime;
- (g) details of the proposed method of working and timing of execution of works; and
- (h) details of vehicle access routes for construction and operational traffic.

Premises: means land that Exolum owns, occupies or otherwise has rights to use including but not limited to storage facilities, administrative buildings and jetties.

“Protective Works” means works for the inspection and protection of Apparatus.

“Restricted Works” means any works that are near to, or will or may affect any Apparatus including:

- (a) all works within 15 metres measured in any direction of any Apparatus including embankment works and those that involve a physical connection or attachment to any Apparatus,
- (b) the crossing of Apparatus by other utilities,
- (c) the use of explosives within 400 metres of any Apparatus,
- (a) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of any Apparatus,
- (e) all works that impose a load directly upon the Apparatus, wherever situated

whether carried out by the undertaker or any third party in connection with the Authorised Development.

Acquisition of Apparatus

- 3 Regardless of any other provision in the Order or anything shown on the land plans:
 - 3.1 the undertaker must not, otherwise than by agreement with Exolum, acquire any Apparatus, Exolum's rights in respect of Apparatus, or any of Exolum's interests in the Order land;
 - 3.2 where the undertaker acquires the freehold of any land in which Exolum holds an interest, the undertaker must afford to or secure for Exolum such rights in land in substitution for any right which would be extinguished by that acquisition (the replacement rights). These replacement rights must be granted upon substantially the same terms and conditions as the right to be extinguished, unless otherwise agreed between the undertaker and Exolum, must be no less favourable to Exolum than the right to be extinguished, and must be granted or put in place contemporaneously with the extinguishment of the right which they replace;

- 3.3 the undertaker must not, otherwise than in accordance with this Part of this Schedule:
 - 3.3.1 obstruct or render less convenient the access to any Apparatus;
 - 3.3.2 interfere with or affect Exolum's ability to carry out its functions as an oil pipeline operator;
 - 3.3.3 require that Apparatus is relocated or diverted; or
 - 3.3.4 remove or require to be removed any Apparatus;
- 3.4 any right of Exolum to maintain, repair, renew, adjust, alter or inspect Apparatus must not be extinguished by the undertaker or otherwise pursuant to the Order until any necessary Alternative Apparatus has been constructed and it is in operation and the Alternative Rights have been granted, all to the reasonable satisfaction of Exolum; and
- 3.5 any right of Exolum to access the Exolum operations must not be extinguished until necessary alternative access has been provided to Exolum's reasonable satisfaction.
- 4 Prior to the carrying out of any Restricted Works or any works authorised by this Order that will affect the Apparatus, and if required by Exolum, the parties must use their reasonable endeavours to negotiate and enter into such deeds of consent and, if considered necessary, variations to the existing rights upon such terms and conditions as may be agreed between Exolum and the undertaker acting reasonably and which must be no less favourable on the whole to Exolum than this Part of this Schedule, and the undertaker will use all reasonable endeavours to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such works.
- 5 Where the undertaker acquires land which is subject to any existing rights and the provisions of paragraph 7 do not apply, the undertaker must:
 - 5.1 retain any notice of the existing rights of Exolum on the title to the relevant land when registering the undertaker's title to such acquired land; and
 - 5.2 (where no such notice of the existing rights or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with an application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of the existing rights or other interest in relation to such acquired land; and
 - 5.3 provide up to date official entry copies to Exolum within 20 working days of receipt of such up to date official entry copies.
- 6 Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which Exolum has Apparatus or Premises:
 - 6.1 where reasonably necessary, Exolum may exercise its rights to access such land:
 - 6.1.1 in an emergency, without notice; and
 - 6.1.2 in non-emergency circumstances, having first given not less than 14 days' written notice to the undertaker in order to allow the parties to agree the timing of their respective works during the period of temporary possession; and

- 6.2 the undertaker must not remove or in any way alter Exolum's rights in such land, unless in accordance with the provisions of this Order.

Removal of Apparatus and Rights for Alternative Apparatus

- 7 If, having used all reasonable endeavours to implement the Authorised Development without the removal of any Apparatus:
- 7.1 the undertaker reasonably requires the removal of any Apparatus; or
- 7.2 Exolum reasonably requires the removal of any Apparatus;
- then the relevant party must give written notice of that requirement to the other.
- 8 The Parties must use their reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of the Alternative Apparatus to be provided or constructed.
- 9 The undertaker must afford to Exolum the necessary facilities and rights for the construction of Alternative Apparatus and subsequently the grant of Alternative Rights in accordance with paragraphs 15 to 19.
- 10 Any Alternative Apparatus is to be constructed in land owned by the undertaker or in land in respect of which Alternative Rights have been or are guaranteed to be granted to Exolum. The Alternative Apparatus must be constructed in such manner and in such line or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by arbitration in accordance with [article [x] (arbitration)].
- 11 After the details for the works for Alternative Apparatus to be provided or constructed have been agreed or settled in accordance with [article [x] (arbitration)], and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 9, Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Alternative Apparatus and subsequently to remove (or if agreed between the parties to allow the undertaker to remove) any redundant Apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.
- 12 The following paragraphs 13 and 14 only apply if:
- 12.1 Exolum fails to comply with its obligations under paragraph 11 to remove any redundant Apparatus; and
- 12.2 the undertaker has served notice on Exolum specifying the default; and
- 12.3 Exolum has failed to remedy the default within 28 days.
- 13 In the circumstances set out in paragraph 12, if the undertaker then gives notice in writing to Exolum that it desires itself to remove the redundant Apparatus, that work, instead of being executed by Exolum, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Exolum.
- 14 Nothing in paragraph 13 authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any Apparatus, or execute any filling around the Apparatus (where the Apparatus is laid in a trench) within 3000 millimetres of the Apparatus unless that Apparatus is redundant and disconnected from Exolum's remaining system.

Facilities and Rights for Alternative Apparatus

- 15 Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Exolum facilities and rights for the construction of Alternative Apparatus and the grant of Alternative Rights, in substitution for Apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Exolum in accordance with this Part of this Schedule or in default of agreement settled by arbitration in accordance with [article [x] (arbitration)].
- 16 Alternative Rights must be granted before any Alternative Apparatus is brought into use.
- 17 The parties agree that the undertaker must use all reasonable endeavours to procure the grant of the Alternative Rights by way of a 999 year sub-soil lease, substantially in the form of Exolum's precedent from time to time as amended by written agreement between the parties acting reasonably, or such other form of agreement as the parties otherwise agree acting reasonably.
- 18 Nothing in this Schedule or contained in the Alternative Rights requires Exolum to divert or remove any Alternative Apparatus.
- 19 If the facilities and rights to be afforded by the undertaker in respect of any Alternative Apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of Exolum less favourable on the whole to Exolum than the facilities and rights enjoyed by it in respect of the Apparatus to be removed and the terms and conditions to which those facilities and rights are subject, Exolum may refer the matter to arbitration in accordance with [article [x] (arbitration)].

Retained Apparatus and Alternative Apparatus: protection

- 20 Before commencing the execution of any Restricted Works, the undertaker must submit to Exolum a Plan of the works to be executed and any other information that Exolum may reasonably require to allow Exolum to assess the works.
- 21 No Restricted Works are to be commenced until the Plan to be submitted to Exolum under paragraph 20 has been approved by Exolum in writing (acting reasonably) and are to be carried out only in accordance with the details submitted under paragraph 20 and in accordance with such reasonable requirements as may be notified to the undertaker in writing in accordance with paragraph 22 by Exolum.
- 22 Any approval of Exolum in respect of Restricted Works may be given subject to such reasonable requirements as Exolum may require to be made for:
- 22.1 the continuing safety and operational viability of any Apparatus; and
 - 22.2 the requirement for Exolum to have reasonable access with or without vehicles to inspect, repair, replace, maintain and ensure the continuing safety and operation or viability of any Apparatus; and
 - 22.3 the requirement for Exolum to be entitled to watch and inspect the execution of Restricted Works to ensure the continuing safety and operational viability of any Apparatus and ensure compliance with the agreed Plan;
- providing such reasonable requirements will be notified to the undertaker in writing.
- 23 Where reasonably required by either party, in view of the complexity of any proposed works, timescales, phasing or costs, the parties must with due diligence and good faith

negotiate a works agreement for the carrying out of Protective Works or the installation of Alternative Apparatus.

- 24 If in consequence of the works notified to Exolum by the undertaker under paragraph 20, the circumstances in paragraph 7 apply, then the parties must follow the procedure in paragraph 7 onwards.
- 25 Nothing in paragraphs 20 to 24 precludes the undertaker from submitting prior to the commencement of works to protect retained Apparatus or to construct Alternative Apparatus (unless otherwise agreed in writing between the undertaker and Exolum) a new Plan, instead of the Plan previously submitted, in which case the parties must re-run the procedure from paragraph 20 onwards.
- 26 Where Exolum reasonably requires Protective Works, the parties must use their reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of any physical features to be provided or constructed.
- 27 The undertaker must afford to Exolum the necessary facilities and rights for the construction of Protective Works and subsequently the grant of Alternative Rights in accordance with paragraphs 15 to 19.
- 28 Any Protective Works are to be constructed in land owned by the undertaker or in land in respect of which Additional Rights have been or are guaranteed to be granted to Exolum. The Protective Works must be constructed in such manner and in such line or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by arbitration in accordance with [article [x] (arbitration)].
- 29 After the details for the Protective Works to be provided or constructed have been agreed or settled in accordance with [article [x] (arbitration)] and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 9, Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Protective Works.

Cathodic protection testing

- 30 Where in the reasonable opinion of Exolum or the undertaker:
 - 30.1 the Authorised Development might interfere with the cathodic protection forming part of Apparatus; or
 - 30.2 any Apparatus might interfere with the proposed or existing cathodic protection forming part of the Authorised Development;

Exolum and the undertaker must co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

- 31 The parties must carry out the works and enter into such agreements as are necessary to implement the measures for providing or preserving cathodic protection.

Expenses

- 32 Subject to the following provisions of these paragraphs 32 to 34, the undertaker must pay to Exolum the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Exolum in, or in connection with:
 - 32.1 the negotiation of the provisions of this Schedule;

- 32.2 undertaking its obligations under this Part of this Schedule including:
 - 32.2.1 the installation, inspection, removal, alteration, testing or protection of any Apparatus, Alternative Apparatus and/or Protective Works;
 - 32.2.2 the execution of any other works under this Part of this Schedule; and
 - 32.2.3 the review and assessment of Plans;
- 32.3 the watching of and inspecting the execution of the Authorised Development, any Restricted Works and any works undertaken by third parties as a result of Authorised Development (including the assessment of Plans); and
- 32.4 imposing reasonable requirements for the protection or alteration of Apparatus affected by the Authorised Development or works as a consequence of the Authorised Development in accordance with paragraph 22;

together with any administrative costs properly and reasonably incurred by Exolum.

- 33 There will be no deduction from any sum payable under paragraph 32 as a result of:
 - 33.1 the placing of apparatus of a better type, greater capacity or of greater dimensions, or at a greater depth than the existing Apparatus, to the extent Exolum has acted reasonably in procuring such apparatus;
 - 33.2 the placing of apparatus in substitution of the existing Apparatus that may defer the time for renewal of the existing Apparatus in the ordinary course; or
 - 33.3 the scrap value (if any) of any Apparatus removed.
- 34 Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Exolum, the undertaker must pay Exolum sufficiently in advance to enable Exolum to undertake its obligations under this Part of this Schedule in a manner that is neutral to its cash flow provided that in the event that the costs incurred by Exolum are less than the amount paid by the undertaker pursuant to this paragraph 34 then Exolum must within 35 days of payment being made by Exolum for the costs anticipated in the costs and expenses estimates, repay any overpayment to the undertaker.

Damage to property and other losses

- 35 Subject to paragraphs 37 to 39, the undertaker must:
 - 35.1 indemnify Exolum for all reasonably incurred loss, damage, liability, costs and expenses suffered or reasonably incurred by Exolum including but not limited to claims against Exolum made pursuant to the Energy Act 2013 as amended arising out of:
 - 35.1.1 the carrying out of works under this Part of this Schedule;
 - 35.1.2 the carrying out of the Authorised Development;
 - 35.1.3 the use or occupation of land over or in the vicinity of any Apparatus in connection with the carrying out of the Authorised Development;
 - 35.1.4 any injury or damage whatsoever to any property, real or personal, including the property of Exolum; and
 - 35.1.5 any matters arising out of or in connection with this Order;

- 35.2 indemnify Exolum against any claim made against, or loss suffered by, Exolum as a result of any act or omission committed by the undertaker's officers, employees, contractors or agents whilst on or in the vicinity of any Apparatus for the purposes of carrying out any activity authorised by this Order;
- 35.3 pay to Exolum, in accordance with the terms of the provisions of this Part of this Schedule, the cost reasonably incurred by Exolum in making good any damage to the Apparatus (other than Apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising out of the carrying out of works under this Part of this Schedule and arising out of the carrying out of the Authorised Development; and
- 35.4 pay to Exolum the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply through its Apparatus in consequence of the carrying out of works under this Part of this Schedule or the carrying out of the Authorised Development;

and make reasonable compensation to Exolum for any other expenses, losses, damages, penalty or costs incurred by Exolum by reason or in consequence of any such damage or interruption including all claims by third parties.

- 36 The fact that any act or thing may have been done by Exolum on behalf of the undertaker or in accordance with a Plan approved by Exolum or in accordance with any requirement of Exolum or under its supervision shall not, subject to paragraph 38, excuse the undertaker from liability under the provisions of paragraph 35.
- 37 Nothing in paragraph 35 imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the negligent act, neglect or default of Exolum, its officers, servants, contractors or agents.
- 38 The undertaker and Exolum must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers in connection with this Part of this Schedule.
- 39 The undertaker warrants that it must use reasonable endeavours to ensure:
 - 39.1 the information it or any of its employees, agents or contractors provide to Exolum about the Plans or the Authorised Development and on which Exolum relies in the design of and carrying out of any works is accurate; and
 - 39.2 the undertaker or any of its employees, agents or contractors have exercised all the reasonable skill, care and diligence to be expected of a qualified and experienced member of their respective profession.

Insurance

- 40 The undertaker must not carry out any Restricted Works unless and until Exolum has confirmed to the undertaker in writing that it is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker (or its contractor) has procured acceptable professional indemnity insurance and public liability insurance, with respect to the carrying out of the works.
- 41 The undertaker must maintain such insurance for the construction period of the Restricted Works from the proposed date of Commencement of the Restricted Works.

Co-operation and reasonableness

- 42 Where Apparatus is required to be protected, altered, diverted or removed under this Part of this Schedule, the undertaker must use all reasonable endeavours to co-ordinate the execution of any works under this Part of this Schedule:
- 42.1 in the interests of safety;
 - 42.2 in the interest of the efficient and economic execution of both Exolum's works and the Authorised Development; and
 - 42.3 taking into account the need to ensure the safe and efficient operation of the Apparatus and carrying out of Exolum's functions.
- 43 Exolum must use its reasonable endeavours to co-operate with the undertaker for the purposes outlined in paragraph 42.
- 44 The undertaker and Exolum must act reasonably in respect of any given term of this Schedule and, in particular, (without prejudice to generality) where any approval, consent or expression of satisfaction is required by this Schedule it must not be unreasonably withheld or delayed.

Emergency circumstances

- 45 The undertaker acknowledges that Exolum provides services to His Majesty's Government, using the Apparatus, which may affect any works to be carried out under this Part of this Schedule and the Authorised Development.
- 46 In the following circumstances, Exolum may on written notice to the undertaker immediately suspend all works that necessitate the stopping or suspending of the supply of product through any Apparatus under this Part of this Schedule and Exolum shall not be in breach of its obligations under this Part of this Schedule:
- 46.1 circumstances in which, in the determination of His Majesty's Government, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or
 - 46.2 circumstances in which a request has been received, and a decision to act upon such request has been taken, by His Majesty's Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or
 - 46.3 circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by His Majesty's Government; or
 - 46.4 any circumstances identified as such by the COBRA committee of His Majesty's Government (or any successor committee thereof); or
 - 46.5 any situation in connection with which His Majesty's Government requires fuel capacity, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas.
- 47 The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which includes, where applicable, costs of

demobilising and remobilising any workforce, and any costs to protect the Apparatus "mid-works") to account for the suspension.

- 48 Exolum shall not be liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under paragraphs 45 to 47 or delays caused by it.

Dispute Resolution

- 49 The undertaker and Exolum must use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Schedule in accordance with the following provisions.
- 50 The undertaker and Exolum must each nominate a representative who must meet to try to resolve the matter. If the matter is not resolved at that level within ten working days of either the undertaker or Exolum requesting such a meeting (or such longer period as may be agreed between the undertaker and Exolum) the matter may at the request of either the undertaker or Exolum be referred for discussion at a meeting to be attended by a senior executive from each party.
- 51 If the meeting between senior executives fails to result in a settlement within 20 working days of the date of the request for such a meeting (or if it is not possible to convene a meeting within this period) unless otherwise agreed in writing between the undertaker and Exolum the dispute or difference will be determined by arbitration in accordance with [article [x] (arbitration)].

Miscellaneous

- 52 No failure or delay by a party to exercise any right or remedy provided under this Part of this Schedule or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

Appendix B

Norther Power Grid Protected Provisions

Schedule – PROTECTIVE PROVISIONS
FOR THE PROTECTION OF NORTHERN POWERGRID

1. For the protection of Northern Powergrid the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

2. In this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989) belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“authorised works” means so much of the works authorised by this Order which affect existing Northern Powergrid’s apparatus within the Order limits;

“functions” includes powers and duties;

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

“Northern Powergrid” means Northern Powergrid (Yorkshire) PLC (Company Number 04112320) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne;

“Order” means the One Earth Solar Farm Order 202* ;

“Order limits” means as defined in article 2 of the Order;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to

mitigate the impacts of the works on Northern Powergrid's undertaking.

3. This Schedule does not apply to apparatus and / or alternative apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.
4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 of the Order (temporary prohibition or restriction on use of streets and public rights of way) the undertaker must not prevent Northern Powergrid from taking all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.
5. Regardless of any provision in this Order or anything shown on the land plans, or contained in the book of reference, the undertaker shall not acquire any apparatus, or override any easement or other interest of Northern Powergrid otherwise than by agreement with Northern Powergrid such agreement not to be unreasonably withheld or delayed.
6. Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not interfere with any communications cables or equipment used by Northern Powergrid in relation to its apparatus or acquire or interfere with rights or interests supporting the use, maintenance or renewal of such equipment other than by agreement of Northern Powergrid, such agreement not to be unreasonably withheld or delayed and having regard to Northern Powergrid's existing and known future requirements for such land or interests)
7. (1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed in or over which access to any apparatus is enjoyed or requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement or other form of written agreement in a form reasonably acceptable to Northern Powergrid which shall include rights to retain and subsequently maintain the apparatus being replaced or diverted for the lifetime of that alternative apparatus, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid 90 days' 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 Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or 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:

i. the undertaker must in the first instance use reasonable endeavours to acquire through voluntary negotiations all necessary land interests or rights as Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus and must use reasonable endeavours to procure through voluntary negotiations all necessary rights to access and maintain Northern Powergrid's apparatus and alternative apparatus thereafter the terms of such access and maintenance to be agreed by Northern Powergrid (acting reasonably); and

ii. In the event that the undertaker is not able to procure the necessary land interest or rights referred to in the sub-paragraph (3) (i) Northern Powergrid must, on receipt of a written notice to that effect from the undertaker and subject to paragraph 10, as soon as reasonably practicable use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Northern Powergrid to use its compulsory purchase powers to this end.

iii. In the event that neither the undertaker nor Northern Powergrid can acquire all necessary land interest or rights which Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus pursuant to paragraph 7 (3) (i) and /or (ii), the undertaker shall use its compulsory purchase powers under the Order (where available) unless otherwise agreed by arbitration under article 42.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 42.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42, and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

8.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be

granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

9.—(1) Not less than 90 days before starting the execution of any authorised works in, on or under any land purchased, held, appropriated or used under this Order that are near to (including conducting any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid's apparatus or encroach on safety distances to live equipment) or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7 (2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed and any such information as Northern Powergrid reasonably requires relating to those works.

(2) Those authorised works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the authorised works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph (2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 42 days before commencing the execution of any authorised works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section

and description of those authorised works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within fifty (50) days of receipt of an itemised invoice or claim all reasonable and proper expenses costs or charges incurred by Northern Powergrid—

(a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2) including without limitation:

- (i) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that Northern Powergrid acquires any necessary land and / or rights for alternative apparatus by voluntary negotiation or elects to use its compulsory purchase powers to acquire any necessary rights under paragraph 7(3) all costs reasonably incurred as a result of such action;
- (ii) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (iii) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (iv) the approval of plans which must include the review of any such plans and assessing and preparing a design for apparatus to address and accommodate the proposals of the undertaker, whether or not the undertaker proceeds to implement those proposals or any alternative, pursuant to paragraph 9(1);
- (v) the carrying out of protective works for apparatus as a result of the authorised works, plus a capitalised sum to cover the reasonable cost of adequately maintaining and renewing any permanent protective works;
- (vi) 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 Schedule); and

(2) Where any payment falls due pursuant to paragraph 10 (1),-Northern Powergrid must:

- (i) provide an itemised invoice or reasonable expenses claim to the undertaker.
- (ii) provide 'reminder letters' to the undertaker for payment to be made within the fifty days on the following days after the invoice or reasonable expenses claim to the undertaker:
 - 15 days ('reminder letter 1')
 - 29 days ('reminder letter 2')
 - 43 days ('reminder letter 3')
- (iii) be entitled to commence debt proceedings to recover any unpaid itemised invoice or reasonable expenses claim after fifty one days of receipt of the same where payment has not been made.

(3) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1) if in accordance with the provisions 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, 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 article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under 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 Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible on account of reasonable project time limits communicated in a reasonable timeframe to the undertaker or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(4) For the purposes of sub-paragraph (2)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 5(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised works referred to in paragraph 7(2), or in consequence of the, maintenance or failure of any of the authorised 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 authorised works, including without limitation authorised 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 (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to

pay any amount to a third party as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, the undertaker must—

(a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and

(b) indemnify Northern Powergrid for any other reasonable expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from Northern Powergrid by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to –

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, employees, servants, contractors or agents.

(b) any authorised development and/or other works authorised by this Schedule

carried out by Northern Powergrid as an assignee, transferee or lessee of the undertaker

with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article

36 (consent to transfer the benefit of the Order) subject to the proviso that once such

works become apparatus (“new apparatus”) any works yet to be executed by the undertaker and not falling within this paragraph will be subject to the full terms of this

Schedule including this paragraph in respect of such new apparatus.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the option of sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 9 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by Northern Powergrid.

(5) Subject to sub-paragraphs (3) and (4), the fact that any act or thing may have been done by Northern Powergrid on behalf of the undertaker or in accordance with a plan approved by Northern Powergrid or in accordance with any requirement of Northern Powergrid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (2) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (5) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skillful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and Northern Powergrid.

12. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

13. Any difference under the provisions of this Schedule, unless otherwise agreed, is to be referred to and settled by arbitration in accordance with Article 42 (Arbitration).

14. Where in consequence of the proposed construction of any of the authorised works, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 7 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use reasonable endeavours to co-operate with each other for those purposes.

15. If in consequence of an agreement reached in accordance with paragraph 4 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

16. The plans submitted to Northern Powergrid by the undertaker pursuant to this Schedule must be sent to Northern Powergrid at property@northernpowergrid.com or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

17. Prior to carrying out any authorised works within the Order Limits Northern Powergrid must give written notice of the proposed works to the undertaker, such notice to include full details of the location of the proposed works, their anticipated duration, access arrangements, depths of the works, and any other information that may impact upon the works consented by the Order.

18. Where practicable, the undertaker and Northern Powergrid will make reasonable efforts to liaise and co-operate in respect of information that is relevant to the safe and efficient construction

operation and maintenance of the authorised development. Such liaison shall be carried out where any authorised works are:

- a) within 15m of any above ground apparatus and / or
- b) within 15m of any apparatus and are to a depth of between 0 – 4m below ground level under any apparatus.

Appendix C NGET Protected Provisions

NATIONAL GRID ELECTRICITY TRANSMISSION PLC

SCHEDULE 1

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

1. (1) For the protection of National Grid Electricity Transmission Plc NGET as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGET.
- (2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and NGET, where the benefit of this Order is transferred or granted to another person under article 36 (*consent to transfer the benefit of the Order*) –
 - (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between NGET and the transferee or grantee (as the case may be); and
 - (b) written notice of the transfer or grant must be given to NGET on or before the date of that transfer or grant.
- (3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to NGET (but without prejudice to 16(3)b).

Interpretation

2. In this Part of this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of that part of the authorised works which constitutes specified works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):

 - (a) a waiver of subrogation and an indemnity to principal clause in favour of NGET
 - (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc); "alternative apparatus" means appropriate alternative apparatus to the satisfaction of NGET to enable NGET to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means—

- (a) electric lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to or maintained by NGET including for the purpose of construction, operation and maintenance of the NGET Projects together with any replacement apparatus; and
- (b) such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or must 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 (interpretation) of this 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 Part of this Schedule;

"Chesterfield to High Marnham Project" means the proposed new high voltage electricity transmission line and associated works between a new substation at Chesterfield and High Marnham to be undertaken by National Grid Electricity Transmission Plc;

"Chesterfield to High Marnham Site" means land within the Order Limits which is –

- (a) land on which any Chesterfield to High Marnham apparatus is situated; and
- (b) land on which Chesterfield to High Marnham apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the Chesterfield to High Marnham Project (in so far as the same has been notified by National Grid Electricity Transmission Plc in writing to the undertaker)

"commence" and "commencement" in this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"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;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by NGET (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 NGET'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;

“incentive deduction” means any incentive deduction NGET Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” will include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of NGET: construct, use, repair, alter, inspect, renew or remove the apparatus;

“NESO” means as defined in the STC;

“NGET Projects” means the National Grid High Marnham Substation, the North Humber to High Marnham Project and the Chesterfield to High Marnham Project respectively;

“North Humber to High Marnham Project” means the proposed new high voltage electricity transmission line and associated works between a new substation at Creyke Beck in the East Riding of Yorkshire and a new substation at High Marnham in Nottinghamshire to be undertaken by National Grid Electricity Transmission Plc;

“North Humber to High Marnham Site” means land within the Order Limits which is –

- (a) land on which any North Humber to High Marnham apparatus is situated; and
- (b) land on which North Humber to High Marnham apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the North Humber to High Marnham Project (in so far as the same has been notified by National Grid Electricity Transmission Plc in writing to the undertaker)

“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;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid Electricity Transmission Plc acting reasonably;

“specified works” means any of the authorised works or activities undertaken in association with the authorised development 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 under paragraph 12(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 12(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 “Avoidance of Danger from Overhead Lines”.

“STC” means the System Operator Transmission Owner Code prepared by the electricity transmission owners and NGENSO as modified from time to time;

“STC claims” means any claim made under the STC against NGET arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of NGET's transmission system which arises as a result of the authorised works;

“transmission owner” means as defined in the STC;

Interaction with the NGET Projects

3. Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the construction, maintenance and operation of the authorised development, and the NGET Projects. For the purposes of this paragraph, “reasonable endeavours” includes—
 - (a) undertaking consultation on the detailed design and programming of the grid connection works and all works associated and ancillary to the grid connection works to ensure that the design and programme for the grid connection works do not unreasonably impede or interfere with the NGET Projects;
 - (b) having regard to the proposed programme of works for the NGET Projects (as may be made available to the undertaker by NGET as soon as reasonably practicable in the circumstances);
 - (c) seeking to facilitate a co-ordinated approach to the programme, land assembly and the carrying out of the grid connection works and the NGET Projects;
 - (d) providing a point of contact for each of the undertaker and NGET for continuing liaison and co-ordination throughout the construction and operation of the authorised works and the NGET Projects; and
 - (e) keeping NGET informed of material changes to detailed design and on the programme of works for the grid connection works.

Grid connection works

4. The undertaker must not except with the agreement of NGET carry out the grid connection works, or any part of it (excepting any works which are works regulated by the connection agreement between the undertaker and National Grid Energy Systems Operator (or a successor thereto)).
5.
 - (1) Before beginning to construct any grid connection works, or any part of it, the undertaker must submit to NGET plans of the relevant grid connection works (or part of it) and such further particulars available to it as NGET may request within 21 days of receipt of the plans reasonably requested.
 - (2) Any grid connection works must not be constructed except in accordance with such plans as may be approved in writing by NGET.
6.
 - (1) Any approval of NGET required under this Schedule—
 - (a) must not be unreasonably withheld or delayed;
 - (b) in the case of a refusal must be accompanied by a statement of grounds or refusal; and
 - (c) may be given subject to such reasonable requirements as NGET may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the National Grid High Marnham Substation or otherwise for the protection of National Grid High Marnham Substation apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph 20 (*arbitration*).
 - (2) NGET must respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If NGET require further particulars, such particulars must be requested by NGET no later than 21 days from the submission of plans and thereafter NGET must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

7. (1) The undertaker must give to NGET not less than 14 days' notice in writing of its intention to commence construction of any grid connection works and notice in writing of its completion not later than 7 days after the date on which it is completed and NGET will be entitled by its officer to watch and inspect the construction of such works.
- (2) If any part of the grid connection works is constructed otherwise than in accordance with paragraph 5(2) above NGET may by notice in writing identify the extent to which the grid connection works do not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 5(2) of this Schedule or such alternative works as may be agreed with NGET or as otherwise may be agreed between the parties.
- (3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (2) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NGET may execute the works specified in the notice and any reasonable expenditure incurred by NGET in so doing will be recoverable from the undertaker.
- (4) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NGET will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 20.

On Street Apparatus

8. Except for paragraphs 9 (*apparatus of NGET in stopped up streets*), 14 (*retained apparatus: protection of NGET*), 15 (*expenses*) and 16 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of NGET, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NGET are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of NGET in stopped up streets

9. Notwithstanding the prohibition or restriction on use or diversion of any highway under the powers of article 12 (*temporary prohibition or restriction on use of streets and public rights of way*), NGET is at liberty at all times to take all necessary access across any such street or public right of way and to execute and do all such works and things in, upon or under any such street or public right of way as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction on use or diversion was in that street or public right of way.

Protective works to buildings

10. 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 or to the Chesterfield to High Marnham Project or to the North Humber to High Marnham Project without the written consent of NGET.

Acquisition of land

11. 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 or (b) appropriate, acquire, extinguish, interfere

with or override any easement, other interest or right and/or apparatus of NGET otherwise than by agreement.

- (1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not unless otherwise agreed in writing with NGET appropriate or acquire or take temporary possession of any land forming part of the Chesterfield to High Marnham Site and the North Humber to High Marnham Site (such agreement not to be unreasonably withheld or delayed)
- (2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between NGET and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of NGET or affect the provisions of any enactment or agreement regulating the relations between NGET and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as NGET reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between NGET and the undertaker acting reasonably and which must be no less favourable on the whole to NGET unless otherwise agreed by NGET, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.
- (3) Save where otherwise agreed in writing between NGET and the undertaker, the undertaker and NGET agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by NGET and/or other enactments relied upon by NGET as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule will prevail.
- (4) Any agreement or consent granted by NGET under paragraph 14 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

12. (1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of NGET to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of NGET in accordance with sub-paragraph (2) to (5).
- (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 NGET advance written notice of that requirement, together with a plan 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 NGET reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to NGET to its satisfaction (taking into account paragraph 13(1) below) the necessary facilities and rights
 - (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
 - (b) subsequently for the maintenance of that apparatus.

- (3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or 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, NGET may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for NGET to use its compulsory purchase powers to this end unless it elects to do so.
- (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 NGET and the undertaker.
- (5) NGET must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to NGET of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

13. (1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for NGET facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National and must be no less favourable on the whole to NGET than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by NGET.
- (2) If the facilities and rights to be afforded by the undertaker 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 NGET than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 20 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to NGET as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of NGET

14. (1) Not less than 56 days before the commencement of any specified works the undertaker must submit to NGET a plan of the works to be executed and seek from NGET details of the underground extent of their electricity assets.
- (2) In relation to specified works the plan to be submitted to NGET 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;
 - (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;
 - (f) any intended maintenance regimes; and
 - (g) an assessment of risks of rise of earth issues.

- (h) a ground monitoring scheme, where required.
- (2) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing; -
- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
 - (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
 - (c) details of load bearing capacities of trenches;
 - (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
 - (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
 - (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
 - (g) assessment of earth rise potential if reasonably required by NGET's engineers; and
 - (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.
- (4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until NGET has given written approval of the plan so submitted.
- (5) Any approval of NGET required under sub-paragraphs (4)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
 - (b) may be given subject to such reasonable requirements as National Grid may have in connection with the safe and efficient construction, commissioning, operation and maintenance of the Chesterfield to High Marnham and North Humber to High Marnham Projects
 - (c) and must not be unreasonably withheld.
- (6) In relation to any work to which sub-paragraphs (2) or (3) apply, NGET 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.
- (7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and NGET and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by NGET for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGET will be entitled to watch and inspect the execution of those works.
- (8) Where NGET 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 NGET's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and NGET must give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (9) If NGET in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1, 2, 7 and 10 to 12 apply

as if the removal of the apparatus had been required by the undertaker under paragraph 8(2).

- (10) 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 the specified works, a new 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.
- (11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to NGET notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.
- (12) At all times when carrying out any works authorised under the Order, the undertaker must comply with NGET's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

15. (1) Save where otherwise agreed in writing between NGET and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NGET within 180 days of receipt of an itemised invoice or claim from NGET all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by NGET 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) any costs reasonably incurred by or compensation properly paid by NGET in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by NGET as a consequence of NGET;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 12(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting NGET;
 - (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
 - (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
 - (d) the approval of plans;
 - (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
 - (f) 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 direct consequence of the execution of any such works referred to in this Part of this Schedule.
- (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 20 (*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 NGET 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 NGET in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on NGET any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.
- (6) Where anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by NGET are less than the amount already paid by the undertaker, NGET will repay the difference to the undertaker as soon as reasonably practicable.

Indemnity

- 16. (1) Subject to sub-paragraphs (2) and (3), 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 authorised 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 him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of NGET, or there is any interruption in any service provided, or in the supply of any goods, by NGET, or NGET becomes liable to pay any amount to any third party, the undertaker will—
 - (a) bear and pay on demand accompanied by an invoice or claim from NGET the cost reasonably and properly incurred by NGET in making good such damage or restoring the supply; and
 - (b) indemnify NGET for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NGET, by reason or in

consequence of any such damage or interruption or NGET becoming liable to any third party and including STC claims or an incentive deduction other than arising from any act, neglect or default of NGET.

- (2) The fact that any act or thing may have been done by NGET on behalf of the undertaker or in accordance with a plan approved by NGET or in accordance with any requirement of NGET or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this paragraph (1) unless NGET fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.
- (3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of-
 - (a) any damage or interruption to the extent that it is attributable to the neglect or default of NGET, its officers, servants, contractors or agents;
 - (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by NGET as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 36 (*consent to transfer the benefit the of Order*) subject to the proviso that once such works become apparatus (“new apparatus”), any specified works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 12; and/or
 - (c) any indirect or consequential loss (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) or damage which may be suffered by NGET or any third party under or in connection with the Order;
- (4) NGET must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without the consent of the undertaker, which if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- (5) NGET 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.
- (6) NGET 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 NGET’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of NGET’s control and if reasonably requested to do so by the undertaker NGET must provide an explanation of how the claim has been minimised, where relevant.
- (7) Not to commence construction (and not to permit the commencement of such construction) of the specified works on any land owned by NGET or in respect of which NGET has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of NGET’s apparatus until the following conditions are satisfied:
 - (a) unless and until NGET is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and unless otherwise agreed with NGET, acting reasonably, provided evidence that it shall maintain such acceptable security for the construction period of the part of the specified works referred to in sub-paragraph (7) above from the proposed date of commencement of construction of the authorised works) and NGET has confirmed the same to the undertaker in writing; and
 - (b) unless and until NGET is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and unless otherwise agreed with NGET, acting reasonably, provided evidence to NGET that it shall maintain such acceptable insurance for the construction period of the part of the authorised works referred to in sub-paragraph (7) above from the

proposed date of commencement of construction of the authorised works) and NGET has confirmed the same in writing to the undertaker.

- (8) In the event that the undertaker fails to comply with 16(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent NGET from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

17. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between NGET and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NGET 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

18. (1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or NGET requires the removal of apparatus under paragraph 12(2) or NGET makes requirements for the protection or alteration of apparatus under paragraph 14, the undertaker shall use its best 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 NGET's undertaking and NGET will use its best endeavours to co-operate with the undertaker for that purpose.
- (2) For the avoidance of doubt whenever NGET'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

19. If in consequence of the agreement reached in accordance with paragraph 11(1) or the powers granted under this Order the access to any apparatus or the Chesterfield to High Marnham Project and North Humber to High Marnham Project is materially obstructed, the undertaker must provide such alternative means of access to such apparatus or to the Chesterfield to High Marnham Project and North Humber to High Marnham Project as will enable NGET to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

20. Save for differences or disputes arising under paragraph 12(2), 12(4), 13(1) and 14 any difference or dispute arising between the undertaker and NGET under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NGET, be determined by arbitration in accordance with article 42 (*arbitration*).

Notices

21. Notwithstanding article 44 (*service of notices*), any plans submitted to NGET by the undertaker pursuant to paragraph 10 must be submitted using the LSBUD system [REDACTED] or to such other address as NGET may from time to time appoint instead for that purpose and notify to the undertaker in writing.