

The Lighthouse Green Fuels Order

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THE LIGHTHOUSE GREEN FUELS ORDER 202*

SUBJECT

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Coming into force

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An application has been made to the Secretary of State under section 35 of the Planning Act 2008 (“the 2008 Act”) and in accordance with The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 for an Order granting development consent.

The application was examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 2 of Part 6 of the 2008 Act and in accordance with Chapter 4 of Part 6 of the 2008 Act and The Infrastructure Planning (Examination Procedure) Rules 2010. The Examining Authority has submitted a report to the Secretary of State under section 74(2) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and, as a national policy statement has effect in relation to the proposed development, has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an Order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120, 122, 123 and 140 of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Lighthouse Green Fuels Order 202[●] and comes into force on [●].

Interpretation

2.—(1) In this Order—

“the 1965 Act” means the Compulsory Purchase Act 1965(a);

“the 1966 Act” means the Tees and Hartlepoons Port Authority Act 1966(b);

“the 1974 Order” means The Tees and Hartlepool Port Authority Revision Order 1974(c);

(a) 1965 c.56.
(b) 1966 c. xxv.
(c) S.I. 1975/693.

“the 1980 Act” means the Highways Act 1980(a);

“the 1990 Act” means the Town and Country Planning Act 1990(b);

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

“the 1994 Order” means The Tees and Hartlepool Harbour Revision Order 1994(d);

“the 2003 Act” means the Communications Act 2003(e);

“the 2008 Act” means the Planning Act 2008(f);

“the 2009 Act” means the Marine and Coastal Access Act 2009(g);

“access and rights of way plans” means the access and rights of way plans referred to in Schedule 13 (documents and plans to be certified) and certified as such by the Secretary of State for the purposes of this Order under article 48 (certification of plans, etc.);

“address” includes any number or address used for the purposes of electronic transmission;

“AOD” means above ordnance datum;

“AGI” means above ground installations;

“ancillary works” means the ancillary works described in Part 3 of Schedule 1 (authorised project) and any other works authorised by this Order that are not development within the meaning of section 32 of the 2008 Act;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act save that “apparatus” further includes pipelines, aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

“authorised development” means the development and further associated development described in Schedule 1 (authorised project), which is development within the meaning of section 32 (meaning of “development”) of the 2008 Act;

“authorised project” means the authorised development and the ancillary works described in Schedule 1 (authorised project);

“bank holiday” means a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(h);

“book of reference” means the book of reference certified as such by the Secretary of State for the purposes of this Order under article 48 (certification of plans, etc.);

“crossing design details” means the figure and details as set out in chapter 5 of the environmental statement;

“cables” means cables for the transmission of electricity and other cables (including fibre optic cables) for the purpose of control, monitoring, protection or general communications;

“carriageway” has the same meaning as in the 1980 Act;

“commence” means—

- (a) in relation to any activities licensed by the deemed marine licence, the first carrying out of those activities save for operations consisting of pre-construction surveys, monitoring surveys and unexploded ordnance surveys approved under deemed marine licenses;
- (b) in respect of any other works, the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project except for preliminary works and the words “commence” and “commencement” must be construed accordingly;

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- (a) 1980 c. 66.
 - (b) 1990 c. 8.
 - (c) 1991 c. 22.
 - (d) S.I. 1994/2064.
 - (e) 2003 c. 21.
 - (f) 2008 c. 29.
 - (g) 2009 c. 23.
 - (h) 1971 c. 80.

“CHP generating station” means a biomass and waste wood combined heat and power generating station;

“commissioning” means the process of testing systems, infrastructure and components of Work Nos. 1 and 2 which are installed or in relation to which installation is nearly complete in order to ensure that they, and Work Nos. 1 and 2 as a whole, function in accordance with the plant design specifications and the undertaker’s operational and safety requirements;

“date of final commissioning” means the date on which commissioning of Work No. 1 is completed and commences operation on a commercial basis;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“environmental statement” means the environmental statement referred to in Schedule 13 (documents and plans to be certified) and certified as such by the Secretary of State for the purposes of this Order under article 48 (certification of plans, etc.);

“flood risk assessment” means the flood risk assessment certified as such by the Secretary of State for the purposes of this Order under article 48 (certification of plans, etc.);

“framework construction environmental management plan” means the framework construction environmental management plan certified as such by the Secretary of State for the purposes of this Order under article 48 (certification of plans, etc.);

“framework construction traffic management plan” means the framework construction traffic management plan certified as such by the Secretary of State for the purposes of this Order under article 48 (certification of plans, etc.);

“framework construction workers travel plan” means the framework construction workers travel plan certified as such by the Secretary of State for the purposes of this Order under article 48 (certification of plans, etc.);

“framework drainage strategy” means the framework drainage strategy certified as such by the Secretary of State for the purposes of this Order under article 48 (certification of plans, etc.);

“framework lighting strategy” means the framework lighting strategy certified as such by the Secretary of State for the purposes of this Order under article 48 (certification of plans, etc.);

“framework landscape and biodiversity mitigation and enhancement strategy” means the framework landscape and biodiversity management plan certified as such by the Secretary of State for the purposes of this Order under article 48 (certification of plans, etc.);

“land plans” means the land plans certified as such by the Secretary of State for the purposes of this Order under article 48 (certification of plans, etc.);

“main site” means the land identified as the main site on figure 4.2 (main site and wider site) certified as such by the Secretary of State for the purposes of this Order under article 48 (certification of plans, etc.);

“maintain” includes, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised project provided that such activities do not give rise to any materially new or materially different adverse effects that have not been assessed in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily and described in the book of reference;

“Order limits” means the limits shown on the works plans within which the authorised project may be carried out;

“outline design principles” means the framework design principles certified as such by the Secretary of State for the purposes of this Order under article 48 (certification of plans, etc.);

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“preliminary works” means works consisting of site clearance, including vegetation clearance, and demolition of existing structures, environmental surveys, geotechnical surveys, surveys of existing infrastructure, and other investigations for the purpose of assessing ground conditions, the preparation of facilities for the use of contractors (excluding earthworks and excavations), the provision of temporary means of enclosure and site security for construction, the provision of temporary means of access, the diversion and laying of utilities and services, the temporary display of site notices or advertisements and any other works agreed by the relevant planning authority, provided that these will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement;

“public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) of the Harbours Act 1964(b), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation;

“relevant planning authority” means the planning authority for the area in which the land to which the provisions of this Order apply is situated and the relevant legislative competence under the 1990 Act for the matter to which that provision relates;

“requirements” means those matters set out in Schedule 2 (requirements) to this Order and any reference to a numbered requirement is to be construed accordingly;

“site location plan” means the site location plan referred to in Schedule 13 (documents and plans to be certified) and certified as such by the Secretary of State for the purposes of this Order under article 48 (certification of plans, etc.);

“statutory harbour authority” means the authority responsible for the management and running of Teesport harbour;

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act and includes a public communications provider defined by section 151(1) (interpretation of Chapter I) of the 2003 Act;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“street works” means the works listed in article 9(1) (street works);

“Tees Bay C” means the disposal site allocated for deposit of dredge arisings carrying reference TY150;

“undertaker” means LGF Projects Limited (Company No. 16455871), whose registered office is 1-6 Lombard Street, London, England and Wales, United Kingdom, EC3V 9AA, or a person who has the benefit of this Order in accordance with articles 6 (benefit of the Order) and 7 (consent to transfer the benefit of the Order);

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“working day” means any day other than a Saturday, Sunday or bank holiday; and

“works plans” means the works plans certified as such by the Secretary of State for the purposes of this Order under article 48 (certification of plans, etc.).

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the acquisition of rights and

(a) 1981 c. 67; section 7 (definition of “owner”) was amended by paragraph 9 to Schedule 15 of the Planning and Compensation Act 1991 (c. 34).

(b) 1964 c. 40; paragraph 9B was inserted into Schedule 2 by paragraph 9 of Schedule 3 of the Transport and Works Act 1992 (c. 42). There are other amendments to the 1964 Act that are not relevant to this Order.

restrictions over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions, measurements and lengths referred to in this Order are approximate, except the parameters referred to in Part 3 of Schedule 2 (requirements).

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to “numbered works” or “Work No.” are references to the works comprising the authorised development as numbered in Schedule 1 (authorised project) and shown on the works plans.

(6) The expression “includes” is to be construed without limitation.

(7) In this Order, references to the purposes of the authorised project or authorised development includes for the purposes of and in connection with the construction, maintenance, operation, use and decommissioning of the authorised project or authorised development as applicable.

(8) In this Order, references to materially new or materially different environmental effects in comparison with those reported in the environmental statement must not be construed so as to include the avoidance, removal or reduction of an adverse environmental effect that was reported in the environmental statement as a result of the authorised project.

(9) Save for as modified in this Order, references in this Order to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

3. Subject to the provisions of this Order, including the requirements, the undertaker is granted development consent for the authorised project to be carried out within the Order limits.

Maintenance of authorised project

4.—(1) The undertaker may at any time maintain the authorised project except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

Operation of authorised project

5.—(1) The undertaker is authorised to use and operate the authorised project.

(2) Subject to the provisions of this Order, this article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required from time to time to authorise the operation of the authorised project.

Benefit of the Order

6.—(1) Subject to article 7 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of the owners and occupiers of land, statutory undertakers and other persons affected by the project.

Consent to transfer the benefit of the Order

7.—(1) Subject to paragraph (7), the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (excluding the deemed marine licence) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (excluding the deemed marine licence) and such related statutory rights as may be so agreed in writing between the undertaker and the lessee.

(2) Subject to paragraph (3), the undertaker may with the written consent of the Secretary of State—

- (a) transfer to the transferee the whole of a deemed marine licence and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to the lessee the whole of a deemed marine licence and such related statutory rights as may be so agreed.

(3) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the whole of the benefit of the provisions of a deemed marine licence.

(4) Where a transfer or grant has been made in accordance with paragraph (1) or (2) references in this Order to the undertaker, except in paragraph (5), include references to the transferee or the lessee.

(5) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) or (2) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(6) Where an agreement has been made in accordance with paragraph (1) or (2)—

- (a) the benefit transferred or granted (“the transferred benefit”) includes any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates; and
- (b) the transferred benefit resides exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker.

(7) The consent of the Secretary of State is not required for the exercise of powers under paragraph (1) where—

- (a) the transferee or lessee is—
 - (i) a subsidiary of the undertaker; or
 - (ii) a parent company of the undertaker; or
 - (iii) a subsidiary of a parent company of the undertaker; or
 - (iv) the holder of a licence under section 6 (licenses authorising supply, etc.) of the 1989 Act; or
 - (v) a person who holds a licence under section 7A (licenses of gas suppliers and gas shippers) of the 1986 Act; or
 - (vi) in relation to a transfer or lease of utility or other infrastructure connection works, the relevant statutory undertaker or licence holder;
- (b) The time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of all such claims;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or

- (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(8) Where the consent of the Secretary of State is not required under paragraph (7) the undertaker must notify the Secretary of State in writing before transferring or granting any or all of the benefit referred to in paragraph (1) or (2).

(9) The notification in paragraph (8) must state—

- (a) the name and contact details of the person to whom the benefit of the powers are to be transferred or granted;
- (b) subject to paragraph (10), the date on which the transfer is proposed to take effect;
- (c) the powers to be transferred or granted;
- (d) the restrictions, liabilities and obligations that are to apply to the person exercising the powers transferred or granted under paragraph (1); and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(10) The date specified under paragraph (9)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(11) The notice given under paragraph (8) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

(12) The undertaker must, within 10 working days after entering into an agreement under paragraph (2) in relation to which any of the benefit of the deemed marine licence is to be transferred to another party, notify the Environment Agency and the MMO in writing, and the notice must include particulars of the other party to any agreement under paragraph (1) or (2) and details of the extent, nature and scope of the functions to be transferred or otherwise dealt with which relate to the functions of any of those bodies.

(13) Sections 72(7) and (8) of the 2009 Act (variation, suspension, revocation and transfer) do not apply to a transfer or grant of the whole of the benefit of the provisions of the deemed marine licences to another person by the undertaker pursuant to an agreement under paragraph (2) save that the MMO may amend any deemed marine licence granted under Schedule 10 (deemed marine licence under the 2009 Act) or of the Order to correct the name of the undertaker to the name of a transferee or lessee under this article 7 (consent to transfer the benefit of the Order).

(14) For the purposes of this article “statutory undertaker” includes any person who has apparatus within the Order limits.

Application and modification of legislative provisions

8.—(1) The York Potash Harbour Facilities Order 2016 is amended for the purposes of this Order only as set out in Part 1 of Schedule 3 (amendments to legislation).

(2) The Net Zero Teesside Order 2024 is amended for the purposes of this Order only as set out in Part 2 Schedule 3 (amendments to legislation).

(3) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of the authorised project—

- (a) requirements of section 22 (licensing of works) of the 1966 Act;
- (b) requirements of section 23 (license to dredge) of the 1966 Act;
- (c) section 25 (restriction on construction of works and dredging) of the 1966 Act; and
- (d) the provisions of the Neighbourhood Planning Act 2017^(a) in so far as they relate to the temporary possession of land under articles 29 (temporary use of land for carrying out the authorised project) and 30 (temporary use of land for maintaining the authorised project) of this Order.

(a) 2017 c. 20.

PART 3

STREETS

Street works

9.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel, drill or bore under the street or carry out works to strengthen or repair the carriageway;
- (c) remove or use all earth and materials in or under the street;
- (d) place and keep apparatus in the street;
- (e) maintain, renew or alter apparatus in the street, change its position or remove it;
- (f) demolish, remove, replace and relocate any street furniture;
- (g) execute any works to provide or improve sight lines;
- (h) execute and maintain any works to provide hard and soft landscaping;
- (i) carry out re-lining and placement of road markings;
- (j) remove and install temporary and permanent signage; and
- (k) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (j).

(2) Subject to paragraph (4) and without prejudice to the specific powers conferred by paragraph (1) the undertaker may carry out any of the works referred to in paragraph (1) in any street.

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority but such consent must not be unreasonably withheld or delayed and if the street authority has received an application for consent to exercise powers under paragraph (2) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application is submitted with all relevant information, it is deemed to have granted consent.

(5) The authority given by paragraphs (1) and (2) are a statutory right for the purposes of section 48(3) (streets, street works and undertakers)(a) and section 51(1) (prohibition of unauthorised street works)(b) of the 1991 Act.

Application of the 1991 Act

10.—(1) The provisions of the 1991 Act mentioned in paragraph (2) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to the carrying out of works under article 9 (street works), whether or not the carrying out of the works or the closure, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act(c) are—

- (a) subject to paragraph (3), section 55 (notice of starting date of works);
- (b) section 57 (notice of emergency works);
- (c) section 60 (general duty of undertakers to co-operate);

(a) Section 48 was amended by section 49 of the Planning and Infrastructure Act 2025 (c. 34).

(b) Section 51 was amended by section 49 of the Planning and Infrastructure Act 2025 (c. 34).

(c) Section 55, 57, 60, 68 and 69 were amended by the Traffic Management Act 2004 (c. 18).

- (d) section 68 (facilities to be afforded to street authority);
- (e) section 69 (works likely to affect other apparatus in the street);
- (f) section 76 (liability for cost of temporary traffic regulation);
- (g) section 77 (liability for cost of use of alternative route); and
- (h) all provisions of that Act that apply for the purposes of the provisions referred to in subparagraphs (a) to (g).

(3) Section 55(a) of the 1991 Act as applied by paragraph (2) has effect as if references in section 57 of that Act to emergency works included a reference to a closure, alteration or diversion (as the case may be) required in a case of emergency.

(4) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- (a) section 56(b) (power to give directions as to timing of street works);
- (b) section 56A(c) (power to give directions as to placing of apparatus);
- (c) section 58(d) (restriction on works following substantial road works);
- (d) section 58A(e) (restriction on works following substantial street works);
- (e) section 61 (protected streets); and
- (f) schedule 3A(f) (restriction on works following substantial street works).

Power to alter layout, etc. of streets

11.—(1) The undertaker may, for the purposes of the authorised project, alter the layout of any street within the Order limits and the layout of any street at its junction with such a street, and, without limitation on the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of such a kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain crossovers and passing places.

(2) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(3) The powers conferred by paragraph (1) may not be exercised without the consent of the street authority but such consent must not be unreasonably withheld or delayed and if the street authority has received an application for consent to exercise powers under paragraph (1) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application is submitted with all relevant information, it is deemed to have granted consent.

(4) Paragraphs (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Access to works

12.—(1) The undertaker may, for the purposes of the authorised project and subject to paragraph (2), with the consent of the relevant street authority as appropriate (such consent not to be unreasonably withheld or delayed), form and lay out such means of access (permanent or

(a) Section 55 was amended by Part 4 section 51(9) and Schedule 1 paragraph 1 of the Traffic Management Act 2004 (c. 18).
 (b) Section 56 was amended by sections 40 and 43 and Schedule 1 to the Traffic Management Act 2004 (c. 18).
 (c) Section 56A was inserted by Section 44 of the Traffic Management Act 2004.
 (d) Section 58 was amended by sections 40 and 51 of, and Schedule 1 to, the Traffic Management Act 2004.
 (e) Section 58A was inserted by section 51(1) of, and Schedule 4 to, the Traffic Management Act 2004.
 (f) Section 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004.

temporary) or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires.

(2) The agreement of the relevant street authority as appropriate is not required for the formulation, layout or improvement of a new or existing means of access described in Schedule 5 (access).

(3) If a street authority which has received an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Temporary closure, alteration or diversion of streets and public rights of way

13.—(1) The undertaker may, for the purposes of the authorised project, temporarily close, alter or divert any street and public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street and public right of way;
- (b) authorise for the purpose of crossing only the use of motor vehicles on classes of public rights of way where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and
- (c) subject to paragraph (2), prevent all persons from passing along the street and public rights of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street and public right of way affected by the temporary closure, alteration or diversion of a street and public right of way under this article if there would otherwise be no such access.

(3) The undertaker must not temporarily close, alter or divert—

- (a) the public rights of way specified in Schedule 6 (closure of public rights of way) without first giving not less than 28 days notice in writing to the street authority of its intention to do so; or
- (b) any other street or public right of way without the consent of the street authority, such consent not to be unreasonably withheld or delayed.

(4) Any person who suffers loss by the suspension of any private right under this article is entitled to compensation from the undertaker to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation)(a) of the 1961 Act.

(5) If a street authority which has received an application for consent under paragraph (3) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

(6) Nothing in this article prevents the undertaker from temporarily closing, prohibiting the use of, restricting the use of, altering or diverting a street and public right of way under this article more than once.

Agreements with street authorities

14.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order; or
- (b) any such works the parties may agree.

(2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

(a) Sections 2 and 3 were repealed by Schedule 1 paragraph 38 of the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307.

- (b) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Use of private roads

15.—(1) Subject to paragraphs (2), (3) and (4), the undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of the authorised project.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may only use a private road under paragraph (1) for such time as the power to take temporary possession of the land upon which it is located under either article 29 (temporary use of land for carrying out the authorised project) and article 30 (temporary use of land for maintaining the authorised project) is capable of being exercised under those articles in relation to that land.

Traffic regulation

16.—(1) Subject to paragraphs (2) and (3) and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of the construction of the authorised project, at any time prior to the date that is 12 months after the date of final commissioning—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road and;
- (b) make provision as to the direction or priority of vehicular traffic on any road, either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—

- (a) given not less than four week's notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within seven days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 13 (temporary closure, alteration or diversion of streets and public rights of way) or paragraph (1) of this article has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places)(a) of the 1984 Act, and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act.

(4) In this article—

- (a) subject to sub-paragraph (b), expressions used in it and in the 1984 Act have the same meaning; and

(a) Relevant amendments to section 32 were made by the 1991 Act section 168(1) and Schedule 8, paragraph 39.

- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

17.—(1) Subject to paragraphs (3) and (4) the undertaker may use any watercourse or any public sewer or drain for the drainage of water for the purposes of with the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers)(a) of the Water Industry Act 1991.

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs, and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld or delayed.

(4) The undertaker must not make any opening into any public sewer or drain pursuant to paragraph (1) except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence under The Environmental Permitting (England and Wales) Regulations 2016(b).

(7) In this article expressions excluding “public sewer or drain” and “watercourse”(c), used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(8) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under sub-paragraph (4)(a), that person is deemed to have granted consent or given approval, as the case may be.

(9) A sewerage undertaker is deemed to have granted consent to the discharge of trade effluent into a public sewer under paragraph (3) where the public sewer belongs to the sewerage undertaker and consent under section 118 (consent required for discharge of trade effluent into public sewer) of the Water Industry Act 1991 has been granted in respect of the discharge.

Felling or lopping of trees

18.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) 1991 c. 56.

(b) S.I. 2016/1154.

(c) 1991 c. 57; Section 221 (meaning of “watercourse”) was amended by Schedule 22 paragraph 128 of the Environment Act 1995 c. 25 and Part 2 Section 59(4)(b) of the Water Act 2014 c. 21 Pt 2 s.59(4)(b).

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to persons constructing, maintaining or operating the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2) or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Authority to survey and investigate the land

19.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes or boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land, apparatus for use in connection with the survey and investigation of land and making of trial holes and boreholes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes and boreholes.

(4) No trial holes or boreholes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld or delayed.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1(a) of the 1961 Act.

(6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under sub-paragraph (4)(a) in the case of a highway authority; or
- (b) under sub-paragraph (4)(b) in the case of a street authority,

that authority is deemed to have granted consent.

(a) Sections 2 and 3 were repealed by the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.38 (June 1, 2009).

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions)(a) of the 2008 Act.

PART 5

COMPULSORY ACQUISITION

Compulsory acquisition of land

20.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project, or to facilitate it, or as is incidental to it.

(2) This article is subject to article 21 (time limit for exercise of authority to acquire land and rights compulsorily), article 22 (compulsory acquisition of rights), article 24 (private rights), article 27 (acquisition of subsoil or airspace only), article 28 (rights under or over streets) and article 29 (temporary use of land for carrying out the authorised project).

Time limit for exercise of authority to acquire land and rights compulsorily

21.—(1) After the end of the period of 5 years beginning on the day on which this Order comes into force—

- (a) no notice to treat may be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946)(b) of the 1965 Act; and
- (b) no declaration may be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 25 (application of the 1981 Act).

(2) The authority conferred by article 29 (temporary use of land for carrying out the authorised project) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

22.—(1) Subject to the following paragraphs of this article, the undertaker may acquire such rights over the Order land, by creating them as well as acquiring rights already in existence or impose restrictions as may be required for any purpose for which that land may be acquired under article 20 (compulsory acquisition of land).

(2) The powers of paragraph (1) may be exercised by a statutory undertaker in any case where the undertaker transfers the power to a statutory undertaker, in accordance with article 6 (benefit of the Order).

(3) Where in consequence of paragraph (2), a statutory undertaker exercises the powers in paragraph (1) in place of the undertaker, except in relation to the payment of compensation the liability for which must remain with the undertaker, the statutory undertaker is to be treated for the purposes of this Order, and by any person with an interest in the land affected, as being the undertaker in relation to the acquisition of the rights in question.

(4) In the case of the Order land specified in column (1) of Table 5 in Schedule 7 (land in which new rights etc. may be acquired) and coloured blue on the land plans the undertaker's powers of compulsory acquisition under paragraph (1) are limited to the acquisition of new rights over the land or the imposition of such restrictive covenants as the undertaker may require for the purposes

(a) Section 125(3)(c) was repealed by the Repealed the by Housing and Planning Act 2016 c. 22 Sch.16 para.17 (July 13, 2016).

(b) Section 1 was amended by the Gas Act 1986 (c. 44).

of the authorised project for the purposes specified in column (2) of that Table 5 in relation to that land.

(5) In the case of Order land required for Work No. 11B and 11C, the undertaker's powers under paragraph (1) are limited to either plots falling within Work No. 11B or plots falling within Work No. 11C, the undertaker must—

- (a) if Work No. 11B is to be developed, serve written notice on those plots (being plots falling within Work No. 11C) confirming that the undertaker no longer intends to implement any powers of compulsory acquisition for the purposes of carrying out Work No.11C in relation to such plots; or
- (b) if Works No. 11C is to be developed, serve written notice on those plots (being plots falling within Work No. 11B) confirming that the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots for the purposes of carrying out Work No.11B.

(6) In the event the undertaker develops Work No. 9B, the undertaker must serve written notice on those plots (being plots falling within Work No. 9A) confirming that the undertaker no longer intends to implement any powers of compulsory acquisition for the purposes of carrying out Work No.9A in relation to such plots.

(7) The power under paragraphs (1) and (2) to acquire the rights and to impose the restrictive covenants for the benefit of statutory undertakers—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land as may be required for the benefit of any other statutory undertaker; and
- (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land as are required for the benefit of any other statutory undertaker.

(8) Subject to section 8 (provisions as to divided land)(a) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants)), where the undertaker creates or acquires a right over land or imposes a restrictive covenant under paragraph (1), the undertaker is not to be required to acquire a greater interest in that land.

(9) Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the acquisition of a new right or the imposition of a restrictive covenant.

(10) For the purposes of this article (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) “statutory undertaker” includes any person who has apparatus within the Order limits.

(11) References in this article to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject.

(12) Nothing in this article permits the undertaker to acquire or create rights or impose restrictive covenants in land specified in Schedule 9 (land of which temporary possession may be taken).

(13) This article is subject to article 42 (Crown rights).

(a) Section 8 was amended by various provisions in the by the Gas Act 1986 (c.44) and by Schedule 17(1) paragraph 2 of the Housing and Planning Act 2016 c. 22.

Power to override easements and other rights

23.—(1) The carrying out of or use of the authorised project and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) (nuisance: statutory authority) of the 2008 Act, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation, unless otherwise agreed, to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract,

caused by the carrying out of the authorised project and the operation of section 158 (benefit of Order granting development consent) of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the use of land arising by virtue of a contract.

(4) Section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

Private rights

24.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 20 (compulsory acquisition of land) are suspended and unenforceable or, where so notified by the undertaker to the person with the benefit of such private rights or restrictive covenants, extinguished in so far as in either case their continuance would be inconsistent with the acquisition—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 22 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be

determined, in case of dispute, under Part 1 (determination of questions of disputed compensation)(a) of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.)(b) of the 2008 Act or article 31 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the creation and acquisition of rights or the imposition of restrictive covenants over or affecting the land;
- (ii) the undertaker's appropriation of the land;
- (iii) the undertaker's entry onto the land; or
- (iv) the undertaker's taking temporary possession of the land,

that any or all of those paragraphs do not apply to any right specified in the notice; or

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If an agreement referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right is vested or belongs and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

the agreement is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) References in this article to private rights over land include any right of way, trust, incident, easement, privilege, restrictions, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the 1981 Act

25.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as so applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act), for subsection (2), substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

(4) Section 5 (earliest date for execution of declaration) is omitted.

(5) Section 5A (Time limit for general vesting declaration) is omitted.

(6) In section 5B (Extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and

(7) For “the applicable period for the purposes of section 5A” substitute “the five year period mentioned in article 21 (time limit for exercise of authority to acquire land and rights compulsorily) of the Lighthouse Green Fuels Order 202[●]”.

(8) In section 6 (notices after execution of declaration)(c), in subsection (1)(b) for “section 15 of, or paragraph 5 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(a) Sections 2 and 3 were repealed by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.38 (June 1, 2009).

(b) Section 138(4) was amended by section 23(4)(a) of the Growth and Infrastructure Act 2013.

(9) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.

(10) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 27 acquisition of subsoil or airspace only) of the Lighthouse Green Fuels Order 202[●], which excludes the acquisition of subsoil only from this Schedule.”

(11) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 26 (application of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Application of Part 1 of the 1965 Act

26.—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge)—

- (a) for “section 23 of the Acquisition of Land Act 1981(application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the applicable period for the purposes of section 4” substitute “the five year period mentioned in article 21 (time limit for exercise of authority to acquire land and rights compulsorily) of the Lighthouse Green Fuels Order 202[●]”.

(3) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 21 (time limit for exercise of authority to acquire land and rights compulsorily) of the Lighthouse Green Fuels Order 202[●]”.

(4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

- (a) omit paragraphs 1(2) and 14(2); and
- (b) at the end insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 29 (temporary use of land for carrying out the authorised project) or article 30 (temporary use of land for maintaining the authorised project) of the Lighthouse Green Fuels Order 202[●].”

Acquisition of subsoil or airspace only

27.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil or under airspace over the land referred to in paragraph 2(1) of article 20 (compulsory acquisition of land) or article 22 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil under or airspace over land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(c) 1981 c. 67; Section 6 was amended by section 4 and Schedule 2 paragraph 52(2) of the Planning (Consequential Provisions) Act 1990 and Schedule 15 paragraph 7 of the Housing and Planning Act 2016 c. 22.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153(4A) (reference to objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory or airspace above a house, building or factory.

Rights under or over streets

28.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order land as may be required for the purposes of the authorised project and may use the subsoil under or airspace over for those purposes or any other purpose ancillary to the authorised project.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5) any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation)(a) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised project

29.—(1) The undertaker may, for the purposes of the authorised project—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of Table 6 in Schedule 9 (land of which temporary possession may be taken), for the purpose specified in relation to that land in column (2) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any structure, buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), running tracks, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a working site with access to the working site in connection with the authorised project;

(a) Sections 2 and 3 were repealed by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.38 (June 1, 2009).

- (e) construct the authorised project;
- (f) construct any works as specified in relation to that land in column (3) of Table 6 in Schedule 9 (land of which temporary possession may be taken); and
- (g) carry out any mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph 1(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (3) of Table 6 in Schedule 9 (land of which temporary possession may be taken); and
- (b) in the case of land specified in paragraph 1(a)(ii) after the end of the period of one year beginning on the date of completion of the part of the authorised project for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace any building, structure, drain or electric line removed under this article;
- (b) remove any drainage works installed by the undertaker under this article; or
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 4 (streets subject to street works).

(5) The undertaker must pay compensation to the owners and occupiers of land which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 (Determination of questions of disputed compensation)(a) of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 22 (compulsory acquisition of rights) to the extent that such land is listed in column (1) of Table 5 in Schedule 7 (land in which only new rights etc., may be acquired) in; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 27 (acquisition of subsoil or airspace only).

(a) Sections 2 and 3 were repealed by the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 Sch.1 para.38 (June 1, 2009).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land that the undertaker takes temporary possession of under this article.

Temporary use of land for maintaining the authorised project

30.—(1) Subject to paragraph (2), at any time during the maintenance period the undertaker may—

- (a) enter on and take temporary possession of any of the Order land if such possession is reasonably required for the purpose of maintaining the authorised project;
- (b) enter on any of the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised project; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The notice in paragraph (3) must specify—

- (a) the period after the end of which the undertaker may take temporary possession of the land provided that such period must not end earlier than the end of the period of 28 days beginning with the day on which the notice is given; and
- (b) subject to paragraph (5) the period for which the undertaker is to take temporary possession of the land, provided that such periods may be varied from time to time by agreement between the undertaker and the owner or occupier.

(5) The undertaker is not required to comply with paragraph (3) in a case of emergency and if an emergency exists they must—

- (a) give to the owners and occupiers of the land in question notice of its intended entry or (as the case may be) of its having entered onto the land as soon as is reasonably practicable; and
- (b) comply with paragraph (1) so far as is reasonably possible in the circumstances.

(6) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken and to restore the land in accordance with sub-paragraph (7).

(7) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(8) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(9) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(10) Nothing in this article affects any liability to pay compensation under section 152 (further provisions as to compensation for injurious affection) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (7).

(11) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(13) In this article “the maintenance period” means the period of five years beginning with the date of final commissioning.

Statutory undertakers

31. Subject to the provisions of Schedule 11 (protective provisions) the undertaker may—

- (a) acquire compulsorily, create or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the Order land; and
- (b) extinguish or suspend the rights of, remove, relocate or modify the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

No double recovery

32. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

Apparatus and rights of statutory undertakers in streets

33. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 11 (power to alter layout etc. of streets), or article 13 (temporary closure, alteration or diversion of streets and public rights of way), any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 11 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

34.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31 (statutory undertakers) any person who is—

- (a) the owner or occupier of premises the drains of which communicated with the sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 33 (apparatus and rights of statutory undertakers in streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article— “public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(a); and “public utility undertaker” has the same meaning as in the 1980 Act.

Compulsory acquisition of land – incorporation of the mineral code

35.—(1) Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 are incorporated in this Order subject to the following modifications—

- (a) for “compulsory purchase order” substitute “this Order”;
- (b) for “the acquiring authority” substitute “the undertaker”;
- (c) for the “undertaking” substitute “authorised project”; and
- (d) paragraph 8(3) is not incorporated.

Funding

36.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land.

(2) The provisions are—

- (a) article 20 (compulsory acquisition of land);
- (b) article 22 (compulsory acquisition of rights);
- (c) article 24 (private rights);
- (d) article 27 (acquisition of subsoil or airspace only);
- (e) article 28 (rights under or over streets);
- (f) article 29 (temporary use of land for carrying out the authorised project);
- (g) article 30 (temporary use of land for maintaining the authorised project); and
- (h) article 31 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

(5) Nothing in this article requires a guarantee or alternative form of security to be put in place by the undertaker where—

- (a) the undertaker provides the Secretary of State with financial information sufficient to demonstrate that it has appropriate funding in place without a guarantee or alternative form of security to meet any liability to pay compensation under this Order in respect of the exercise of the relevant powers in paragraph (2); and

(a) 2003 c. 21.

- (b) the Secretary of State provides written confirmation that no such guarantee is required, such written confirmation not to be unreasonably withheld.

PART 6

MISCELLANEOUS PROVISIONS

Operational land for purposes of the 1990 Act

37. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of the 1990 Act.

Planning permission

38.—(1) It does not constitute a breach of the terms of this Order, if, following the coming into force of this Order, any development is carried out or used within the Order limits in accordance with any planning permission granted (either prior to or after the Order has come into force) under the powers conferred by the 1990 Act, any development consent granted (either prior to or after the Order has come into force) under the powers conferred by the 2008 Act or other equivalent consent.

(2) To the extent any development carried out or used pursuant to a planning permission granted under section 57 (requirement of planning permission)(a) of the 1990 Act, any development consent granted (either prior to or after the Order has come into force) under the powers conferred by the 2008 Act or other equivalent consent, or compliance with any conditions or requirements of that permission or consent is inconsistent with the exercise of any power or right under this Order or the authorised project—

- (a) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that permission or consent is capable of physical implementation; and
- (b) in respect of that inconsistency, no enforcement action under the 1990 Act may be taken in relation to development carried out or used pursuant to that permission or consent whether inside or outside the Order limits.

(3) Any development or any part of a development within the Order limits which is constructed or used under the authority of a permission granted under section 57 of the 1990 Act including permissions falling under paragraph (1) or (2) or otherwise, is deemed not to be a breach of, or inconsistent with, this Order and does not prevent the authorised project being carried out or used or any other power or right under this Order being exercised.

(4) Any works carried out under this Order are deemed to be work requiring development consent under section 31 (when development consent is required) of the 2008 Act for the purpose of paragraph 7(3) of Schedule 3 to the Flood and Water Management Act 2010.

Deemed marine licence

39. The marine licence set out in Schedule 10 (deemed marine licence under the 2009 Act) is deemed to have been issued under Part 4(b) of the 2009 Act (marine licensing) for the licensed activities set out in Part 1, and subject to the conditions set out in Part 2.

(a) Section 1 was amended by paragraph 35 to Schedule 2 to the Planning Act 2008. There are amendments to the 1964 Act that are not relevant to this Order.

(b) Part 4 was amended by Schedule 4(2) paragraph 11(2)(a) of the Fisheries Act 2020 (c. 22).

Protective provisions

40. Schedule 11 (protective provisions) has effect.

Saving for Trinity House

41. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown rights

42.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any lessee or licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held or otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) or paragraph (2) may be given unconditionally or subject to terms and conditions, and is deemed to have been given in writing where it is sent electronically.

Arbitration

43.—(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled in arbitration in accordance with the rules at Schedule 12 (arbitration) of this Order by an arbitrator or multiple arbitrators to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Law Society.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order, including the requirements, shall not be subject to arbitration.

Application of landlord and tenant law

44.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Defence to proceedings in respect of statutory nuisance

45.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990^(a) in relation to a nuisance falling within paragraphs (a), (b), (c), (d), (e), (fb), (g), (ga) and (h) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction sites) or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974^(b); or
 - (ii) is a consequence of the construction, maintenance or decommissioning of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) For the purposes of paragraph (1), compliance with the controls and measures described in the construction environmental management plan and decommissioning environmental management plan approved under Schedule 2 (requirements) to this Order will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.

(3) Section 61(9) (prior consent for work on construction sites) of the Control of Pollution Act 1974 does not to apply where the consent relates to the use of premises by the undertaker for the purposes of the authorised project.

Service of notices

46.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(a) 1990 c. 43; section 79 was amended by the Clean Neighbourhoods and Environment Act 2005 (c. 16), sections 101 and 102; section 82 was amended by section 103 of the same Act. There are other amendments but none is relevant.
 (b) 1974 c. 40; sections 61(9) and 65(8) were amended by the Environmental Protection Act 1990 (c. 25), section 162, and paragraph 15 to Schedule 3. There are other amendments to the 1974 Act but none is relevant.

(3) For the purposes of section 7 (references to service by post)(a) of the Interpretation Act 1978 as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

Procedure in relation to certain approvals

47.—(1) Where an application is made to or request is made of a consenting authority for any consent, agreement or approval required or contemplated by any of the provisions of the Order, such consent, agreement or approval, if given, must (unless contrary provision is made in Part 2 of Schedule 2 (requirements) or in Schedule 10 (deemed marine licence under the 2009 Act) be given in writing and must not be unreasonably withheld or delayed; and any refusal must be accompanied by a statement of the reasons for refusal.

(2) If, within six weeks after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article (or such other period as may be agreed in

(a) 1978 c. 30.

writing with the undertaker) it has not notified the undertaker of its decision (and if it is a disapproval the grounds of disapproval), it is deemed to have approved the application or request.

(3) Paragraph (2) does not apply in relation to—

- (a) applications made in relation to requirements;
- (b) applications made in relation to conditions under Schedule 10 (deemed marine licence under the 2009 Act); or
- (c) applications or requests made pursuant to any article in this Order which provides for deemed consent other than in accordance with paragraph (2).

(4) Part 2 of Schedule 2 (requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to the requirements.

Certification of plans, etc.

48.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans referred to in Schedule 13 (documents and plans to be certified) for certification that they are true copies of those documents.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including in specified requirement) when it was in draft form; and
- (b) identifies that provision by number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order made,

the reference in the plan or document concerned must be construed for the purpose of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department

SCHEDULE 1

AUTHORISED PROJECT

Article 3

PART 1

AUTHORISED DEVELOPMENT

In the administrative boundary of Stockton-on Tees Borough Council and Redcar and Cleveland Borough Council development which, in accordance with a direction made by the Secretary of State on 8 September 2025 under section 35(a) of the 2008 Act, is to be treated as development for which development consent is required, and a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act, together with associated development under section 115(1)(b) of the 2008 Act including—

Work No. 1 — a SAF production facility including—

(a) Section 35 was amended by section 26(2) of the Growth and Infrastructure Act 2013 (c. 27).

- (a) *Work No. 1A* – feedstock pre-treatment, flue gas treatment, waste heat boilers, exhaust stack and storage of pre-treated feedstock.
- (b) *Work No. 1B* – SAF processing including—
 - (i) feedstock preparation, gasification, syngas clean-up, acid gas removal and carbon dioxide vent, Fischer-Tropsch reactors and product upgrading;
 - (ii) compression; and
 - (iii) thermal oxidiser, flue gas treatment, up to four exhaust stacks;
- (c) *Work No. 1C* – up to two flare structures.

Work No. 2 — a CHP generating station of over 50MWe including—

- (a) *Work No. 2A* – boilers and steam turbine generators; and
- (b) *Work No. 2B* - flue gas treatment and exhaust stack.

Work No. 3 —

- (a) feedstock handling and storage; and
- (b) intermediate and final product handling and storage,

including conveyors, storage silos, tanks and buildings.

Work No. 4 — in association with Work Nos. 1-3, cooling infrastructure including towers and basins for SAF production facility and CHP generating station.

Work No.5 — in association with Work Nos. 1, 2, 3 and 6, provision of a means of crossing over or under existing infrastructure including bridges, culverts, embankments and supporting structures.

Work No. 6 — marine infrastructure including—

- (a) *Work No. 6A* – construction of permanent quay and associated wing walls including—
 - (i) demolition of existing jetties and associated infrastructure;
 - (ii) demolition and reinstatement of existing mooring infrastructure;
 - (iii) relocation of existing navigational buoys; and
 - (iv) extension of existing outfall;
- (b) *Work No. 6B* – permanent quay; and
- (c) *Work No. 6C* – capital and maintenance dredging activities.

Work No. 7 — electrical connection works including—

- (a) *Work No. 7A* – underground and overground 132kV electrical cabling connections and associated equipment from the existing North Bank Supply Point to the main site; and
- (b) *Work No. 7B* - 11kV electrical connection works.

Work No. 8 — natural gas connection works comprising modification of existing or construction of new AGI.

Work No. 9 — supply of industrial gases including—

- (a) *Work No. 9A* – industrial gases connection works including—
 - (i) oxygen pipeline connection works between existing industrial gases facility and Work No.1 comprising installation of new and repurposing of existing oxygen pipeline up to 355 millimetres external diameter; and
 - (ii) high pressure nitrogen pipeline connection works between existing industrial gases facility and Work No.1 comprising installation of new and repurposing of existing pipelines, up to 355 millimetres external diameter; and
 - (iii) connection to existing low pressure nitrogen supply; or

- (b) *Work No. 9B* – air separation unit facility and connecting pipework and utilities from the area in the main site to the north of Seal Sands Road, to the area of the main site to the south of Seal Sands Road.

Work No. 10 — modification of or removal of existing pipelines and replacement with a new industrial wastewater pipeline, up to 324 millimetres external diameter, connecting the main site into existing wastewater infrastructure.

Works No. 11 — export pipeline works including—

- (a) *Work No. 11A* – up to two pipelines of up to 355 millimetres external diameter for the export of SAF and renewable naphtha from the main site to third party marine export facilities; and
- (b) *Work No. 11B* – in association with Work No.1, a pipeline of up to 610 millimetres external diameter between the main site and the NEP AGI C1 for the export of carbon dioxide; or
- (c) *Work No. 11C* – in association with Work No.1, a pipeline of up to 610 millimetres external diameter between the main site and the NEP AGI C2 for the export of carbon dioxide.

Work No. 12 — in association with Work Nos. 1-3, surface water attenuation infrastructure and drainage and discharge works in connection with the main site.

Work No. 13 — in association with Work Nos. 1-3, 6-10 and 11A—

- (a) *Work No. 13A* – temporary construction compounds and laydown areas; and
- (b) *Work No. 13B* – permanent laydown and storage.

Work No. 14 — in association with Work Nos. 1-3, 6-10 and 11A— access and private street improvements, including works to create, improve, repair, or maintain access roads and access points.

PART 2

FURTHER ASSOCIATED DEVELOPMENT

In connection with and in addition to Work Nos. 1-14, to the extent that they do not otherwise form part of any such work, further associated development within the Order limits comprising such other works or operations for the purposes of the authorised development and insofar as they are unlikely to give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement, including—

- (a) site clearance (including vegetation removal and demolition of existing structures);
- (b) temporary hardstanding;
- (c) environmental mitigation measures including soft landscaping;
- (d) works to alter existing services and utilities apparatus and connections (overground and underground);
- (e) channelling, culverting, crossings and works to existing drainage ditches and systems;
- (f) temporary lighting including lighting columns;
- (g) temporary security fencing, gates, boundary treatment and other means of enclosure;
- (h) temporary generators and bunded storage tanks;
- (i) creation of temporary construction access points and roadways;
- (j) wheel wash facilities;
- (k) signage;
- (l) temporary materials and plant storage and laydown areas;

- (m) contractor facilities including offices and staff welfare facilities; and
- (n) temporary vehicle, pedestrian and cycle facilities.

In connection with and in addition to the works comprised within Work No. 6, to the extent that they do not otherwise form part of any such work, further associated development within the Order limits comprising such other works or operations for the purposes of the authorised development and insofar as they are unlikely to give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement, including—

- (a) the disposal of up to 800,000m³ of dredge arisings at Tees Bay C;
- (b) creation and use of temporary vessel laydown areas, use of cable anchors;
- (c) temporary landing places, moorings or other means of accommodating vessels in the construction or maintenance of the authorised scheme;
- (d) lighting; and
- (e) marking buoys, beacons, fenders and other navigational warning or ship impact protection works.

In connection with and in addition to the works comprised within the main site, to the extent that they do not otherwise form part of any such work, further associated development within the Order limits comprising such other works or operations for the purposes of the authorised development and insofar as they are unlikely to give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement, including—

- (a) earthworks (including soil stripping and storage, and site levelling) and excavations;
- (b) tunnelling, boring, piling and drilling works and management of arisings;
- (c) site levelling, ground and remediation works;
- (d) foundations, kerbed areas, bunds, plinths and hard landscaping;
- (e) concrete batching facilities;
- (f) administration, welfare and control buildings;
- (g) warehousing, workshop and stores buildings;
- (h) ancillary plant, equipment, stacks, buildings, enclosures and structures to support main operational processes;
- (i) conveying equipment comprising cranes, grabs, ship offloaders and any other apparatus for the conveyance of solid materials;
- (j) pipework, pipe runs, pipe racks and supports;
- (k) vents and relief valves;
- (l) pumps;
- (m) water and waste water treatment;
- (n) firefighting equipment, buildings, tanks and distribution pipework;
- (o) permanent accesses, roads and pedestrian routes;
- (p) permanent vehicle parking (including provision of electrical vehicle charging points where required);
- (q) permanent vehicle unloading facilities;
- (r) permanent cycle storage facilities;
- (s) permanent lighting;
- (t) permanent emergency diesel generators;
- (u) permanent bunded diesel storage tanks;
- (v) permanent plant laydown areas for operation and maintenance activities; and

- (w) permanent access control buildings, security fencing, gates, boundary treatment and other means of enclosure and access control;
- (x) closed circuit television cameras and columns and other security measures;
- (y) temporary and permanent surface water drainage systems, foul water drainage systems, storm water attenuation systems, oil-water separators; and
- (z) temporary and permanent mechanical, electrical, gas, telecommunications and water (potable and raw water supply) equipment and systems including pipework, cables, racks, drains, sumps, ducts, cathodic protection posts, marker posts and other associated infrastructure, instrumentation, utilities and connections.

PART 3

ANCILLARY WORKS

Works and operations within the Order limits which fall within the scope of the work assessed by the environmental statement including—

- (a) intrusive ground investigations including the making of boreholes and trial pits; and
- (b) works for the benefit or protection of land or structures affected by the authorised development.

SCHEDULE 2

Articles 3, 4 and 5

REQUIREMENTS

PART 1

REQUIREMENTS

Commencement of the authorised development

1.—(1) The authorised project must commence no later than the expiration of five years from the date this Order comes into force.

(2) The authorised project may not commence unless the undertaker has given the relevant planning authority fourteen day's notice of its intention to commence the authorised project.

(3) If any proceedings are begun to challenge the validity of this Order, the period specified in paragraph (1) is extended by—

- (a) a period equivalent to the period beginning with the day the application is made and ending on the day it is withdrawn or finally determined; or
- (b) if shorter, one year.

(4) An application is not finally determined for the purposes of sub paragraph 3(1) if an appeal in respect of the application—

- (a) could be brought (ignoring any possibility of an appeal out of time with permission); or
- (b) has been made and not withdrawn or finally determined.

Notice of start and completion of commissioning

2.—(1) Notice of the intended start of commissioning of Work Nos. 1 and 2 must be given to the relevant planning authority no later than fourteen days prior to the date that commissioning is started.

(2) Notice of the intended date of final commissioning must be given to the relevant planning authority no later than fourteen days prior to the date of final commissioning.

Detailed design

3.—(1) The authorised project must not exceed the parameters at Part 3 of Schedule 2 (requirements) of this Order.

(2) No part of the authorised project comprised in Work No. 1 may commence, save for any preliminary works, until details of the following (as applicable) for that part, as relevant, have been submitted to and approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels; and
- (c) the permanent circulation roads, vehicle parking and hardstanding.

(3) No part of the authorised project comprised in Work No. 2 may commence, save for any preliminary works, until details of the following (as applicable) for that part have been submitted to and approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels; and
- (c) the permanent circulation roads, vehicle parking and hardstanding.

(4) No part of the authorised project comprised in Work No. 3 may commence, save for any preliminary works, until details of the following (as applicable) for that part have been submitted to and approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, structures and above ground apparatus;
- (b) finished floor levels; and
- (c) the permanent circulation roads, vehicle parking and hardstanding.

(5) No part of the authorised project comprised in Work No. 4 may commence, save for any preliminary works, until details of the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures (as applicable) for that part have been submitted to and approved by the relevant planning authority.

(6) Work No. 5 must be constructed in accordance with crossing design details, unless otherwise agreed in writing with the relevant planning authority.

(7) No part of the authorised project comprised in Work No. 6 may commence, save for any preliminary works, until details of the following (as applicable) for that part have been submitted to and approved by the relevant planning authority (following consultation with the statutory harbour authority and the Marine Management Organisation)—

- (a) the method of construction, siting, layout, levels, materials and finishes, structural and piling arrangements of any new quay, wing wall, deck, mooring structure and associated buildings and structures;
- (b) dredging and berth arrangements;
- (c) scour protection;
- (d) lighting and navigational aids; and
- (e) maintenance access.

(8) No part of the authorised project comprised in Work No. 7A may commence, save for any preliminary works, until details of the following (as applicable) for that part have been submitted to and approved by the relevant planning authority—

- (a) the route and method of installation of cables together with associated above ground apparatus; and

- (b) the connections within the existing North Bank Supply Point, including the underground electric cables, connections to the existing busbars and new, upgraded or replacement equipment.

(9) No part of the authorised project comprised in Work No. 7B may commence, save for any preliminary works, until details of the route and method of installation of cables together with associated above ground apparatus (as applicable) for that part have been submitted to and approved by the relevant planning authority.

(10) No part of the authorised project comprised in Work No. 8 may commence, save for any preliminary works, until details of the following (as applicable) for that part have been submitted to and approved by the relevant planning authority—

- (a) the route and method of installation of the high-pressure gas supply pipeline and any electrical supply telemetry and other apparatus;
- (b) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new enclosures, structures and above ground apparatus; and
- (c) hard standings.

(11) No part of the authorised project comprised in Work No. 9A or 9B may commence, save for any preliminary works, until notification that either Work No. 9A or Work No. 9B is proceeding has been given to the relevant planning authority and details of the following (as applicable) for that part have been submitted to and approved by the relevant planning authority—

- (a) the route and method of installation and/ or replacement and the method of connection of the pipeline;
- (b) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new above ground apparatus.
- (c) finished floor levels;
- (d) hard standings; and
- (e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities.

(12) No part of the authorised project comprised in Work No. 10 may commence, save for any preliminary works, until details of the route and method of installation and/ or replacement and the method of connection of the pipeline (as applicable) for that part have been submitted to and approved by the relevant planning authority.

(13) No part of the authorised project comprised in Work No. 11A-11C may commence, save for any preliminary works, until notification that either Work No. 11B or Work No. 11C is proceeding has been given to the relevant planning authority and details of the route and method of installation and/ or replacement and the method of connection of the pipeline (as applicable) for that part have been submitted to and approved by the relevant planning authority.

(14) No part of the authorised project comprised in Work No. 13 may commence, save for any preliminary works, until details of the following (as applicable) for that part have been submitted to and approved by the relevant planning authority—

- (a) hard standings and laydown;
- (b) contractor compounds and construction staff welfare facilities;
- (c) lighting;
- (d) means of enclosure and security; and
- (e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian routes.

(15) No part of the authorised project comprised in Work No. 14 may commence, save for any preliminary works, until details of the following (as applicable) for that part have been submitted to and approved by the relevant planning authority—

- (a) surfacing and signage works to the private road;
- (b) means of enclosure, vehicle control barriers and security; and

- (c) vehicle loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(16) The details submitted and approved under sub-paragraph (2) to (15) must be in accordance with the design process and codes set out in the outline design principles.

(17) The authorised project must be carried out in accordance with the details approved under sub-paragraph (2)-(5) and (7)-(15) for the relevant part of the authorised project unless otherwise agreed with the relevant planning authority.

Construction Environment Management

4.—(1) No part of the authorised project, save for preliminary works, may commence until a construction environmental management plan for that part has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency, and in relation to Work No. 6, the statutory harbour authority and the MMO.

(2) Each plan submitted and approved must be in accordance with the framework construction environmental management plan and incorporate, where relevant—

- (a) materials management plan;
- (b) site waste management plan;
- (c) construction noise management plan;
- (d) emergency response plan;
- (e) pollution prevention plan;
- (f) flood warning and evacuation plan;
- (g) construction surface water management plan;
- (h) invasive species management plan; and
- (i) dust management plan.

(3) Any preliminary works carried out prior to commencement of the authorised project must be carried out in accordance with the framework construction environmental management plan, unless otherwise agreed with the relevant planning authority.

(4) All construction works associated with the authorised project must be carried out in accordance with the relevant approved construction environmental management plan, unless otherwise agreed with the relevant planning authority.

Piling risk assessment

5.—(1) No piling works may be carried out until a piling risk assessment for those works has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) Each plan submitted and approved must be in accordance with the framework construction environmental management plan unless otherwise agreed in writing with the relevant planning authority.

(3) All piling works must be carried out in accordance with the approved piling risk assessment.

Landscape and biodiversity enhancement

6.—(1) No part of the authorised project, save for preliminary works, may commence until the landscape and biodiversity enhancement plan for that part has been submitted to and approved by the relevant planning authority in consultation with Natural England.

(2) Each plan submitted and approved under paragraph (1) must be in accordance with the framework landscape and biodiversity enhancement strategy.

(3) The preliminary works must be carried out in accordance with the framework landscape and biodiversity enhancement strategy unless otherwise agreed in writing with the relevant planning authority.

(4) The landscape and biodiversity enhancement approved under sub-paragraph (1) must be implemented as approved unless otherwise agreed with the relevant planning authority.

Construction hours

7.—(1) Construction work and the delivery or removal of materials, plant and machinery by HGV relating to the authorised project must not take place on bank holidays nor otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday;
- (b) 0700 to 1600 hours on a Saturday; and
- (c) 0800 to 1700 hours on a Sunday.

(2) The restrictions in sub-paragraph (1) do not apply to construction work or the delivery or removal of materials, plant and machinery, or abnormal indivisible loads by HGV where these—

- (a) do not exceed the noise limits which are agreed with the relevant planning authority in accordance with the construction environmental management plan;
- (b) are carried out with the prior approval of the relevant planning authority and in accordance with any restrictions imposed by the relevant planning authority;
- (c) are continuous works; or
- (d) are associated with an emergency.

(3) Sub-paragraph (1) does not preclude any start-up and shut-down activities 30 minutes before and after the times listed in sub-paragraph (1).

(4) In this requirement—

- (a) “emergency” means a situation where, if the relevant action is not taken, there would likely be adverse health, safety, security or environmental consequences that, in the reasonable opinion of the undertaker, would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action; and
- (b) “start-up and shut-down activities” includes personnel briefings, inspections, tool-box talks, inductions, health and safety works, deliveries excluding heavy goods vehicle movements, movement to place of work, general preparation and site maintenance work but does not include operation of heavy machinery or operation of generators or flood lights.

Construction traffic management

8.—(1) No part of the authorised project, save for preliminary works, may commence until a construction traffic management plan for that part has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority.

(2) Each construction traffic management plan submitted and approved under sub-paragraph (1) must be in accordance with the framework construction traffic management plan.

(3) The preliminary works must be carried out in accordance with the framework construction traffic management plan unless otherwise agreed in writing with the relevant planning authority.

(4) Each construction traffic management plan approved under sub-paragraph (1) must be implemented as approved throughout the construction of the authorised project unless otherwise agreed with the relevant planning authority.

Construction workers travel plan

9.—(1) No part of the authorised project may commence until a construction workers travel plan for that part has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority.

(2) Each construction workers travel plan submitted and approved under sub-paragraph (1) must be in accordance with the framework construction workers travel plan.

(3) Each construction workers travel plan approved under sub-paragraph (1) must be implemented as approved throughout the construction of the authorised project unless otherwise agreed with the relevant planning authority.

Fencing and other means of enclosure

10.—(1) Any construction areas or sites associated with the authorised project must remain securely fenced at all times during construction of the authorised project and the temporary means of enclosure must then be removed in accordance with the framework construction environmental management plan, unless otherwise agreed in writing with the relevant planning authority.

(2) Prior to the date of final commissioning, details of any proposed permanent means of enclosure, must, for each part of the authorised project, be submitted to and approved by the relevant planning authority.

(3) Prior to the date of final commissioning, any approved permanent means of enclosure must be completed.

(4) The authorised project must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

(5) In this requirement, “means of enclosure” means fencing, walls or other means of boundary treatment and enclosure.

External lighting

11.—(1) No part of the authorised project may commence, save for the preliminary works, until a scheme for all external lighting to be installed during construction for that part (with the exception of the aviation warning lighting required by virtue of requirement 14) has been submitted to and approved by the relevant planning authority.

(2) Prior to the date of final commissioning, details of any proposed permanent means of lighting must be submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved pursuant to sub-paragraphs (1) and (2) of this requirement must be in accordance with the framework lighting strategy, unless otherwise agreed in writing with the relevant planning authority.

(4) The lighting strategies approved pursuant to sub-paragraph (1) and (2) must be implemented as approved, unless otherwise agreed in writing with the relevant planning authority.

Fire prevention

12.—(1) No part of the authorised project may commence, save for the preliminary works, until a fire prevention method statement including details (where relevant) of fire detection measures, fire suppression measures and the location of accesses to all fire appliances in all of the major building structures and storage areas for that part, including measures to contain and treat water used to suppress any fire has, for that part, been submitted to and, after consultation with the Health and Safety Executive and the Cleveland Fire Authority, approved by the relevant planning authority.

(2) The works approved under sub-paragraph (1) must be implemented in accordance with the approved details and all relevant fire prevention, detection and suppression measures, accesses and fire appliances must be maintained to the reasonable satisfaction of the relevant planning authority at all times throughout the operation of Work Nos. 1 and 2.

Aviation warning lighting

13.—(1) No part of the authorised project where the constructed work will be over 90m AOD, may commence, save for the preliminary works, until details of the aviation warning lighting to be installed for that part during construction and operation have been submitted to, and after consultation with the Civil Aviation Authority, approved by the relevant planning authority.

(2) The aviation warning lighting approved pursuant to sub-paragraph (1) must be installed and operated in accordance with the approved details.

Air safety

14.—(1) No part of Work Nos. 1 and 2 may commence, save for the preliminary works, until details of the information that is required by the Defence Geographic Centre of the Ministry of Defence to chart the site for aviation purposes for that part have been submitted to and approved by the relevant planning authority.

Operational Noise

15.—(1) No part of Work Nos. 1 or 2 may be brought into commercial use following commissioning until a scheme for the management and monitoring of noise during operation of those parts of the authorised project and which is consistent with the principles set out in Chapter 9 of the environmental statement has been submitted to and approved by the relevant planning authority.

(2) Noise (in terms of the BS4142:2014 + A1:2019 rating level) from the operation of the authorised project must be no greater than +5dB difference to the defined representative background sound level during the daytime and no greater than +5dB difference to the defined representative background sound level during the night time adjacent to the residential properties identified within chapter 9 of the environmental statement, unless otherwise agreed with the relevant planning authority.

(3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

(4) In this requirement “daytime” means the period from 0700 to 2300 and “night time” means the period from 2300 to 0700.

Local employment and skills

16.—(1) No part of the authorised project may commence, save for preliminary works, until an employment and skills plan has been submitted to and approved by the relevant planning authority.

(2) The employment and skills plan shall identify opportunities for individuals and businesses for local residents to access employment opportunities associated with the construction, operation and maintenance of the authorised project, in accordance with the approach presented in chapter 17 of the environmental statement.

(3) The employment and skills plan approved under sub-paragraph (1) must be implemented as approved.

Operational surface and foul water drainage

17.—(1) No part of the authorised project may be commissioned until a detailed operational surface and foul water drainage strategy has been submitted to and approved by the relevant planning authority in consultation with Northumbrian Water Limited and the Environment Agency each on matters related to their functions.

(2) The strategy submitted and approved pursuant to sub-paragraph (1) must be in accordance with the framework drainage strategy.

(3) The strategy approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction and/or operation of the authorised project unless otherwise agreed with the relevant planning authority.

(4) When submitting the strategy under sub-paragraph (1), the undertaker may submit separate strategies for the foul and surface water drainage systems.

Groundwater and contamination

18.—(1) Subject to sub-paragraph (7), no part of the authorised project may commence, save for geotechnical surveys and other investigations for the purpose of assessing ground conditions, until a scheme to deal with the contamination of land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been submitted to and, after consultation with the Environment Agency approved by the relevant planning authority.

(2) The scheme submitted and approved under sub-paragraph (1) must be consistent with the principles set out in Chapter 21 of the environmental statement and in accordance with any construction environmental management plan submitted under requirement 4 and include—

- (a) a preliminary risk assessment (desk top study) and risk assessment that—
 - (i) is supported by a site investigation scheme; and
 - (ii) identifies the extent of any contamination;
- (b) an appraisal of remediation options and a proposal of the preferred option where the risk assessment indicates that remediation is required in order for the relevant area of land not to meet the definition of “contaminated land” under Part 2A (contaminated land)(a) of the Environmental Protection Act 1990;
- (c) where the risk assessment carried out under sub-paragraph (a) identifies the need for remediation, a remediation strategy which must include—
 - (i) the preferred option for remediation to ensure that the site will not meet the definition of “contaminated land” under Part 2A (contaminated land)(b) of the Environmental Protection Act 1990; and
 - (ii) a verification plan, providing details of the data to be collected in order to demonstrate that the works set out in the remediation scheme submitted and approved under this sub-paragraph are complete;
- (d) a materials management plan which sets out measures with respect to any contaminants remaining on the site during construction and operation of the authorised project;
- (e) details of how any unexpected contamination will be dealt with;
- (f) an update to the hydrogeological impact assessment including hydrogeological conceptual model that is informed by any further ground investigation reports and groundwater monitoring in addition to the information in Chapter 10 of the environmental statement;
- (g) a long term monitoring and maintenance plan in respect of contamination, including details of (but not limited to) monitoring of groundwater and surface water, appropriate screening criteria, and a time-table of monitoring and submission of monitoring reports, and which must include any necessary contingency action or mitigation measures arising from the matters reported; and
- (h) a plan for managing or otherwise decommissioning any boreholes installed for the investigation of soils, groundwater or geotechnical purposes, including details of how redundant boreholes are to be decommissioned in order to prevent risk of groundwater pollution, how any boreholes that need to be retained for monitoring purposes will be secured, protected and inspected, and including a requirement for appropriate validation

(a) 1990 c. 43; sections 78QA, 78TA and 78TB are not currently in force in England.

(b) 1990 c. 43; sections 78QA, 78TA and 78TB are not currently in force in England.

records within a report to be submitted to demonstrate that all boreholes which are no longer required have been decommissioned in accordance with best practice.

(3) The authorised project, including any remediation and monitoring, must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority following consultation with the Environment Agency.

(4) Following the implementation of the remediation strategy approved under sub-paragraph (3), a verification report, based on the data collected as part of the remediation strategy and demonstrating the completion of the remediation measures must be produced and supplied to the relevant planning authority and the Environment Agency.

(5) Where the verification report produced under sub-paragraph (4) does not demonstrate the completion of the remediation measures, a statement as to how any outstanding remediation measures will be addressed must be supplied to the relevant planning authority and the Environment Agency at the same time as the verification report.

(6) The outstanding remediation measures must be completed to the reasonable satisfaction of the relevant planning authority, after consultation with the Environment Agency, by the date agreed with that authority.

(7) Sub-paragraphs (1) to (6) do not apply to any part of the Order land where—

- (a) the undertaker carries out works which do not involve breaking of ground; or
- (b) the undertaker demonstrates to the relevant planning authority following consultation with the Environment Agency that the relevant part of the Order land is fit for the authorised project through the provision of a remedial validation report (which must include a risk assessment, details of any planning permission under which remediation works were carried out and any ongoing monitoring requirements) and the relevant planning authority notifies the undertaker that it is satisfied that the relevant part of the Order land is fit for the authorised project on the basis of that report.

(8) The undertaker must comply with any ongoing monitoring requirements and any activities identified as necessary by the monitoring contained within the documents submitted to and approved by the relevant planning authority pursuant to sub-paragraph (7).

Decommissioning

19.—(1) Within 2 years of the date that the undertaker decides to decommission any part of the authorised project, the undertaker must submit to the relevant planning authority for its approval a decommissioning environmental management plan for that part.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the relevant plan submitted pursuant to paragraph (1).

(3) Each plan submitted and approved must include measures to address any significant environmental effects.

(4) Each plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) any restoration works to restore the land to a condition agreed with the relevant planning authority;
- (e) the phasing of any restoration works; and
- (f) a timetable for the implementation of the plan.

(5) Each plan must be implemented and maintained for the duration of the decommissioning of the relevant part of the authorised project as approved unless otherwise agreed with the relevant planning authority.

Requirement for written approval

20. Where under any of the requirements the approval or agreement of the Secretary of State, the relevant planning authority or another person is required, that approval or agreement must be given in writing.

Amendments to approved details

21. With respect to any requirement which requires the authorised project, or any part, to be carried out in accordance with the details approved under this Schedule, the approved details are taken to include any amendments that may subsequently be approved or agreed by the Secretary of State, the relevant planning authority or another person.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

22.—(1) Where an application has been made to the relevant planning authority for any consent, agreement, approval or amendment thereto under a requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 24; or
- (c) such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) In the event that the relevant planning authority does not determine all parts of an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all other parts of that application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a Requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

- (a) and the application is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,

then the application is deemed to have been approved by the relevant planning authority at the end of that period.

Further information and consultation

23.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 10 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five working days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five working days of receipt of such a request and in any event within 15 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

Fees

24.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012^(a) (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within eight weeks from the relevant date in paragraph 23 unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 22 of this Schedule.

Appeals

25.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses an application for any consent, agreement, approval, or amendment thereto, required by a requirement included in this Order or grants it subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 24 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

^(a) S.I. 2012/2920.

(2) The steps to be followed in the appeal process are as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;
- (b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent (the 'start date');
- (c) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to sub-paragraph (c);
- (e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and
- (f) the appointment of the person pursuant to paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must, within five working days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date, but otherwise the process and time limits set out in paragraphs (c) to (e) of sub-paragraph (2) apply.

(5) The appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision under appeal of the relevant planning authority and may deal with the application as if it had been made to them in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the advice on planning appeals and the award costs published on 3 March 2014 by what was then the Department for Communities and Local Government or any circular or guidance which may from time to time replace it.

PART 3

PARAMETERS

Table 1

<i>Component of the Proposed Development</i>	<i>Maximum Length of component (m)</i>	<i>Maximum Width of component (m)</i>	<i>Maximum height above ground level of the tallest building/structure (mAGL)</i>	<i>Indicative maximum height (mAOD as defined upper limit) based on development platform at 5.1mAOD and quay topside elevation at 6.0m AOD</i>
Feedstock Pre-Treatment (Work No. 1A)	400 6m outer diameter	100	75 (buildings) 100 (stack)	80.1 105.1
SAF Production (Work No.1B)	235	100	95 (column)	100.1
Flare structure(s) (Work No. 1C)	24 (at base)	24 (at base)	140 (flare structure)	145.1
CHP Plant (Work No. 2)	200 6m outer diameter	125	100 (buildings) 140 (stack)	105.1.1 145.1
Feedstock Reception and Storage (multiple blocks) (Work No. 3)	500	335	90 (including conveyor)	95.1
Cooling Towers (Work No. 4)	180	60	40 (cooling towers)	45.1
Quay (Work No. 6B)	300	50	60 (ship unloaders) 70 (cranes)	66.0 76.00
ASU (Work No. 9B)	245	130	65 (main plant)	70.1

SCHEDULE 3
AMENDMENTS TO LEGISLATION

Article 8

PART 1

THE YORK POTASH HARBOUR FACILITIES ORDER 2016

1. The York Potash Harbour Facilities Order 2016 is amended as follows—

(a) after Schedule 11, insert a new Schedule 12—

“SCHEDULE 12

Article 8

PART 1

FOR THE PROTECTION OF LGF PROJECTS LIMITED

Interpretation

1.—(1) For the protection of LGF, the following provisions have effect unless otherwise agreed in writing between the Parties.

2. In this Part of this Schedule—

“Access Activities” means the exercise by the undertaker of rights of access within, over or across the Shared Area for the purposes of the authorised development, but does not include the carrying out of works within the Shared Area;

“LGF” means LGF Projects Limited (Company No. 16455871), whose registered office is 1-6 Lombard Street, London, England And Wales, United Kingdom, EC3V 9AA;

“LGF Apparatus” means the apparatus including the pipeline, cables, structures, mains, plant and ancillary apparatus which are or are to be owned, occupied or maintained by LGF within the Shared Area for the purposes of the authorised development;

“Lighthouse Green Fuels Order” means the Lighthouse Green Fuels Order 202[X].

“LGF Project” means the construction, operation or maintenance of the authorised development as is defined in the LGF Order;

“LGF Specified Works” means so much of the LGF Project as is within the Shared Area;

“Liability Cap” means a level to be agreed between the parties;

“Parties” means the undertaker and LGF;

“Plans” means, so far as reasonably relevant to the proposed Access Activities, plans, drawings, method statements, access arrangements, traffic management proposals, programmes and details of the extent, timing and duration of any proposed occupation or use of the Shared Area;

“Respective Projects” means the authorised development and the LGF Project;

“Secretary of State” means the Secretary of State for Energy Security and Net Zero or any successor in function;

“Shared Area” means the land coloured blue on the Shared Area Plan; and

“Shared Area Plan” means the plan which is certified as the [XXX Shared Area Plan] by the Secretary of State under article XX (certification of plans etc.) for the purposes of this Order.

Protection of access and apparatus

3.—(1) The undertaker must exercise the powers of the Order and undertake the Access Activities so as not to materially prevent or materially obstruct LGF's access to the LGF Project or the LGF Apparatus, unless otherwise agreed in writing by LGF acting reasonably.

(2) If, as a direct consequence of the undertaker's Access Activities, LGF's access to the LGF Project or LGF Apparatus is materially obstructed, the undertaker must use reasonable endeavours to provide, or procure the provision of, a reasonable alternative means of access for so long as the obstruction continues.

(3) LGF must not prevent or obstruct the undertaker's Access Activities within the Shared Area and, where access is prevented or obstructed by LGF, LGF must provide a reasonable alternative means of access as soon as reasonably practicable.

Co-operation

4. Insofar as the LGF Specified Works are or may be undertaken concurrently with the Access Activities within the Shared Area, the undertaker must—

- (a) co-operate with a view to ensuring, so far as is reasonably practicable—
 - (i) the co-ordination of programming of all activities within the Shared Area and the carrying out of works within the Shared Area; and
 - (ii) that access for the purposes of the construction and operation of the LGF Project is maintained for LGF and its employees, contractors and sub-contractors; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the Respective Projects; and
- (c) provide a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development.

Miscellaneous provisions

5. The undertaker and LGF must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part of this Schedule.

Indemnity

6.—(1) Subject to the rest of this paragraph, if by direct reason, or in direct consequence, of the Access Activities, or failure thereof, any damage is caused to any LGF Apparatus used in connection with the LGF Specified Works or damage is caused to any part of the LGF Specified Works or there is any interruption in any service provided, or the operations of LGF, or in the supply of any goods, by LGF, or LGF becomes liable to pay any amount to any third party as a consequence of the Access Activities, the undertaker must—

- (a) bear and pay the costs reasonably and properly incurred and appropriately evidenced by LGF in making good such damage or restoring the service, operations or supply; and
 - (b) make reasonable compensation to LGF for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from LGF, by reason or in direct consequence of any such damage or interruption or LGF becoming liable to any third party as aforesaid, up to the Liability Cap.
- (2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—
- (a) (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of LGF, its officers, employees, servants, contractors or agents; or

- (b) (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract, or loss of opportunity by LGF.

(3) LGF must—

- (a) give the undertaker reasonable notice of any such claim or demand
- (b) consult with the undertaker at regular intervals regarding the progress and strategy of any settlement or compromise or of any proceedings necessary to resist the claim or demand and take into account reasonable representations of the undertaker in connection therewith;
- (c) not settle or compromise the claim 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 during which LGF must continue to co-operate with the undertaker with regards to such claim or demand;
- (d) on request from the undertaker, provide the undertaker with sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which LGF must continue to co-operate with the undertaker with regards to such claim or demand

(4) If the undertaker becomes responsible for a claim or demand pursuant to sub-paragraph (3) it must—

- (a) keep LGF fully informed of the developments and material elements of the proceedings;
- (b) take account of the views of LGF before taking any action in relation to the claim;
- (c) act in an appropriate and professional manner when disputing any claim; and
- (d) not pay or settle such claims without the prior written consent of LGF such consent not to be unreasonably withheld or delayed.

(5) LGF must use its reasonable endeavours to mitigate any claim or losses in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, LGF 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).

(6) The undertaker shall not be liable under this paragraph in respect of any claim capable of being mitigated or minimised to the extent that LGF has not used its reasonable endeavours to mitigate and/or minimise that claim in accordance with sub-paragraph (5).

(7) The undertaker shall only be liable under this paragraph 6 for claims reasonably incurred by LGF up to the Liability Cap.

Dispute resolution

7.—(1) Any dispute arising under this Part of this Schedule must, upon written request by either Party, be referred to senior representatives of each Party who have authority to settle the dispute, and the Parties must seek to resolve the dispute within 10 days of that request or such longer period as may be agreed in writing.

(2) If the dispute is not resolved in accordance with sub-paragraph (1), the dispute must, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 40 (arbitration) of the Order.

Notices

8. Notices served under this Part of this Schedule must be served in accordance with article 43 (service of notices) of the Order, unless otherwise agreed in writing between the undertaker and LGF.”

PART 2

THE NET ZERO TEESSIDE ORDER 2024

2. The Net Zero Teesside Order 2024 is amended as follows—

- (a) in article 2 after the definition of “legible in all material respects” insert a new definition as follows—
 - (i) “LGF land” means plot numbers 122, 123, 125, 135, 138, 138a, 139, 141, 141a and 142a;
- (b) after Article 21A insert a new Article 21B as follows—

“21B. — LGF land

The undertaker may not take temporary possession of any part of the LGF land pursuant to articles 31 and 32.”;
- (c) in article 31, sub-paragraph (1) insert “and article 21B (LGF land)” after the words “article 21A (supplemental land)”;
- (d) in article 32, sub-paragraph (1) insert “and article 21B (LGF land)” after the words “article 21A (supplemental land)”;
- (e) in Schedule 7—
 - (i) Column 1, Row 9 of Table 7, delete plot numbers “138, 139 and 141”; and
 - (ii) after Row 10 of Table 7, insert a new row as follows—

The following plots shown coloured blue on the land plans—138, 139 and 141

For and in connection with the Work No. 6 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, together with the right to install, retain, use and maintain the Work No.6 infrastructure, and a right of support for it

- (f) in the definition of “INEOS” in paragraph 97 of Schedule 12, Part 9 insert the following words at the end of the definition after the words “INEOS operations”—
 - (i) (excluding LGF Projects Limited (Company No. 16455874))
- (g) after Schedule 12, Part 28 insert a new Part 29 as follows—

“PART 29

FOR THE PROTECTION OF LGF PROJECTS LIMITED

Interpretation

1. For the protection of LGF, the following provisions have effect, unless otherwise agreed in writing between the parties.

2. The following definitions apply in this Part—

“alternative apparatus” means alternative apparatus adequate to enable LGF to carry out its operations in a manner not less efficient than previously;

“LGF apparatus” means the apparatus including the pipeline, cables, structures, mains, plant and ancillary apparatus which are or are to be used, owned, occupied or

maintained by LGF within the shared area for the purposes of the authorised development;

“LGF order” means The Lighthouse Green Fuels Order 202[x];

“LGF project” means the construction, operation or maintenance of the authorised development as is defined in the LGF order;

“LGF project site” means—

- (a) land on which any LGF apparatus is situated; and
- (b) land on which LGF apparatus is anticipated to be situated and insofar as the same has been notified by LGF in writing to the undertaker;

“LGF specified works” means so much of the LGF project as is within the shared area;

“LGF” means LGF Projects Limited (Company No. 16455871), whose registered office is 1-6 Lombard Street, London, England And Wales, United Kingdom, EC3V 9AA;

“NEP apparatus” means the pipeline, cables, structures to be owned, occupied or maintained by the undertaker within the shared area;

“parties” means LGF and the undertaker;

“plans” includes so far as is reasonably relevant: sections, drawings, specifications design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation by the undertaker of any land for purposes of the shared area works;

“secretary of state” means the Secretary of State for Energy Security and Net Zero or any successor in function;

“shared area” means land included within both the LGF project site and the authorised development Order limits; and

“shared area works” means any part of the authorised development taking place within the shared area.

Consent to works in the shared area

3.—(1) Before commencing the execution of any shared area works the undertaker must submit to LGF the plans for the shared area works and such further particulars as LGF may, within 28 days from the day on which the plans are submitted under this paragraph, reasonably require.

(2) No shared area works are to be commenced until the plans in respect of those shared area works submitted under sub-paragraph (1) have been approved by LGF.

(3) Any approval of LGF required under this paragraph 3 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as LGF may require to be made for—

- (a) the continuing safety and operational viability of the LGF apparatus; and
- (b) the requirement for LGF to have reasonable access to inspect, repair, replace

and maintain and ensure the continuing safety and operational viability of the LGF Apparatus.

(4) Where the reasonable requirements relate to the matters in sub-paragraph (3) a reasoned explanation will be provided by LGF to substantiate the need for these requirements.

(5) Any approval of LGF required under this paragraph 3 including any reasonable requirements required by LGF under sub-paragraph (3) must not be unreasonably withheld or delayed and in any event must be made in writing within a period of 56 days (unless a shorter period is otherwise agreed in writing between the undertaker and LGF) beginning with the date on which the plans were submitted to LGF under subparagraph (1), after which approval is deemed to be given.

(6) Any refusal shall be substantiated with a reasonable explanation.

(7) The authorised development must be executed only in accordance with the plans approved by LGF under this paragraph 3 including any reasonable requirements notified to the undertaker in accordance with sub-paragraphs (3) and (4), unless otherwise agreed in writing between the undertaker and LGF acting reasonably.

(8) If LGF, in accordance with the requirements notified under sub-paragraphs (3) and (4) and in consequence of the shared area works proposed by the undertaker, reasonably requires the removal of any of the LGF apparatus and gives written notice to the undertaker of that requirement, this Order applies as if the removal of the LGF apparatus had been required by the undertaker under paragraph 4.

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but (unless otherwise agreed in writing between the undertaker and LGF) in no case less than 28 days before commencing the execution of any works that are different from the approved shared area works, new plans, instead of the plans submitted, and having done so the provisions of this paragraph 3 apply to and in respect of the new plans.

(10) The undertaker is not required to comply with sub-paragraphs (1) and (2) in a case of emergency but in that case must give LGF notice as soon as is reasonably practicable and must provide a plan of any shared area works carried out as soon as reasonably practicable.

Removal of apparatus/access

4.—(1) If, in the exercise of powers conferred by this Order, the undertaker acquires any interest in any land in which any LGF apparatus is placed or over which access to any LGF apparatus is enjoyed or requires that LGF apparatus is relocated or diverted, that LGF apparatus must not be removed under this Part, and any right of LGF to maintain that LGF apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus (or alternative rights as the case may be) has been constructed (or granted) and is in operation, and access to it has been provided to the reasonable satisfaction of LGF in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any shared area works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any LGF apparatus placed in, on or under that land, the undertaker must give to LGF 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 LGF reasonably needs to remove any LGF apparatus) the undertaker must, subject to sub-paragraph (3), afford to LGF the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that alternative 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, LGF must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between LGF and the undertaker (acting reasonably) or in default of agreement settled by arbitration in accordance with paragraph 12.

(5) LGF must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 12, and after the grant to LGF 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 LGF apparatus required by the undertaker to be removed under the provisions of this Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to LGF that it desires itself to execute any work, or part of any work, in connection with the construction or removal of LGF apparatus in any land controlled by the undertaker, that work, instead of being executed by LGF must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of LGF.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to LGF facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for LGF apparatus to be removed, those facilities and rights must be granted—

- (a) upon such terms and conditions as may be agreed between the undertaker LGF (acting reasonably) or in default of agreement settled by arbitration in accordance with paragraph 12; and
- (b) in compliance with all health and safety, environmental and regulatory requirements and relevant industry standards.

(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 LGF than the facilities and rights enjoyed by it in respect of the LGF apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator may make such provision for the payment of compensation by the undertaker to LGF as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Interaction with the LGF project

6.—(1) Without limiting any other provision of this Part, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out of the authorised development and the LGF project. For the purposes of this paragraph, “reasonable endeavours” means—

- (a) undertaking consultation on the design and programming of the shared area works;
- (b) taking into consideration the proposed programme of works for the LGF project as may be made available to the undertaker by LGF and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the shared area works and the LGF project;
- (c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and
- (d) keeping LGF informed on the programme of works for the authorised development.

Regulation of shared area works

7.—(1) The undertaker must give to LGF not less than 28 days’ written notice of its intention to commence the construction of any of the shared area works and, not more than 14 days after completion of their construction, must give LGF written notice of the completion of construction and LGF will be entitled by its offer to watch and inspect the construction of such shared area works.

(2) The undertaker must during construction of the shared area works allow LGF and its officers, employees, servants, contractors and agents reasonable access to the shared area works and reasonable facilities for inspection of the shared area works.

(3) After the purpose of any temporary shared area works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from LGF requiring the undertaker to do so, remove the temporary shared area works in, on, under, over, or within the shared area.

(4) If the undertaker fails to remove the temporary shared area works within a reasonable period of receipt of a notice pursuant to sub-paragraph (3), LGF may remove the temporary shared area works and may recover the reasonable costs of doing so from the undertaker.

(5) If in consequence of the exercise of the powers conferred by the Order or the carrying out of the shared area works the access to any of the LGF specified works is materially obstructed, the undertaker must provide such alternative means of access to the LGF specified works as is necessary for LGF to construct, maintain or operate the LGF project.

(6) To ensure its compliance with this paragraph 7, the undertaker must before carrying out any of the shared area works request up-to-date written confirmation from LGF of the location of any part of the LGF specified works.

Constructability principles

8.—(1) The undertaker must (unless otherwise agreed, in an emergency, or where it would render the LGF apparatus, the shared area works, the LGF specified works or LGF apparatus unsafe, or put the undertaker in breach of its statutory duties or in breach of an obligation or requirement of the Order)—

- (a) notify LGF of any incidences which occur as a result of, or in connection with, the shared area works which are required to be reported under the relevant Reporting of Injuries Diseases and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising; and
- (b) where requested in writing by LGF within 21 days of receipt of post-completion of construction notice pursuant to paragraph 7(1), provide as built drawings of the shared area works as may be reasonably required by LGF (including, for the avoidance of doubt, buried pipelines) within three months of the completion of construction of each of the shared area works.

Expenses

9.—(1) Save where otherwise agreed in writing between LGF and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to LGF within 30 days of receipt of an itemised invoice from LGF all costs and expenses reasonably and properly incurred by LGF in the inspection, removal, relaying or replacing, alteration or protection of any LGF apparatus or the construction of any alternative apparatus which may be required in consequence of the execution of any shared area works including without limitation—

- (a) 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;
- (b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (c) the approval of plans;
- (d) the carrying out of protective shared area works;
- (e) the survey of any land, LGF apparatus or shared area works, the inspection and monitoring of shared area works or the installation or removal of any temporary shared area works reasonably necessary in consequence of the execution of any such shared area works referred to in this Part.

(2) LGF shall provide evidence of all such reasonable and properly incurred costs and expenses to which this paragraph applies.

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

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

- (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 dispute resolution in accordance with paragraph 12 to be necessary, then, if such placing involves cost in the construction of works under this Part 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 LGF by virtue of subparagraph (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.

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

- (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.

(6) Any amount which apart from this sub-paragraph would be payable to LGF by virtue of sub-paragraph (1) will, if it confers any financial benefit on LGF by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

10.—(1) Subject to the rest of this paragraph, if by direct reason or in direct consequence of the construction of any shared area works authorised by this Part, any damage is caused to any LGF apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the shared area works), the undertaker will bear and pay the cost reasonably and properly incurred by LGF in making good such damage or restoring the supply.

(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 LGF, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract, loss of opportunity of LGF.

(3) LGF must give the undertaker reasonable notice of any such claim or demand as soon as reasonably practicable after LGF becomes aware of any such claims or demands.

(4) LGF must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs to which this paragraph 10 applies.

(5) If requested to do so by the undertaker, LGF 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).

(6) The undertaker shall only be liable under this paragraph 10 for costs reasonably incurred by LGF.

Miscellaneous provisions

11. LGF and the undertaker must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

Dispute resolution

12.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Notices

13. Notices served under this Part shall be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed between the undertaker and LGF in writing.”

SCHEDULE 4

Article 9

STREETS SUBJECT TO STREET WORKS

Table 2

<i>Area</i>	<i>Street name</i>	<i>Description of street works</i>
In the District of Stockton-on-Tees	A178	Works in relation to access point A on Sheet 1 of access and rights of way plans.
In the District of Stockton-on-Tees	A178	Works in relation to access point B on Sheet 1 of access and rights of way plans.
In the District of Stockton-on-Tees	Hunstman Drive	Works in relation to access point C on Sheet 1 of access and rights of way plans.
In the District of Stockton-on-Tees	Seal Sands Road	Works in relation to access point D on Sheet 1 of access and rights of way plans.
In the District of Stockton-on-Tees	Seal Sands Road	Works in relation to access point E on Sheet 3 of access and rights of way plans.
In the District of Stockton-on-Tees	North Access Road	Works in relation to access points F, H, I, J on Sheet 3 of access and rights of way plans.
In the District of Stockton-on-Tees	Seal Sands Road	Works in relation to access point G on Sheet 3 of access and rights of way plans.

In the District of Stockton-on-Tees	Seal Sands Road	Works in relation to access points K, L, M, M, O, P, Q, R, S and T on Sheet 4 of access and rights of way plans.
In the District of Stockton-on-Tees	Seal Sands Road	Works in relation to access points N, O, P, Q, R, S, T, U, V, W and X on Sheet 6 of access and rights of way plans.
In the District of Middlesbrough	Tees Dock Road	Works in relation to access point Z on Sheet 8 of access and rights of way plans.

SCHEDULE 5

Article 12

ACCESS

Table 3

<i>Area</i>	<i>Access Point</i>
In the District of Stockton-on-Tees	Access point A onto unnamed private track south of Seal Sands Roundabout on Sheet 1 of access and rights of way plans.
In the District of Stockton-on-Tees	Access point B onto unnamed private track south of Seal Sands Roundabout on Sheet 1 of access and rights of way plans.
In the District of Stockton-on-Tees	Access point C onto Huntsman Drive on Sheet 1 of access and rights of way plans.
In the District of Stockton-on-Tees	Access point D onto Seal Sands Road on Sheet 1 of access and rights of way plans.
In the District of Stockton-on-Tees	Access point AA south of Ineos site on Sheet 2 of access and rights of way plans.
In the District of Stockton-on-Tees	Access point E on Seal Sands Road on Sheet 3 of access and rights of way plans.
In the District of Stockton-on-Tees	Access point F, H, I, J North Access Road off Seal Sands Road on Sheet 3 of access and rights of way plans.
In the District of Stockton-on-Tees	Access point G on Seal Sands Road on Sheet 3 of access and rights of way plans.
In the District of Stockton-on-Tees	Access point K, L, M, M, O, P, Q, R, S, T on Seal Sands Road on Sheet 4 of access and rights of way plans.
In the District of Stockton-on-Tees	Access point N, O, P, Q, R, S, T, U, V, W, X on Seal Sands Road on Sheet 6 of access and rights of way plans.
In the District of Middlesbrough	Access point Y on private road heading to Wilton Site on sheet 9 of access and rights of way plans.
In the District of Middlesbrough	Access point Z on Tees dock Road north of Tees Dock Bridge on Sheet 8 of access and rights of way plans.

SCHEDULE 6

Article 13

CLOSURE OF PUBLIC RIGHTS OF WAY

Table 4

<i>Area</i>	<i>PRoW subject to works</i>	<i>Extent of works</i>
In the District of Stockton-on-Tees	National trail King Charles III England Coast Path at Seaton Carew Road junction onto unnamed private road south of Seal Sands Roundabout	A section of the PRoW between its junction with Seaton Carew Road going east, illustrated by the pink dashed line on Sheet 1 of access and rights of way plans (approx.20 metres), is subject to management controls.
In the District of Stockton-on-Tees	National trail King Charles III England Coast Path south of Billingham Fire Station crossing junction onto unnamed private road	A section of the PRoW, illustrated by the pink dashed line on sheet 1 of access and rights of way plans (approx. 10 metres), is subject to management controls.
In the District of Middlesbrough	Public footpath 116/31/1 in vicinity of Northumbrian Water site	A section of the public footpath between Dabholm Gut and bridge to Northumbrian Water, approx. 330 metres and illustrated by the green dashed line on sheets 7 and 8 of access and rights of way plans, is subject to temporary closure.
In the District of Middlesbrough	Public footpath 116/31/1 adjacent to unnamed private road	A section of the public footpath illustrated by the green dashed line on sheet 7 and 8 of access and rights of way plans extending approx. 600 metres northeast is subject to temporary closure.

SCHEDULE 7

Article 22

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

For the purposes of this schedule, the following terms shall be defined as set out below—

“land” means land including the riverbed of the River Tees;

“dredging works” means Work No. 6C together with all relevant associated development, further associated development and ancillary works as described in Schedule 1 of this Order; and

“electrical connection works” means Work No. 7 together with all relevant associated development, further associated development and ancillary works as described in Schedule 1 of this Order;

“pipeline connection works” means Work Nos. 8, 9, 10 and 11 together with all relevant associated development, further associated development and ancillary works as described in Schedule 1 of this Order;

“quay works” means Work No. 6A and 6B together with all relevant associated development, further associated development and ancillary works as described in Schedule 1 of this Order; and

“statutory undertakers” has the meaning as set out in article 2 of this Order and also includes any operators benefitting from protective provisions in Schedule 11 of this Order.

Table 5

<i>Sheet number and number of plot shown on land plans</i>	<i>Purpose for which rights may be acquired</i>
11-5, 11-6, 11-7, 11-8, 11-11, 11-12, 11-13 11-14, 11-16, 11-17, 11-18, 11-19, 11-20, 11-21, 11-22, 11-23, 11-24, 11-25, 11-26, 11-27, 11-28, 11-29, 11-31, 11-32, 11-33, 11-34, 11-35, 11-36, 11-37, 11-38, 11-39, 11-40, 11-41, 11-44, 11-45, 11-46, 11-47, 11-48, 11-49, 11-51, 11-52, 11-54, 11-55, 11-56, 11-57, 11-59, 11-60, 11-61, 11-62, 11-63, 11-64, 11-65, 11-66, 11-67, 11-68, 11-69, 11-70, 11-71, 11-73, 11-74, 11-75, 11-77, 11-78, 11-79, 11-80, 11-81, 11-82, 11-83, 11-84, 11-85, 11-86, 11-87, 11-88, 11-89.	Rights package 1: Quay works Rights for the purposes of or in connection with the quay works for the undertaker and all persons authorised on its behalf to— (a) enter, pass and re-pass, with or without vehicles, vessels, plant and machinery, for all purposes in connection with the construction, installation, placement, erection, laying, re-laying, retention, testing, commissioning, use, operation, maintenance, inspection, adjustment, alteration, improvement, refurbishment, repair, strengthening, upgrading, reconstruction, renewal, replacement, removal, decommissioning and protection, as may be required, of the quay works; (b) create or improve accesses; (c) make such investigations in, on, under or over the land as required; (d) create boreholes and trial excavation pits for the purposes of intrusively surveying the land and monitoring the use of any trenchless installation technique, to keep in place and monitor the same throughout construction, maintenance, operation and decommissioning and to reinstate the land; (e) construct, install, place, erect, lay, re-lay, retain, test, commission, use, operate, maintain, inspect, adjust, alter, improve, refurbish, repair, strengthen, upgrade, reconstruct, renew, replace, remove, decommission and protect, as may be required, the quay works, including any works required for the construction of, serving, supporting, protecting or providing access to the quay, which may comprise dolphins, berthing and mooring structures, revetments, wingwalls, scour protection, retaining structures,

pipelines, cables, ducts, outfalls, service media, communications apparatus, lighting, beacons, buoys, markers, signage, safety equipment, security equipment and other public or personnel safety measures;

- (f) enter, be on, and break open and break up the surface of the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of the quay works;
- (g) alter, fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the land or other land which would, if not altered, felled, lopped, cut or removed, obstruct or interfere with the quay works;
- (h) take and use, remove and discharge water from the land, and to construct, install, place, erect, lay, re-lay, retain, test, commission, use, operate, maintain, inspect, adjust, alter, improve, refurbish, repair, strengthen, upgrade, reconstruct, renew, replace, remove, cleanse, decommission and protect, as may be required, any sewers, drains, pipes, ducts, mains, conduits, flues and new or existing drainage schemes in, on, under or over the land and to drain into and manage waterflows in any drains, watercourses and culverts;
- (i) construct, install, place, erect, lay, re-lay, retain, test, commission, use, operate, maintain, inspect, adjust, alter, improve, refurbish, repair, strengthen, upgrade, reconstruct, renew, replace, remove, decommission and protect, as may be required, pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus, public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers);
- (j) store and stockpile materials (including excavated material);
- (k) excavate materials below ground

level, including soils, and to store and re-use or dispose of the same;

- (l) erect temporary bridges and supporting or protective structures for the purposes of access to adjoining land;
- (m) carry out mitigation and remediation works for environmental or ecological mitigation; and
- (n) erect, maintain, inspect, repair, remove and replace fencing, gates, walls, barriers or other means of enclosure, and create secure working areas and compounds in connection with the authorised project.

Save where anything at a-f below is reasonably required for the exercise of statutory functions by the statutory harbour authority, a restrictive covenant over the land for the benefit of the remainder of the Order land to—

- (a) prevent anything to be done in or upon the land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto) without the consent in writing of the undertaker;
- (b) prevent anything to be done by way of hard surfacing of the land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);
- (c) prevent anything to be done by way of excavation of any kind in the land nor any activities which would alter, increase or decrease ground cover or soil levels without the consent in writing of the undertaker;
- (d) prevent the planting or growing within the land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood

would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project);

- (e) prevent carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised project; and
- (f) prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of ecological mitigation areas or areas of habitat creation without the prior written consent of the undertaker.

11-12, 11-13, 11-14, 11-18, 11-19, 11-20, 11-21, 11-22, 11-23, 11-24, 11-25, 11-26, 11-28, 11-29, 11-31, 11-34, 11-36, 11-37, 11-38, 11-39, 11-40, 11-41, 11-45, 11-46, 11-47, 11-48, 11-49, 11-51, 11-52, 11-54, 11-57, 11-59, 11-60, 11-61, 11-62, 11-63, 11-64, 11-65, 11-66, 11-68, 11-70, 11-71, 11-73, 11-74, 11-75, 11-77, 11-82, 11-84, 11-85, 11-86, 11-87, 11-88, 11-89.

Rights package 2: Dredging works

Rights for the purposes of or in connection with the dredging works for the undertaker and all persons authorised on its behalf, to—

- (a) enter, pass and re-pass with or without vehicles, vessels, plant and machinery, for all purposes in connection with the carrying out of capital and maintenance dredging, including the replacement or removal of pipes, cables or conduits or apparatus including but not limited to telecommunications cables and any ancillary equipment and apparatus, service media (including the pipes, cables or conduits or apparatus of statutory undertakers);
- (b) make such investigations in, on, under or over the land as required;
- (c) create boreholes and trial excavation pits for the purposes of intrusively surveying the land and monitoring the use of any trenchless installation technique, to keep in place and monitor the same throughout construction, maintenance, operation and decommissioning and to reinstate the land;
- (d) carry out capital dredging to the berth pocket and approach channel and carry out any improvements thereto;
- (e) carry out maintenance dredging to the berth pocket and approach channel from time to time as necessary for the purpose of maintaining or restoring authorised depths; and
- (f) carry out mitigation and remediation

works for environmental or ecological mitigation.

5-1, 5-2, 5-3, 5-4, 5-5, 7-18, 7-19, 7-20, 7-21, 7-23, 7-24, 7-25, 7-26, 7-27.

Rights package 3: Electrical connection works

Rights for the purposes of or in connection with the electrical connection works for the undertaker and all persons authorised on its behalf, to—

- (a) create or improve accesses;
- (b) enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the construction, installation, placement, erection, laying, re-laying, retention, testing, commissioning, use, operation, maintenance, inspection, adjustment, alteration, improvement, refurbishment, repair, strengthening, upgrading, reconstruction, renewal, replacement, removal, decommissioning and protection, as may be required, of the electrical connection works;
- (c) construct, install, place, erect, lay, re-lay, retain, test, commission, use, operate, maintain, inspect, adjust, alter, improve, refurbish, repair, strengthen, upgrade, reconstruct, renew, replace, remove, decommission and protect, as may be required, the electrical connection works including electricity cables in, under, over or on the land and in the ducts, together with such telemetry and fibre-optic lines, ducting, jointing bays, and other apparatus, protection measures, cable marker posts, chambers and manholes, manhole covers and other equipment which is ancillary to the purposes of transmitting electricity along the electricity cables and in doing so, to use or resort to trenchless installation techniques including directional drilling beneath land and features including sea defences, watercourses, roads, railways and utility corridors;
- (d) construct, install, place, erect, lay, re-lay, retain, test, commission, use, operate, maintain, inspect, adjust, alter, improve, refurbish, repair, strengthen, upgrade, reconstruct, renew, replace, remove, decommission and protect, as may be

required, the additional ducts for the electrical connection works including electricity cables in, under, over or on the land and in the additional ducts together with such telemetry and fibre-optic lines, ducting, jointing bays and other apparatus, protection measures, cable marker posts, chambers and manholes, manhole covers and other equipment which is ancillary to the purposes of transmitting electricity along the electricity cables and in doing so, to use or resort to trenchless installation techniques including directional drilling beneath land and features including sea defences, watercourses, roads, railways and utility corridors;

- (e) support all infrastructure relating to the authorised project;
- (f) enter, be on, and break open and break up the surface of the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity via the electrical connection works;
- (g) erect, maintain, inspect, repair, remove and replace fencing, gates, walls, barriers or other means of enclosure, and create secure working areas and compounds including trenchless installation technique compounds and working areas;
- (h) make such investigations in, on, under or over the land as required;
- (i) create boreholes and trial excavation pits for the purposes of intrusively surveying the land and monitoring the use of any trenchless installation technique, to keep in place and monitor the same throughout construction, maintenance, operation and decommissioning and to reinstate the land;
- (j) alter, fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the land or other land which would, if not altered, felled, lopped, cut or removed, obstruct or interfere with the electrical connection works;
- (k) take and use, remove and discharge water from the land, and to construct, install, place, erect, lay, re-lay, retain,

test, commission, use, operate, maintain, inspect, adjust, alter, improve, refurbish, repair, strengthen, upgrade, reconstruct, renew, replace, remove, cleanse, decommission and protect, as may be required, any sewers, drains, pipes, ducts, mains, conduits, flues and new or existing drainage schemes in, on, under or over the land and to drain into and manage waterflows in any drains, watercourses and culverts;

- (l) construct, install, place, erect, lay, re-lay, retain, test, commission, use, operate, maintain, inspect, adjust, alter, improve, refurbish, repair, strengthen, upgrade, reconstruct, renew, replace, remove, decommission and protect, as may be required, pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers);
- (m) erect temporary bridges and supporting or protective structures for the purposes of access to adjoining land;
- (n) store and stockpile materials (including excavated material);
- (o) excavate materials below ground level, including soils, and to store and re-use or dispose of the same; and
- (p) carry out mitigation and, remediation works for environmental or ecological mitigation.

Restrictive covenants

A restrictive covenant over the land for the benefit of the remainder of the Order land to—

- (a) prevent anything to be done in or upon the land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto) without the consent in writing of the undertaker (such consent not to be

unreasonably withheld or delayed if the proposed works would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project) save where such works are reasonably required for the exercise of statutory functions or rights in relation to any street on the land and will not damage, undermine or interfere with the electrical connection works;

- (b) prevent anything to be done by way of hard surfacing of the land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project) save where such works are reasonably required for the exercise of statutory functions or rights in relation to any street on the land and will not damage, undermine or interfere with the electrical connection works;
- (c) prevent anything to be done by way of excavation of any kind in the land nor any activities which would alter, increase or decrease ground cover or soil levels without the consent in writing of the undertaker, save where such works are reasonably required for the exercise of statutory functions or rights in relation any street on the land and will not damage, undermine or interfere with the electrical connection works;
- (d) prevent the planting or growing within the land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project);

6-31, 6-32, 6-33, 6-34, 6-35, 7-1, 7-2, 7-3, 7-4, 7-5, 7-35, 7-36, 9-22, 9-23, 9-24, 9-25, 9-26, 9-27, 9-28, 9-29, 9-38, 9-39, 9-40, 9-41, 9-42, 9-47, 9-48, 9-49, 9-50, 9-51, 9-52, 9-53, 9-54, 9-58, 9-59, 9-60, 10-7, 10-8, 10-15, 10-16, 12-1, 12-2, 12-3, 12-4, 12-8, 12-9, 12-10, 12-11, 12-13, 12-14, 12-15, 12-18, 12-19, 12-20, 12-21, 12-22, 12-23, 12-24, 12-25, 12-26, 12-27, 12-28, 12-29, 12-32, 12-33, 12-34, 12-35, 13-1, 13-2, 13-3, 13-4, 13-6, 13-7, 13-8, 13-9, 13-12, 13-13, 13-15, 13-16, 13-17, 13-18, 13-19, 13-20, 13-21, 13-24, 13-27, 13-28, 13-29, 13-30, 13-31, 13-32, 13-33, 13-34, 13-35, 13-36, 13-37, 13-38, 13-39, 13-40, 13-41, 13-42, 13-43, 13-44, 13-45, 13-46, 13-47, 13-49, 13-50, 13-51, 13-52, 13-53, 13-54, 13-55, 13-56, 13-57, 13-58, 13-59, 14-1, 14-2, 14-3, 14-4, 14-5, 14-6, 14-7, 14-8, 14-12, 14-13, 14-17, 14-18, 14-26, 14-27, 14-28, 14-29, 14-30, 14-31, 14-35, 14-36, 14-37, 14-38, 14-39, 16-2, 16-3, 16-4, 16-5, 16-6, 16-7, 17-5, 17-6, 17-7, 18-1, 18-2, 18-3, 18-4, 18-5, 18-6, 18-7, 18-8, 18-11, 18-12, 18-13, 18-14, 18-15, 18-16, 18-17, 18-18, 18-19, 18-22, 18-23, 18-24, 18-25, 18-26, 18-27, 18-28, 18-29, 18-30, 18-31, 18-32, 18-33, 18-35, 18-36, 18-40, 18-41, 18-42, 18-43, 18-44, 18-45, 18-46, 18-47, 18-48, 18-49, 18-50, 20-3, 20-4, 20-5, 20-6, 20-7, 20-8, 20-9, 20-10, 20-11, 20-12, 20-13.

- (e) prevent anything being done which may interfere with free flow and passage of electricity or telecommunications through the electrical connection works or support for the authorised project;
- (f) prevent carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised project; and
- (g) prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of ecological mitigation areas or areas of habitat creation without the prior written consent of the undertaker.

Rights package 4: Pipeline connection rights

Rights for the purposes of or in connection with the pipeline connection works for the undertaker and all persons authorised on its behalf, to—

- (a) create or improve accesses;
- (b) enter, pass and re-pass with or without vehicles, plant and machinery, for all purposes in connection with the construction, installation, placement, erection, laying, re-laying, retention, testing, commissioning, use, operation, maintenance, inspection, adjustment, alteration, improvement, refurbishment, repair, strengthening, upgrading, reconstruction, renewal, replacement, removal, decommissioning and protection, as may be required, of the pipeline connection works;
- (c) construct, install, place, erect, lay, re-lay, retain, test, commission, use, operate, maintain, inspect, adjust, alter, improve, refurbish, repair, strengthen, upgrade, reconstruct, renew, replace, remove, decommission and protect, as may be required, the pipeline connection works including pipelines in, under, over and/or on the land, together with such telemetry and fibre-optic lines, cathodic protection measures and other equipment, apparatus or protection measures which are ancillary to the pipeline connections works;

- (d) support all infrastructure relating to the authorised project;
- (e) enter, be on, and break open and break up the surface of the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting natural gas, wastewater and products via the pipeline connections works;
- (f) erect, maintain, inspect, repair, remove and replace fencing, gates, walls, barriers or other means of enclosure, and create secure working areas and compounds including trenchless installation technique compounds and working areas;
- (g) make such investigations in, on, under or over the land as required;
- (h) create boreholes and trial excavation pits for the purposes of intrusively surveying the land and monitoring the use of any trenchless installation technique, to keep in place and monitor the same throughout construction, maintenance, operation and decommissioning and to reinstate the land;
- (i) alter, fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the land or other land which would, if not altered, felled, lopped, cut or removed, obstruct or interfere with the pipeline connection works;
- (j) take and use, remove and discharge water from the land, and to construct, install, place, erect, lay, re-lay, retain, test, commission, use, operate, maintain, inspect, adjust, alter, improve, refurbish, repair, strengthen, upgrade, reconstruct, renew, replace, remove, cleanse, decommission and protect, as may be required, any sewers, drains, pipes, ducts, mains, conduits, flues and new or existing drainage schemes in, on, under or over the land and to drain into and manage waterflows in any drains, watercourses and culverts;
- (k) construct, install, place, erect, lay, re-lay, retain, test, commission, use, operate, maintain, inspect, adjust, alter, improve, refurbish, repair, strengthen, upgrade, reconstruct,

renew, replace, remove, decommission and protect, as may be required, pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers);

- (l) store and stockpile materials (including excavated material);
- (m) excavate materials below ground level, including soils, and to store and re-use or dispose of the same;
- (n) erect temporary bridges and supporting or protective structures for the purposes of access to adjoining land; and
- (o) carry out mitigation and remediation works for environmental or ecological mitigation.

Restrictive covenants

A restrictive covenant over the land for the benefit of the remainder of the Order land to—

- (a) prevent anything to be done in, on or over the land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto) without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed works would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project) save where such works are reasonably required for the exercise of statutory functions or rights in relation to any street on the land and will not damage, undermine or interfere with the pipeline connection works;
- (b) prevent anything to be done by way of hard surfacing of the land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the

undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project) save where such works are reasonably required for the exercise of statutory functions or rights in relation to any street on the land and will not damage, undermine or interfere with the pipeline connection works;

- (c) prevent anything to be done by way of excavation of any kind in the land nor any activities which would alter, increase or decrease ground cover or soil levels without the consent in writing of the undertaker, save where such works are reasonably required for the exercise of statutory functions or rights in relation to any street on the land and will not damage, undermine or interfere with the pipeline connection works;
- (d) prevent the planting or growing within the land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project);
- (e) prevent anything being done which may interfere with free flow and passage of natural gas, wastewater or products through the pipelines or support for the authorised project;
- (f) prevent carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised project; and
- (g) prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of ecological mitigation areas or areas of habitat creation without the prior written consent of the undertaker.

6-9, 7-13, 7-14, 7-35, 7-36, 7-43, 8-1, 8-3, 9-1, 9-22, 9-26, 9-27, 9-28, 9-29, 9-35, 9-36, 9-37,

Rights package 5: Enhanced access rights including construction and improvement

9-38, 9-39, 9-40, 9-49, 9-50, 9-51, 9-52, 9-53, 9-54, 12-2, 12-3, 12-4, 12-5, 12-6, 12-7, 12-12, 12-16, 12-17, 12-30, 12-31, 13-4, 13-5, 13-7, 13-9, 13-10, 13-11, 13-14, 13-18, 13-19, 13-20, 13-21, 13-22, 13-23, 13-25, 13-26, 13-27, 13-37, 13-39, 14-32, 14-33, 14-34, 15-1, 15-2, 15-3, 16-8, 17-3.

works

Rights for the purposes of or in connection with the authorised project for the undertaker and all persons authorised on its behalf, to—

- (a) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials;
- (b) construct, install, place, erect, lay, re-lay, retain, straighten, widen, test, commission, use, operate, maintain, inspect, adjust, alter, improve, refurbish, repair, strengthen, upgrade, reconstruct, renew, replace, remove, decommission and protect, as may be required, a permanent means of access (including visibility splays) for the purposes of accessing the land, adjoining land, streets and highway;
- (c) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing the land, adjoining land, streets and highway;
- (d) construct, install, place, erect, lay, re-lay, retain, test, commission, use, operate, maintain, inspect, adjust, alter, improve, refurbish, repair, strengthen, upgrade, reconstruct, renew, replace, remove, decommission and protect, as may be required, temporary access roads including any necessary hard standing and other surface materials including matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains throughout construction, maintenance, operation and decommissioning;
- (e) erect temporary bridges and supporting or protective structures for the purposes of access to adjoining land;
- (f) alter, fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the land or other land, which would, if not felled, lopped, cut or removed, obstruct or interfere with the right to pass and re-pass to adjoining land;
- (g) repair, improve, renew, remove, relocate and plant trees, woodland, shrubs, hedgerows, seeding and other ecological measures together with the

right to maintain, inspect and replant such trees, shrubs and landscaping;

- (h) construct, install, place, erect, lay, re-lay, retain, test, commission, use, operate, maintain, inspect, adjust, alter, improve, refurbish, repair, strengthen, upgrade, reconstruct, renew, replace, remove, decommission and protect, as may be required, pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers);
- (i) erect, maintain, inspect, repair, remove and replace fencing, gates, walls, barriers or other means of enclosure, and create secure working areas and compounds including trenchless installation technique compounds and working areas;
- (j) take and use, remove and discharge water from the land, and to construct, install, place, erect, lay, re-lay, retain, test, commission, use, operate, maintain, inspect, adjust, alter, improve, refurbish, repair, strengthen, upgrade, reconstruct, renew, replace, remove, cleanse, decommission and protect, as may be required, any sewers, drains, pipes, ducts, mains, conduits, flues and new or existing drainage schemes in, on, under or over the land and to drain into and manage waterflows in any drains, watercourses and culverts; and
- (k) carry out mitigation and remediation works for environmental or ecological mitigation.

1-1, 1-2, 1-3, 1-4, 1-5, 1-6, 1-7, 1-18, 2-1, 2-2, 2-3, 2-4, 3-1, 4-1, 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 4-9, 4-10, 5-6, 6-1, 6-2, 6-4, 6-12, 6-25, 15-4, 15-5, 15-6, 17-1, 17-2, 18-21, 18-34, 18-37, 18-38, 18-39, 18-51, 18-52, 18-53, 18-54, 18-55, 18-56, 18-57, 18-58, 18-59, 18-60, 18-61, 18-62, 18-63, 19-1, 19-2, 19-3, 19-4, 19-5, 19-6 19-7, 20-1, 20-2, 21-1, 21-2, 21-3.

Rights package 6: Access rights

Rights for the purposes of or in connection with the authorised project for the undertaker and all persons authorised on its behalf, to—

- (a) pass and re-pass with or without vehicles, plant, machinery, equipment and materials;
- (b) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of

accessing the land, adjoining land, streets and highway;

- (c) construct, install, place, erect, lay, re-lay, retain, test, commission, use, operate, maintain, inspect, adjust, alter, improve, refurbish, repair, strengthen, upgrade, reconstruct, renew, replace, remove, decommission and protect, as may be required, pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers);
 - (d) erect, maintain, inspect, repair, remove and replace fencing, gates, walls, barriers or other means of enclosure, and create secure working areas and compounds including trenchless installation technique compounds and working areas;
 - (e) take and use, remove and discharge water from the land, and to construct, install, place, erect, lay, re-lay, retain, test, commission, use, operate, maintain, inspect, adjust, alter, improve, refurbish, repair, strengthen, upgrade, reconstruct, renew, replace, remove, cleanse, decommission and protect, as may be required, any sewers, drains, pipes, ducts, mains, conduits, flues and new or existing drainage schemes in, on, under or over the land and to drain into and manage waterflows in any drains, watercourses and culverts; and
 - (f) carry out mitigation and remediation works for environmental or ecological mitigation.
-

SCHEDULE 8

Article 22

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a

compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2—(1)).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) For the words “land is acquired or taken” there is substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) For the words “acquired or taken from him” there is substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of sub-paragraph (1), the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If-

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) (powers of entry) of the 1965 Act (as modified by paragraph 8 of Schedule 8 to the Lighthouse Green Fuels Order 2027);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 6 of Schedule 8 to the Lighthouse Green Fuels Order 2027) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”

Application of the 1965 Act

4.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or, in relation to the imposition of a restriction, with the modifications specified in the following provisions of this Schedule.

5. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

“**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to

(a) 1973 c. 26.

be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

6. Section 8(1) of the 1965 Act has effect as if references to acquiring land were to acquiring a right in the land, and Schedule 2A to that Act is to be read as if, for that Schedule, there were substituted—

“SCHEDULE 2A

Ref

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 25 (application of the 1981 Act) of the Lighthouse Green Fuels Order 2025 in respect of land to which the notice to treat relates.

(2) But see article 27 (acquisition of subsoil or airspace only) of the Lighthouse Green Fuels Order 202[●] which excludes acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the undertaker to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice the undertaker must decide whether to

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The undertaker must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the undertaker decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the undertaker does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the undertaker serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7 the Upper Tribunal must determine whether the acquisition of the right would

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account

- (a) the effect of the acquisition of the right,
- (b) the proposed use of the right, and
- (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10 it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the undertaker ought to be required to take some or all of the house, building or factory the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the undertaker ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the undertaker withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal."

7. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

is so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

8. Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 22), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry); 11B (counter notice requiring possession to be taken on specified date, 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

9. Section 20 of the 1965 Act (tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition

under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

10. Section 22 of the 1965 Act (interests omitted from purchase) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 9

Article 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 6

<i>Sheet number and number of plot shown on land plans</i>	<i>Purpose for which temporary possession may be taken</i>	<i>Relevant part of authorised project</i>
8-2, 13-48, 14-9, 14-10, 14-11, 14-14, 14-15, 14-16, 14-19, 14-20, 14-21, 14-22, 14-23, 14-24, 14-25, 16-1, 17-4, 18-9, 18-10, 18-20.	Temporary use as construction compound, laydown, construction use and access required to facilitate construction of the authorised project	Work No. 13 Work No. 13A temporary construction compounds and laydown areas

SCHEDULE 10

Article 39

DEEMED MARINE LICENCE UNDER THE 2009 ACT

PART 1

LICENSED ACTIVITIES

Interpretation

1.—(1) In this licence—

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009(a);

“AOD” means above ordnance datum;

“authorised deposits” means the substances and objects authorised for deposit pursuant to Part 1, paragraph 3 of this licence, or as otherwise agreed in writing with the MMO;

“authorised project” means the authorised development and the ancillary works described in Schedule 1 (authorised project);

“authorised scheme” means Work No. 6 together with the further associated development included in Part 1, paragraph 2(2) of this licence or any part of that work or development;

“bank holiday” means a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(b);

“CEMP” means a construction environmental management plan for the licensed activities or any part of those works;

(a) 2009 c. 23.

(b) 1971 c. 80.

“commence” means the first carrying out of any licensed activities authorised by this marine licence and “commenced” and “commencement” shall be construed accordingly;

“condition” means a condition under Part 2 of this licence;

“disposal” means the deposit of dredge arisings at a disposal site carrying reference TY150–“Tees Bay C”, or as otherwise agreed in writing with the MMO;

“dredge arisings” means inert material of natural origin and/or dredged material produced during capital dredging;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of Part 4 (marine licensing) of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“framework construction environmental management plan” means the document certified as such by the Secretary of State for the purposes of the Lighthouse Green Fuels Order 202[●] under article 48 (certification of plans, etc.);

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised project provided such activities do not give rise to any materially new or materially different adverse effects that have not been assessed in the environmental statement and “maintenance” and “maintaining” must be construed accordingly;

“Marine Management Organisation” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence or any successor of that function and “MMO” shall be construed accordingly;

“MCMS” means the Marine Case Management System web portal provided and operated by the MMO or any equivalent or successor system to the MCMS;

“MCA” means the Maritime and Coastguard Agency, the executive agency of the Department for Transport;

“mean high water springs” or “MHWS” means the average throughout the year of two successive high waters during a 24-hour period in each month when the range of the tide is at its greatest (Spring tides);

“office hours” means the period from 09:00 until 17:00 on any working day;

“Order” means the Lighthouse Green Fuels Order 202[●];

“Order limits” means the limits shown on the works plans within which the authorised project may be carried out;

“permanent quay” means for the purposes of Work No. 6B the operation of the permanent quay constructed under Work No. 6A and the operation of associated permanent infrastructure including wingwall, revetments, mooring infrastructure, outfalls and navigational buoys;

“sediment sampling plan” means a plan that provides an adequate characterisation of material proposed for dredging as part of the licensed activities;

“statutory harbour authority” or “SHA” means the authority responsible for the management and running of Teesport harbour;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“UKHO” means the United Kingdom Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“undertaker” means LGF Projects Limited (Company No. 16455871), whose registered office is 1-6 Lombard Street, London, England And Wales, United Kingdom, EC3V 9AA, or the person who has the benefit of this deemed marine licence by virtue of article 6 (benefit of the

Order) and article 7 (consent to transfer the benefit of the Order) and any agent, contractor or sub-contractor acting on its behalf;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other craft constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“working day” means any day other than a Saturday, Sunday or bank holiday;

“Work No. 6” means marine infrastructure including—

(a) Work No. 6A — construction of permanent quay and associated wing walls including—

- (i) demolition of existing jetties and associated infrastructure;
- (ii) demolition and reinstatement of existing mooring infrastructure;
- (iii) relocation of existing navigational buoys; and
- (iv) extension of existing outfall;

(b) Work No. 6B — permanent quay; and

(c) Work No. 6C — capital dredging activities; and

“works plans” means the plans certified as such by the Secretary of State for the purposes of the Lighthouse Green Fuels Order 202[●] under article 48 (certification of plans, etc.);

(2) A reference to any statute, order, regulation or similar instrument is to be construed as reference to a statute, order, regulation or similar instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

(a) all times are taken to be Greenwich Mean Time (GMT); and

(b) all co-ordinates are taken to be latitude and longitude degrees minutes and seconds to three decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

(a) Centre for Environment, Fisheries and Aquaculture Science, Pakefield Road, Lowestoft, Suffolk, NR33 0HT; Tel. 01502 562 244;

(b) Historic England, Cannon Bridge House, 25 Dowgate Hill, London, EC4R 2YA; Tel. 020 7973 370;

(c) Kingfisher Information Service of Seafish, Email – kingfisher@seafish.co.uk

(d) Marine Management Organisation, Local Enforcement Office, Neville House Bell Street, North Shields, NE30 1LJ; Tel. 0191 257 4520, Email – northshields@marinemanagement.org.uk;

(e) Marine Management Organisation, Marine Licensing Team, Tyneside House, Skinnerburn Road, Newcastle Upon Tyne, NE4 7AR; Tel. 0300 123 1032, Email – marine.consents@marinemanagement.org.uk;

(f) Maritime and Coastguard Agency, Navigation Safety Branch, Bay 2/20, Spring Place, 105 Commercial Road, Southampton, SO15 1EG; Tel. 020 3817 2433;

(g) Natural England, Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX; Tel. 0300 060 3900;

(h) The United Kingdom Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN; Tel. 01823 337 900; and

(i) Trinity House, Tower Hill, London, EC3N 4DH; Tel. 020 7481 6900.

(5) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is marine.consents@marinemanagement.org.uk, or, where contact to the Local Office of the MMO is required, northshields@marinemanagement.org.uk

Details of licensed activities

2.—(1) Subject to the licence conditions in Part 2, this licence authorises the undertaker to carry out any licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

- (a) form part of, or are related to, the authorised project; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

(2) The licensed activities are authorised in relation to the construction, maintenance and operation of the authorised scheme, including—

- (a) the deposit at sea of the substances and objects specified in paragraph 3 below;
- (b) the construction of works in or over the sea or on the sea bed;
- (c) the removal of sediment samples and small-scale excavations for the purposes of informing geotechnical investigations and environmental monitoring under this licence;
- (d) site clearance and preparation works;
- (e) disposal of up to 800,000 cubic metres (being a maximum, not an approximate upper figure) of dredge arisings within the disposal site;
- (f) import of up to 25,000 cubic meters of scour protection around the foundations of the quay;
- (g) creation and use of temporary vessel laydown areas and use of cable anchors;
- (h) temporary landing places, mooring or other means of accommodating vessels in the construction or maintenance of the authorised project;
- (i) lighting; and
- (j) marking buoys, beacons, fenders and other navigational warning or ship impact protection works.

3. The substances and objects authorised for deposit are—

- (a) ferrous and non-ferrous metals;
- (b) stone and rock;
- (c) concrete and grout;
- (d) sand and gravel;
- (e) plastic and synthetic materials;
- (f) anchors and weights used for the calibration of vessels consisting of a hessian sack, metal shackles or chains;
- (g) material extracted from within the Order limits during construction drilling or seabed preparation for foundation works; and
- (h) marine coatings, other chemicals and timber.

4. The undertaker may engage in the licensed activities related to the authorised scheme in the area bounded by the coordinates set out in Table 7 in this paragraph.

Table 7

<i>Point ID</i>	<i>Longitude</i>	<i>Latitude</i>
1	54.604325	-1.1684203
2	54.604334	-1.1684046
3	54.604334	-1.1683891
4	54.604352	-1.1683578
5	54.604361	-1.1683267
6	54.604361	-1.1683267
7	54.60436	-1.1682802

8	54.60436	-1.1682493
9	54.60436	-1.1682493
10	54.60436	-1.1682493
11	54.60436	-1.1682338
12	54.60436	-1.1682028
13	54.60436	-1.1681719
14	54.60436	-1.1681719
15	54.60436	-1.1681719
16	54.604359	-1.1681564
17	54.604359	-1.1681564
18	54.604368	-1.1681407
19	54.604368	-1.1681407
20	54.604368	-1.1681253
21	54.604377	-1.1681096
22	54.604377	-1.1681096
23	54.604377	-1.1681096
24	54.604386	-1.1680784
25	54.604404	-1.1680626
26	54.604413	-1.1680469
27	54.604413	-1.1680469
28	54.604421	-1.1680313
29	54.604421	-1.1680158
30	54.60443	-1.1680001
31	54.604439	-1.1679845
32	54.604439	-1.167969
33	54.604448	-1.1679688
34	54.604448	-1.1679688
35	54.604457	-1.1679532
36	54.604457	-1.1679532
37	54.604466	-1.167953
38	54.604475	-1.1679373
39	54.604475	-1.1679373
40	54.604484	-1.1679371
41	54.604484	-1.1679371
42	54.604484	-1.1679216
43	54.604501	-1.1678903
44	54.604501	-1.1678903
45	54.604501	-1.1678748
46	54.604501	-1.1678594
47	54.60451	-1.1678592
48	54.60451	-1.1678437
49	54.60451	-1.1678282
50	54.604519	-1.1677971
51	54.604519	-1.1677971
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354	54.607437	-1.1635729
355	54.607285	-1.163576
356	54.607222	-1.1635773
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359	54.606843	-1.1634303
360	54.605972	-1.1634791
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362	54.605576	-1.1634872
363	54.60425	-1.1653102
364	54.603965	-1.165703
365	54.603935	-1.1665551
366	54.604028	-1.1670331
367	54.604186	-1.1677729
368	54.604289	-1.1682972
369	54.604307	-1.1683587
370	54.604325	-1.1684203

5. The coordinates in Table 7 are defined in accordance with reference system WGS84 - World Geodetic System 1984.

6. This licence remains in force until the authorised scheme has been decommissioned.

7. The provisions of section 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 7 (consent to transfer the benefit of the Order).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

9. Any amendments to or variations from the approved details, plans or schemes must be in accordance with the principles and assessments set out in the environmental statements. Such agreement may only be given where it has been demonstrated to the reasonable satisfaction of the MMO, in consultation with the SHA, that it is unlikely to or will not give rise to any materially new or materially different adverse environmental effects from those assessed in the environmental statement.

10. Should the undertaker become aware that any of the information on which the granting of this licence was based was materially false or misleading, the undertaker must notify the MMO and the SHA of this fact in writing as soon as is reasonably practicable. The undertaker must explain in writing what information was materially false or misleading and must provide to the MMO and the SHA the correct information.

PART 2

CONDITIONS

Design parameters

11. The quay to be constructed must be constructed in accordance with the parameters assessed in the environmental statement and must not—

- (a) be above 6m AOD in elevation;
- (b) exceed 300m in length; and
- (c) have a dredge depth below 19.85m below Ordnance Datum for the berthing pocket.

12.—(1) Vibratory or drilled piling must be used as standard, with percussive piling only used if required to drive a pile to its design depth and where the undertaker has established, following the carrying out of a desk top study informed by appropriate survey information, that vibratory or drilled piling would be ineffective.

(2) Where percussive piling is established to be necessary in accordance with sub-paragraph (1)—

- (a) soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved;
- (b) the soft-start duration must be a period of not less than 20 minutes; and
- (c) should piling cease for a period greater than 10 minutes, then the soft start procedure must be repeated.

(3) Unless otherwise agreed in writing with the MMO, piling will only be carried out during the hours of—

- (a) 0700 to 1900 hours on Monday to Friday;
- (b) 0700 to 1600 hours on a Saturday; and
- (c) 0800 to 1700 hours on a Sunday.

Notifications and inspections

13.—(1) The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—

- (i) all agents and contractors notified to the MMO in accordance with condition 16(1)(a); and
 - (ii) the vessel masters responsible for the vessels notified to the MMO in accordance with condition 16(2); and
 - (b) the undertaker must confirm in writing to the MMO and the SHA within 28 days a copy of this licence and any subsequent amendments or revisions to it being provided to the persons listed in sub-paragraph (1)(a) that the required information has been provided.
- (2) Only those persons and vessels notified to the MMO in accordance with condition 16 are permitted to carry out the licensed activities.
- (3) Copies of this licence must also be available for inspection at the following locations—
- (a) the undertaker's registered address;
 - (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
 - (c) on board each vessel or at the office of any person with responsibility for such vessel from which the removal or deposit of dredge arisings are to be made.
- (4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3) above.
- (5) The undertaker must (subject to compliance with all relevant health and safety requirements) provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised development.
- (6) The undertaker must inform the MMO Local Office in writing at least fourteen days prior to the commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities. A copy of the notification must be provided to the SHA within 5 days of issue.
- (7) A notice to mariners must be issued by the undertaker at least fourteen days prior to the commencement of the licensed activities or any part of them advising of the start date of the licensed activities relating to the authorised scheme.
- and copies of all notices must be provided to the MMO, the SHA, TH and the MCA within five days as soon as reasonably practicable and no later than 24 hours after the issue of such notice.
- (8) The undertaker must ensure that local notifications to mariners are updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works (unless otherwise agreed in writing by the MMO). A copy of the notification must be provided to the MMO, Trinity House, MCA and the SHA within 5 days.
- (9) The undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details of the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part—
- (a) at least 14 days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data;
 - (b) as soon as reasonably practicable and no later than 24 hours of completion of the authorised scheme,
- and confirmation of notification must be provided to the MMO and the SHA within five days.
- (10) In case of material damage to, or destruction or decay of, the authorised development seaward of MHWS or any part thereof, the undertaker must as soon as reasonably practicable and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify the MMO Local Office, the SHA, MCA, Trinity House, Kingfisher Information Service of Seafish and the United Kingdom Hydrographic Office.

Pre construction

14.—(1) The undertaker must submit a CEMP to the MMO at least three months prior to the proposed commencement of the licensed activities or part of the licensed activities.

(2) Any CEMP submitted pursuant to sub-paragraph (1) must be in accordance with the framework construction environmental management plan and include details of—

- (a) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised development in relation to all activities to be carried out;
- (b) a biosecurity plan detailing how risk of the introduction and spread of invasive non-native species will be minimised;
- (c) waste management and disposal arrangements;
- (d) a deconfliction management plan; and
- (e) the appointment and responsibilities of a fisheries liaison officer.

(3) No part of the licensed activities may commence until a CEMP for that part has been approved in writing by the MMO, in consultation with the SHA.

(4) The MMO must determine an application for approval of a CEMP within a period of 3 months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(5) A CEMP approved pursuant to sub-paragraph (3) may be amended from time to time subject to approval in writing from the MMO.

(6) The licensed activities must be carried out in accordance with the CEMP approved pursuant to sub-paragraph (3) and (5).

15.—(1) A marine method statement must be submitted to the MMO at least three months prior to the proposed commencement of the licensed activities or part of the licensed activities.

(2) A marine method statement submitted pursuant to sub-paragraph (1) for licensed activities related to the authorised scheme must include details of—

- (a) methods of dredging to be employed and associated disposal arrangements;
- (b) methods for the licensed demolition and construction works; and
- (c) an indicative programme for the delivery of the licensed activities.

(3) The marine method statement submitted pursuant to sub-paragraph (1) must—

- (a) only include details of the licensed activities in so far as they are required; and
- (b) be scaled to correspond to the final requirements of the authorised development.

(4) No part of the licensed activities may commence until the marine method statement for that part has been approved in writing by the MMO, in consultation with the SHA.

(5) The MMO must determine an application for approval of a marine method statement within a period of 3 months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(6) A marine method statement approved pursuant to sub-paragraph (4) may be amended from time to time subject to approval in writing from the MMO.

(7) The licensed activities must be carried out in accordance with the marine method statement approved pursuant to sub-paragraphs (4) and (6).

Reporting of engaged agents, contractors and vessels

16.—(1) The undertaker must provide the following information in writing to the SHA and MMO unless otherwise agreed—

- (a) the name, function, company number (if applicable), registered or head office address (as appropriate) of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; and

- (b) each week during the construction of the authorised scheme a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the licensed activities.

(2) The undertaker must notify the MMO and the SHA in writing of any vessel being used to carry on any licensed activity listed in this licence on behalf of the undertaker. Such notification must be received by the MMO and the SHA no less than 24 hours before the commencement of the licensed activity. Notification must include the master's name, vessel type, vessel IMO number and vessel owner or operating company.

(3) Any changes to the supplied details must be notified to the MMO in writing at least 24 hours before the agent, contractor or vessel engages in the licensed activities.

Sediment Sampling

17.—(1) The undertaker must submit a sample plan request to the MMO for written approval of a sample plan.

(2) The sample plan request must be made for capital dredging, at least three months prior to the commencement of any capital dredging.

(3) The sample plan request must include details of—

- (a) the volume of material to be dredged;
- (b) the location of the area to be dredged;
- (c) the type and dredging methodology (including depth of material to be dredged and proposed programme for the dredging activities); and
- (d) the location and depth of any supporting samples.

(4) The MMO must determine an application for approval of a sample plan within a period of 3 months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(5) Unless otherwise agreed by the MMO, the undertaker must undertake the sampling in accordance with the approved sample plan.

Chemicals, drilling and debris

18.—(1) The undertaker must ensure that any coatings and treatments are suitable for use in the marine environment and are used in accordance with any guidelines approved by the Health and Safety Executive and the Environment Agency.

(2) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken to prevent released into the marine environment, including bundling of 110 percent of the total volume of all reservoirs and containers.

(3) The undertaker must inform the MMO in writing of the location and quantities of material disposed of each month under this licence by submission of a disposal return by 15 February each year for the months August to January inclusive, and by 15 August each year for the months February to July inclusive and must provide a null return if no activity has taken place during the reporting period up to the maximum dredged amount, after which no null returns are required to be submitted.

(4) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas must be contained to prevent run off entering the water through the freeing ports.

(5) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to—

- (a) the MMO Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under condition 12(1)(a); and
- (b) The SHA under the Tees and Hartlepool Oil Spill Contingency Plan.

(6) Debris or dropped objects which are considered a danger or hazard to navigation must be reported as soon as reasonably practicable but no later than six hours from the undertaker

becoming aware of an incident, to the relevant HM Coastguard Maritime Rescue Co-ordination Centre by telephone (0344 382 0580), the SHA and the UK Hydrographic Office email: navwarnings@btconnect.com.

(7) All dropped objects including those in sub-paragraph (6) must be reported to the MMO using the Dropped Object Procedure Form (including any updated form as provided by the MMO) and the SHA as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident, unless otherwise agreed in writing with the MMO.

(8) On receipt of notification or the Dropped Object Procedure Form the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the marine environment at the undertaker's expense if reasonable to do so.

(9) During licensed activities, all wastes must be stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

Reporting of scour protection

19.—(1) No more than four months following completion of the construction of the authorised scheme, the undertaker must provide the MMO and the relevant statutory nature conservation bodies with a report setting out details of the scour protection used for the authorised scheme.

(2) The report must include the following information—

- (a) the location of scour protection;
- (b) the volume of scour protection; and
- (c) any other information relating to the scour protection as agreed between the MMO and the undertaker.

(3) Where any scour protection is replenished following completion of construction the undertaker must submit an updated report in accordance with sub-paragraph (2) in writing to the MMO and the relevant statutory nature conservation bodies no more than four months following completion of the relevant replenishment being deposited.

Post Construction

20. The undertaker must ensure that any equipment, temporary structures, waste and debris associated with the licensed activities are removed within six weeks of completion of the licensed activity.

Disposal

21.—(1) The undertaker must inform the MMO of the location and quantities of material disposed of each month under this licence.

(2) The information submitted pursuant to sub-paragraph (1) must be submitted to the MMO by 15 February each year for the months August to January inclusive, and by 15 August each year for the months February to July inclusive.

22.—(1) The undertaker must ensure that only inert material of natural origin, produced during dredging is disposed of within the extent of the Order limits seaward of MHWS, within the disposal site (or any other disposal site approved in writing by the MMO), and that any other materials are screened out before disposal.

(2) The material to be disposed of within the disposal site must be placed within the boundaries of the disposal site.

(3) The volume of material for disposal at the disposal site must not exceed 800,000m³.

Safety management

23.—(1) Subject to sub-paragraph (4), no part of the licensed activities may commence until a marine safety management system for that part has been submitted to and approved in writing by the MMO in consultation with the SHA.

(2) The marine safety management system approved pursuant to sub-paragraph (1) must be in accordance with the Port Marine Safety Code and Guide to Good Practice on Port Marine Operations (or such documents as may replace them).

(3) The licensed activities must be carried out in accordance with the marine safety management system approved pursuant to sub-paragraph (1).

(4) Sub-paragraphs (1) to (3) do not apply to any part of the licensed activities where evidence has been submitted to and approved in writing by the MMO that there is an existing marine safety management system in place and which will apply to the relevant part of the licensed activities.

(5) In the event that driven or part-driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry—

- (a) no less than three months prior to the commencement of each phase of construction of the licensed activities, information on the expected location, start and end dates of impact pile driving to satisfy the Marine Noise Registry's Forward Look requirements;
- (b) within two weeks after commencement of each phase of construction of the licensed activities, information on the location, start and end dates of impact pile driving to satisfy the Marine Noise Registry's Forward Look requirements; and
- (c) at six-month intervals following the commencement of pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements by 7 April for winter season October to March inclusive and 7 October for summer season April to September inclusive or within 12 weeks of completion of impact pile driving whichever is earlier.

(6) The undertaker must notify the MMO in writing of the successful submission of Forward Look or Close Out data pursuant to paragraph (5) above within seven days of the submission.

(7) For the purpose of this condition, "Forward Look" and "Close Out" mean the requirements as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) as amended, updated, or superseded from time to time.

Maintenance reporting

24.—(1) An annual maintenance report must be submitted to the MMO in writing within one month following the first anniversary of the date of commencement of operations, and every year thereafter until the permanent cessation of operation.

(2) The report must provide a record of the licensed activities undertaken during the preceding year, the timing of activities and methodologies used.

(3) Every fifth year, the undertaker must submit to the MMO in writing, within one month of that date, a consolidated maintenance report, which will—

- (a) include a review of licensed activities undertaken during the preceding five years with reference to the reports submitted in accordance with condition 24(1) of this licence; and
- (b) reconfirm the applicability of the methodologies and frequencies of the licensable activities permitted by this licence for the remaining duration of this licence.

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned and unless any other provisions in Part 4-20 of this Schedule apply to the utility undertaker concerned.

Interpretation

2. In this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the 1989 Act), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986 for the purposes of gas supply;
- (c) in the case of a water undertaker—
 - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act, and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

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 the operation or maintenance of a utility undertaker’s apparatus within the Order limits, save that for the purposes of paragraphs 6 (in so far as it allows a utility undertaker to request removal of its apparatus), 8 and 11 references to authorised works excludes Work No.5;

“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;

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the 1989 Act;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;

- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in temporarily closed public rights of way

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary closure, of streets and public rights of way), a utility undertaker is at liberty at all times to take 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.

Acquisition of land

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

6.—(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 or over which access to any apparatus is enjoyed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker 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 the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(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 the utility undertaker in question 28 days’ 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 for the purposes of carrying out the authorised works a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker 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, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use all reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of 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 the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43 (arbitration), and after the grant to the utility undertaker 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.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) 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 300 millimetres of the apparatus.

(8) If the utility undertaker fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved, provided that the undertaker has first taken all reasonable steps to contact the relevant representatives of the utility undertaker in order to elicit such a response.

(9) Any deemed approval under sub-paragraph (8) does not extend to the actual undertaking of the removal works, which remains the sole responsibility of the utility undertaker or its contractors in these circumstances.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker 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 the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the arbitrator will—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or on the land for which the alternative apparatus is to be substituted.

(3) 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 the utility undertaker in question 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 that utility undertaker as

appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

8.—(1) Not less than 28 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, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(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 the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) 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 to 3, 6-7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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 28 days before commencing the execution of any 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 the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Access

9. If in consequence of the powers granted under this Order for the purposes of the authorised works, the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable utility undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction, unless otherwise agreed between the parties acting reasonably.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker 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 6(2).

(2) 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.

(3) 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 43 (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 the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (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 6(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.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), 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 the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), 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 a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(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 a utility undertaker, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by a utility undertaker.

(3) A utility undertaker 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 sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) A utility undertaker 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 10 applies. If requested to do so by the undertaker, a utility undertaker 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 a utility undertaker.

Co-operation

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

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

2. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as in section 106 of the 2003 Act(b);

“electronic communications code network” means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) a network which the Secretary of State is providing or proposing to provide;

“operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

3. The exercise of the powers conferred by article 31 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act (undertaker’s works affecting electronic communications apparatus).

4.—(1) Subject to sub-paragraphs (2) to (3), if as a result of the authorised project or its construction, or of any subsidence resulting from any of the authorised project—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised project), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other reasonable expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(a) 2003 c.21

(b) See section 106. Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c.30)

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents; or any indirect or consequential loss or loss of profits by an operator.

5.—(1) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker and if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(2) The operator 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 14 applies. If requested to do so by the undertaker, the operator 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 14 for claims reasonably incurred by the operator.

6. Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 43 (arbitration).

7. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised project.

Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF THIRD PARTY APPARATUS

1. For the protection of third parties with apparatus, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the third party, or unless any other provisions in Schedule 11 (protective provisions) of this Order apply to the apparatus.

2. In this Part—

“affected apparatus” means the apparatus within the Order limits or apparatus which has the benefit of rights (including access) over the Order limits vested in the third party, including cables, mains, pipelines, plant and ancillary apparatus;

“alternative apparatus” means alternative apparatus adequate to enable the third party to carry out its operations in a manner not less efficient than previously;

“restricted works” means any works forming any part of the authorised development that will or may have a materially adverse effect on the affected apparatus or access to them including—

- (a) all works within 6 metres of the affected apparatus;
- (b) the crossing of the affected apparatus by other utilities; and
- (c) the use of explosives within 400 metres of the affected apparatus,

whether carried out by the undertaker or any third party in connection with the authorised development, save that for purposes of paragraphs 3(1)-3(7) references to restricted works excludes Work No.5;

“third party” means a company with apparatus that is affected by the authorised development where such apparatus is not already protected under another ‘part’ in Schedule 11 of this Order; and

“works details” means—

- (a) plans and sections;
 - (b) a method statement describing—
 - (i) the exact position of the works;
 - (ii) the level at which the works are proposed to be constructed or renewed;
 - (iii) the manner of the works’ construction or renewal including details of excavation, positioning of plant etc.;
 - (iv) the position of all affected apparatus;
 - (v) by way of detailed drawings, every alteration proposed to be made to or close to any such affected apparatus;
 - (vi) any intended maintenance regime;
 - (vii) details of the proposed method of working and timing of execution of works;
 - (viii) details of vehicle access routes for construction and operational traffic; and
 - (ix) any other information reasonably required by the third party to assess the works;
 - (c) where the restricted works will or may be situated on, over, under or within 6 metres measured in any direction of the affected apparatus, or (wherever situated) impose any load directly upon the affected apparatus or involve embankment works within 6 metres of the affected apparatus, the method statement must also include—
 - (i) the position of the affected apparatus; and
 - (ii) by way of detailed drawings, every alteration proposed to be made to the affected apparatus;
 - (d) any further particulars provided in response to a request under paragraph 3; and
- “Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

Consent of restricted works under this Part

3.—(1) Before commencing the execution of any restricted works the undertaker must submit to the third party the works details for the restricted works and such further particulars as the third party may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No restricted works are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by the third party.

(3) Any approval of the third party required under this paragraph 3 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the third party may require to be made for—

- (a) the continuing safety and operational viability of the affected apparatus; and
- (b) the requirement for the third party to have reasonable access to inspect, repair, replace and maintain and ensure the continuing safety and operational viability of the affected apparatus.

(4) Where the reasonable requirements relate to the matters in sub-paragraph (3) a reasoned explanation will be provided by the third party to substantiate the need for these requirements.

(5) Any approval of the third party required under this paragraph 3 including any reasonable requirements required by the third party under sub-paragraph (3) must not be unreasonably withheld or delayed and in any event must be made in writing within a period of 56 days (unless a shorter period is otherwise agreed in writing between the undertaker and the third party) beginning

with the date on which the works details were submitted to the third party under sub-paragraph (1), after which approval is deemed to be given.

(6) Any refusal shall be substantiated with a reasonable explanation.

(7) The authorised development must be executed only in accordance with the works details approved by the third party under this paragraph 3 including any reasonable requirements notified to the undertaker in accordance with sub-paragraphs (3) and (4), unless otherwise agreed in writing between the undertaker and the third party acting reasonably.

(8) The third party shall be entitled to watch and inspect the execution of the restricted works

(9) If the third party in accordance with sub-paragraphs (3) and (4) and in consequence of the restricted works proposed by the undertaker, reasonably requires the removal of any of the affected apparatus and gives written notice to the undertaker of that requirement, this Order applies as if the removal of the affected apparatus had been required by the undertaker under sub-paragraph (1).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but (unless otherwise agreed in writing between the undertaker and the third party) in no case less than 28 days before commencing the execution of any restricted works, new works details, instead of the works details submitted, and having done so the provisions of this paragraph 3 apply to and in respect of the new works details.

(11) The undertaker is not required to comply with sub-paragraphs (1) and (2) in a case of emergency but in that case must give the third party notice as soon as is reasonably practicable and must provide a plan of any works carried out as soon as reasonably practicable.

Removal of apparatus/access

4.—(1) If, in the exercise of powers conferred by this Order, the undertaker acquires any interest in any land in which any affected apparatus is placed or over which access to any affected apparatus is enjoyed or requires that affected apparatus is relocated or diverted, that affected apparatus must not be removed under this Part, and any right of the third party to maintain that affected apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus (or alternative rights as the case may be) has been constructed (or granted) and is in operation, and access to it has been provided to the reasonable satisfaction of the third party in accordance with sub-paragraphs (2) to (6).

(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 affected apparatus placed in that land, the undertaker must give to the third party written notices 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 the third party reasonably needs to remove any of its affected apparatus) the undertaker must, subject to sub-paragraph (3), afford to the third party the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that alternative 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, the third party must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between the third party and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 8.

(5) The third party must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 8, and after the grant to the third party 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 affected apparatus required by the undertaker to be removed under the provisions of this Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the third party that it desires itself to execute any work, or part of any work, in connection with the construction or removal of affected apparatus in any land controlled by the undertaker, that work, instead of being executed by the third party must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the third party.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to the third party facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for affected apparatus to be removed, those facilities and rights must be granted—

- (a) upon such terms and conditions as may be agreed between the undertaker and the third party or in default of agreement settled by arbitration in accordance with paragraph 8; and
- (b) in compliance with all health and safety, environmental and regulatory requirements and relevant industry standards.

(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 the third party than the facilities and rights enjoyed by it in respect of the affected apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator may make such provision for the payment of compensation by the undertaker to the third party as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Expenses

6.—(1) Subject to the following provisions of this paragraph 6, the undertaker must pay to the third party the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by the third party in, or in connection with—

- (a) undertaking its obligations under this Order including—
 - (i) the execution of any works under this Order including for the protection of the affected apparatus; and
 - (ii) (the review and assessment of works details in accordance with paragraph 3;
- (b) the watching of and inspecting the execution of the restricted works; and
- (c) imposing reasonable requirements in accordance with paragraph 3(3).

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1), the third party must give prior written notice to the undertaker of the activities to be undertaken.

(3) There must be deducted from any sum payable under sub-paragraph (1) the value of any—

- (a) apparatus of better type, of greater capacity or of greater dimensions 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) placed at a depth greater than the depth at which the existing apparatus was.

(4) The third party shall provide evidence of all such reasonable and properly incurred costs and expenses to which this paragraph applies.

Indemnity

7.—(1) Subject to sub-paragraphs (2) to (8) (inclusive), if by direct reason or in direct consequence of the construction of any of the works referred to in paragraph 3, any damage is caused to the affected 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 there is any interruption in any service provided, or in the supply of any goods, by the third party, the undertaker must—

- (a) bear and pay the direct cost reasonably and properly incurred by the third party in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the third party for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by the third party, by direct reason or in direct consequence of any such damage or interruption.

(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 the third party, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract or loss of opportunity by a third party.

(3) The third party to whom the liability is owed under sub-paragraph (1) must give the undertaker reasonable notice of any such claim or demand as soon as reasonably practicable after such third party becomes aware of any such claims or demands.

(4) Where a third party raises a claim or demand under sub-paragraph (1) which arises from a claim or demand by another person:

- (a) the third party shall consult with the undertaker at regular intervals regarding the progress and strategy of any settlement or compromise or of any proceedings necessary to resist the claim or demand and take into account reasonable representations of the undertaker in connection therewith;
- (b) the undertaker shall also, on request, be provided sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which the third party, and any relevant owner or operator must continue to co-operate with the undertaker with regards to such claim or demand; and
- (c) no settlement or admission of liability or compromise is to be made without the prior consent of the undertaker which, if it withholds such consent, has the sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which the third party must continue to co-operate with the undertaker with regards to such claim or demand.

(5) The third party must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which this paragraph 7 applies.

(6) If requested to do so by the undertaker, the third party 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).

(7) The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by the third party.

(8) The total liability of the undertaker pursuant to this paragraph 7 shall not exceed £5,000,000 (Five Million Pounds) in respect of any one event or series of events arising out of the same original cause and, in any event, shall not exceed £10,000,000 (Ten Million Pounds) in aggregate.

Arbitration

8.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Notices

9. Notices served under this Part shall be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed between the undertaker and the third party in writing.

PART 4

FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED

Application

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

Interpretation

2. In this Part of this Schedule—

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

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously or as otherwise agreed with Anglian Water;

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means—

- (a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991;
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act;
- (d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water;

and

- (e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

and for the purpose of this definition, where words are defined by section 219 of that Act, they shall be taken to have the same meaning

“authorised work” means any works contained within Schedule 1 of the Order save that for the purposes of paragraphs 7 and 11 references to authorised work or authorised works excludes Work No. 5;

“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;

“liability cap” means a level to be agreed between the parties;

“plan” includes all sections, drawings, specifications and method statements; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

On street apparatus

3.—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 of the 1991 Act.

(2) Regardless of the temporary stopping up or diversion of any street under the powers conferred by article 13 (Temporary closure, alteration or diversion of streets and public rights of way) , Anglian Water is at liberty to take all necessary access, subject to obtaining consent from the undertaker, such consent not to be unreasonably withheld or delayed, across any such closed street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of apparatus

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

5.—(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 or requires that Anglian Water’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until—

- (a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and
- (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 6.

(2) If, for the purpose of executing any authorised work 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 Anglian Water 28 days’ written notice of that requirement, together with a plan of the authorised 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 the undertaker reasonably needs to remove any apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water 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 Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of 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 Anglian Water and the undertaker.

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43, and after the grant to Anglian Water 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.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such “deemed consent” does not extend to the actual undertaking of the removal works.

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use best endeavours to comply with Anglian Water’s reasonable requests for a reasonable period of time to enable Anglian Water to—

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Anglian Water 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 are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water.

(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 Anglian Water 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 Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2016 or other legislation.

Retained apparatus

7.—(1) Not less than 28 days before starting the execution of any authorised work in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may materially adversely affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to Anglian Water a plan of the authorised work to be executed.

(2) Those authorised works must be executed only in accordance with the plan submitted under sub-paragraph (1), unless otherwise agreed in writing between the parties, acting reasonably, and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it and must be in relation to—

- (a) the continuing safety and operational viability of Anglian Water (for the avoidance of doubt where the reasonable requirements relate to such matters a reasoned explanation will be given); and
- (b) the requirement for Anglian Water to have reasonable access to inspect, repair and maintain and ensure the continuing safety and operation or viability of Anglian Water.

(4) If Anglian Water does not impose any requirements under sub-paragraph (3) within 28 days of the plan being submitted under sub-paragraph (1), Anglian Water is deemed to have confirmed no such requirements will be imposed and the undertaker may commence execution of those works.

(5) If Anglian Water in accordance with sub-paragraph (3) 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 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of the relevant part of any authorised works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those emergency works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using its best endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(8) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, authorised works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those authorised works fall within the following distances measured from the medial line of such apparatus—

- (a) 4 metres where the diameter of the pipe is less than 250 millimetres;
- (b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres, and
- (c) a distance to be agreed on a case by case basis and before the submission of the Plan under sub-paragraph (1) is submitted where the diameter of the pipe exceeds 400 millimetres.

Expenses and costs

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably and properly incurred by Anglian Water in, or in direct connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in direct consequence of the execution of any such authorised works as are referred to in this Part of this Schedule.

(2) There must 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 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 article 43 (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 Anglian Water by virtue of subparagraph (1) must be reduced by the amount of that excess.

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

- (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; 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 is to be treated as if it also had been agreed or had been so determined.

(5) Anglian Water shall provide evidence of all such reasonable and properly incurred costs and expenses to which this paragraph applies.

9.—(1) Subject to sub-paragraphs (2) and (3), if by direct reason or in direct consequence of the construction of any authorised work, or by reason of any subsidence resulting from such development or 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 those works) or property of Anglian Water, or there is any interruption in any service provided or in the supply of any goods by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional 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 with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Anglian Water, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract, loss of opportunity by Anglian Water.

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand.

(5) Anglian Water 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 provisions under this paragraph applies.

(6) If requested to do so by the undertaker, Anglian Water 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).

(7) Anglian Water must give the undertaker reasonable notice of any such claim or demand by a third party as soon as reasonably practicable after Anglian Water becomes aware of any such claims or demands, and no settlement, admission of liability or compromise is to be made without the prior consent of the undertaker which, if it withholds such consent, has the sole conduct and

control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which Anglian Water must continue to co-operate with the undertaker which regards to such claim or demand.

(8) The undertaker shall only be liable under this paragraph for claims reasonably incurred by Anglian Water and up to the Liability Cap.

Cooperation

10. Where in consequence of the proposed construction of any authorised work, the undertaker or Anglian Water requires the removal of apparatus under paragraph 5(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 5, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised work.

11. Taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, the undertaker must use existing processes when carrying out the authorised work, where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

12. Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

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

14. The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

Arbitration

15.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Notices

16. Notices served under this Part shall be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed between the undertaker and Anglian Water in writing.

PART 5

FOR THE PROTECTION OF ANGLO AMERICAN WOODSMITH LIMITED

Interpretation

1.—(1) For the protection of Anglo American, the following provisions have effect unless otherwise agreed in writing between the Parties.

2. In this Part of this Schedule—

“Access Activities” means the exercise by the undertaker of rights of access within, over or across the Shared Area for the purposes of the authorised project, but does not include the carrying out of works within the Shared Area;

“Anglo American” means the parties with the benefit of the York Potash Order, being Anglo American Woodsmith Limited and Anglo American Crop Nutrients Limited, and Anglo American Woodsmith (Teesside) Limited;

“Anglo American Apparatus” means the pipeline, cables, structures and other apparatus owned, occupied or maintained by Anglo American within the Shared Area;

“Anglo American Specified Works” means so much of the Woodsmith Project as is within the Shared Area;

“Liability Cap” means a level to be agreed between the parties;

“Parties” means the undertaker and Anglo American;

“Respective Projects” means the authorised project and the Woodsmith Project;

“Secretary of State” means the Secretary of State for Energy Security and Net Zero or any successor in function;

“Shared Area” means plot 19-7 on the land plans;

“Woodsmith Project” means the construction, operation, or maintenance of development authorised by the York Potash Order or by any planning permission or development consent order issued whether before or after the date of this Order in connection therewith such development comprising—

- (a) an underground mine at Sneatonthorpe for the mining of polyhalite;
- (b) a Mineral Transport System being a tunnel from the mine to Teesside;
- (c) a Material Handling Facility at Wilton International, Teesside;
- (d) Harbour Facilities at Teesside including an overland conveyor between the Material Handling Facility and the Redcar Bulk Terminal and the harbour authorised by the York Potash Order and planning permissions; and

“York Potash Order” means The York Potash Harbour Facilities Order 2016.

Protection of access and apparatus

3.—(1) The undertaker must exercise the powers of the Order and undertake the Access Activities in so far as practicable not to materially prevent or materially obstruct Anglo American’s access to the Woodsmith Project or the Anglo American Apparatus, unless otherwise agreed in writing by Anglo American acting reasonably.

(2) If, as a direct consequence of the undertaker’s Access Activities, Anglo American’s access to the Woodsmith Project or Anglo American Apparatus is materially obstructed, the undertaker must use reasonable endeavours to provide, or procure the provision of, a reasonable alternative means of access for so long as the obstruction continues.

(3) Anglo American must not prevent or obstruct the undertaker’s Access Activities within the Shared Area and, where access is prevented or obstructed by Anglo American, Anglo American must provide a reasonable alternative means of access as soon as reasonably practicable.

Co-operation

4. Insofar as the Anglo American Specified Works are or may be undertaken concurrently with the Access Activities within the Shared Area, the undertaker must—

- (a) co-operate with a view to ensuring, so far as is reasonably practicable—
 - (i) the co-ordination of programming of all activities within the Shared Area and the carrying out of works within the Shared Area; and

- (ii) that access for the purposes of the construction and operation of the Woodsmith Project is maintained for Anglo American and its employees, contractors and sub-contractors; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the Respective Projects; and
- (c) provide a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised project.

Miscellaneous provisions

5. The undertaker and Anglo American must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part of this Schedule.

Indemnity

6.—(1) Subject to the rest of this paragraph, if by direct reason, or in direct consequence, of the Access Activities any damage is caused to any Anglo American Apparatus used in connection with the Anglo American Specified Works or damage is caused to any part of the Anglo American Specified Works or there is any interruption in any service provided, or the operations of Anglo American, or in the supply of any goods, by Anglo American, or Anglo American becomes liable to pay any amount to any third party as a consequence of the Access Activities, the undertaker must—

- (a) bear and pay the costs reasonably and properly incurred and appropriately evidenced by Anglo American in making good such damage or restoring the service, operations or supply; and
- (b) make reasonable compensation to Anglo American for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Anglo American, by reason or in direct consequence of any such damage or interruption or Anglo American becoming liable to any third party as aforesaid, up to the Liability Cap.

(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 Anglo American, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract, or loss of opportunity by Anglo American.

(3) Anglo American must—

- (a) give the undertaker reasonable notice of any such claim or demand;
- (b) consult with the undertaker at regular intervals regarding the progress and strategy of any settlement or compromise or of any proceedings necessary to resist the claim or demand and take into account reasonable representations of the undertaker in connection therewith;
- (c) not settle or compromise the claim 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 during which Anglo American must continue to co-operate with the undertaker with regards to such claim or demand; and
- (d) on request from the undertaker, provide the undertaker with sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which Anglo American must continue to co-operate with the undertaker with regards to such claim or demand.

(4) If the undertaker becomes responsible for a claim or demand pursuant to sub-paragraph (3) it must—

- (a) keep Anglo American fully informed of the developments and material elements of the proceedings;
- (b) take account of the views of Anglo American before taking any action in relation to the claim;
- (c) act in an appropriate and professional manner when disputing any claim; and
- (d) not pay or settle such claims without the prior written consent of Anglo American such consent not to be unreasonably withheld or delayed.

(5) Anglo American must use its reasonable endeavours to mitigate any claim or losses in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, Anglo American 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).

(6) The undertaker shall not be liable under this paragraph in respect of any claim capable of being mitigated or minimised to the extent that Anglo American has not used its reasonable endeavours to mitigate and/or minimise that claim in accordance with sub-paragraph (5).

(7) The undertaker shall only be liable under this paragraph 6 for claims reasonably incurred by Anglo American up to the Liability Cap.

Dispute resolution

7.—(1) Any dispute arising under this Part of this Schedule must, upon written request by either Party, be referred to senior representatives of each Party who have authority to settle the dispute, and the Parties must seek to resolve the dispute within 10 days of that request or such longer period as may be agreed in writing.

(2) If the dispute is not resolved in accordance with sub-paragraph (1), the dispute must, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Notices

8. Notices served under this Part of this Schedule must be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed in writing between the undertaker and Anglo American.

PART 6

FOR THE PROTECTION OF BOC LIMITED

Application

1.—(1) The provisions of this Part have effect for the benefit of the operator unless otherwise agreed between the undertaker and the operator.

(2) The provisions of Part 3 to this Schedule do not apply to the operator or any apparatus of the operator.

Interpretation

2.—(1) In this Part—

“alternative apparatus” means alternative apparatus adequate to serve the operator in a manner no less efficient than previously;

“apparatus” means mains, pipes, cables, sewers, drains, ditches, watercourses or other apparatus and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

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

“operator” means BOC Limited (company number 00337663), whose registered office is at Forge, 43 Church Street West, Woking, Surrey, England, GU21 6HT or any successor as a gas or water transporter within the meaning of Part 1 of the 1986 Act insofar as relates to apparatus of the operator that lies within the Order limits as at the date upon which this Order is made;

“liability cap” means a level to be agreed between the parties;

“restricted works” means any works forming any part of the authorised project, except that for the purposes of paragraphs 3 and 4(5) this excludes Work No. 5, that will or may have a materially adverse effect on the operator’s apparatus or access to them including—

- (a) all works within 6 metres of the operator’s apparatus;
- (b) the crossing of the operator’s apparatus by other utilities; and
- (c) the use of explosives within 400 metres of the operator’s apparatus,

whether carried out by the undertaker or any third party in connection with the authorised project;

“works details” means the plans and sections for the works; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

(2) Any notice or agreement required by or provided for under this Part must be in writing.

(3) Any consent, approval or agreement of the operator under this Part must not be unreasonably withheld or delayed.

Consent of restricted works under this Part

3.—(1) Before commencing the execution of any restricted works, the undertaker must submit to the operator the works details for the restricted works and such further particulars as the operator may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No restricted works are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by the operator.

(3) For the avoidance of doubt, paragraph 6 applies to any approval of the operator required under this paragraph 3.

(4) The restricted works must be executed only in accordance with the works details approved by the operator under this paragraph 3 including any reasonable requirements notified to the undertaker in accordance with paragraph 6(3), unless otherwise agreed in writing between the undertaker and the operator acting reasonably, and the operator shall be entitled to watch and inspect the execution of those works.

(5) If the operator in accordance with paragraph 6(3) and in consequence of the restricted works proposed by the undertaker, reasonably requires the removal of any of the operator’s apparatus and gives written notice to the undertaker of that requirement, this Order applies as if the removal of the operator’s apparatus had been required by the undertaker under sub-paragraph (1).

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but (unless otherwise agreed in writing between the undertaker and the operator) in no case less than 28 days before commencing the execution of the relevant part of any restricted works, new works details, instead of the works details submitted, and having done so the provisions of this paragraph 3 apply to and in respect of the new works details.

Removal of apparatus

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any estate, interest or right in any land in which any apparatus of the operator is placed, the apparatus must not be removed, and any right of the operator to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation and necessary rights for the alternative apparatus have been granted to the operator or as otherwise agreed with the operator.

(2) If, for the purpose of executing any restricted works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus of the operator placed in the land, it must give to the operator written notice of the 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 the undertaker must afford to the operator the necessary facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus in other land of the undertaker and subsequently for the maintenance of the alternative apparatus or as otherwise agreed with the operator.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between the operator and the undertaker, acting reasonably and without delay.

(4) The operator must, after the alternative apparatus to be provided or constructed has been agreed or determined by an arbitrator under paragraph 9, and after the grant to the operator of any such facilities and rights as referred to in sub-paragraph (2) 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 this Part.

(5) If the undertaker gives notice to the operator that it desires itself to execute any work referred to in sub-paragraph (4) in connection with any restricted work, that work, instead of being executed by the operator, must be executed by the undertaker without unnecessary delay to an appropriate standard and in a safe manner.

(6) If works are executed by the undertaker in accordance with sub-paragraph (5), the operator must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.

(7) Nothing in sub-paragraph (5) authorises the undertaker to execute restricted works which involve 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 3,000 millimetres of any apparatus of the operator without the written consent of the operator in accordance with sub-paragraph (3), such consent not to be unreasonably withheld or delayed.

Alternative apparatus

5.—(1) Where, in accordance with this Part, the undertaker affords to the operator 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 on such terms and conditions as may be agreed between the undertaker and the operator or, in default of agreement, determined by arbitration under paragraph 9.

(2) In settling the terms and conditions in respect of alternative apparatus to be constructed, the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised project and for securing any subsequent alterations or adaptations of the alternative apparatus that may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus authorised project for which the alternative apparatus is to be substituted.

Deemed consent

6.—(1) Any consent, approval or agreement of the operator under this Part must not be unreasonably withheld or delayed.

(2) Without prejudice to the generality of sub-paragraph (1) and subject to the following provisions of this paragraph, where the undertaker makes any request for consent, approval or agreement of the operator under this Part, the operator must within 56 days (unless a shorter period is otherwise agreed in writing between the undertaker and the operator acting reasonably) of the date of receipt of that request give notice to the undertaker as to whether its consent, approval or agreement is—

- (a) granted, in whole or in part; or
- (b) refused, in whole or in part.

(3) Any consent, approval or agreement of the operator under this Part may be given subject to such reasonable requirements as the operator may notify to the undertaker in writing for the continuing safe operation of the operator's apparatus. Any such requirements must be set out in full in the notice of the operator's decision under sub-paragraph (2)(a) and that notice must set out the operator's full reasons for those requirements.

(4) If the operator does not give notice of its decision in response to the undertaker's request within the period specified in sub-paragraph (2) then the operator shall be deemed to have granted its consent, approval or agreement in respect of that request on the day next following the last day of that period.

(5) If the operator gives notice under sub-paragraph (2)(b) in respect of part only of the undertaker's request then the operator shall be deemed to have granted its consent, approval or agreement in respect of the remainder of that request on the day next following the date of the notice under sub-paragraph (2)(b).

Expenses

7.—(1) Subject to the provisions of this paragraph, the undertaker must pay to the operator the reasonable and properly incurred expenses of the operator under this Part in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus under any provision of this Part;
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;
- (c) the survey of any land, apparatus or works, the watching, inspection, superintendence and monitoring of works or the installation or removal of any temporary works in consequence of the exercise by the undertaker of any power under this Order;
- (d) the design, project management, supervision and implementation of works;
- (e) the negotiation and grant of necessary rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus; and
- (f) any other work or thing reasonably required in consequence of the exercise by the undertaker of any power under this Order or by the service by the undertaker of any notice, plan, section or description, within a reasonable time of being notified by the operator that it has incurred such expenses.

(2) Where reasonable and practicable, the operator must notify the undertaker of any anticipated expense as outlined in sub-paragraph (1).

(3) In advance of any payment under sub-paragraph (1) above being made, the operator must provide to the undertaker evidence of all such reasonable and properly incurred costs and expenses to which this paragraph applies.

(4) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under this Part, that value being calculated after removal.

(5) If in accordance with this Part—

- (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 an arbitrator under paragraph 9 to be necessary, then, if such placing involves cost in the construction of works under this Part 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 the operator by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(6) In determining whether the placing of apparatus of a type or capacity or of particular dimensions or the placing of apparatus at a particular depth, as the case may be, are necessary under sub-paragraph (5), regard must be had to current health and safety requirements, current design standards, relevant good practice and process design specification.

(7) For the purposes of sub-paragraph (5)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must 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 must be treated as if it also had been agreed or had been so determined.

(8) An amount which apart from this sub-paragraph would be payable to the operator by virtue of sub-paragraph (1) must, if it confers a financial benefit on the operator, be reduced by the amount that represents that benefit.

Indemnity

8.—(1) Subject to the rest of this paragraph, if by direct reason or in direct consequence of the construction of the authorised project (other than apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or any subsidence resulting from any of these works, any damage is caused to apparatus of the operator, or there is any interruption in any service provided, or in the supply of any goods, to or by the operator, the undertaker must—

- (a) bear and pay the cost reasonably and properly incurred by the operator in making good such damage or restoring the service or supply; and
- (b) make reasonable compensation to the operator for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by direct reason or in direct consequence of any such damage or interruption,

up to the liability cap.

(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 the operator (or its officers, employees, servants, contractors or agents); or
- (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract, loss of opportunity of any person.

(3) The operator must give the undertaker reasonable notice of any such claim or demand under sub-paragraph (1) as soon as reasonably practicable.

(4) Where the operator raises a claim or demand under sub-paragraph (1) which arises from a claim or demand by another person—

- (a) The operator shall consult with the undertaker at regular intervals regarding the progress and strategy of any settlement or compromise or of any proceedings necessary to resist the claim or demand and take into account reasonable representations of the undertaker in connection therewith;
- (b) the undertaker shall also, on request, be provided sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which the operator must continue to co-operate with the undertaker with regards to such claim or demand;
- (c) no settlement or admission of liability or compromise is to be made without prior the consent of the undertaker which, if it withholds such consent, has the sole conduct and control of any settlement or compromise or any proceedings necessary to resist the claim or demand, during which the operator must continue to co-operate with the undertaker with regards to such claim or demand.

(5) The operator 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 provisions under this paragraph 8 applies.

(6) If requested to do so by the undertaker, the operator 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).

(7) The undertaker shall only be liable under this paragraph 8 for claims reasonably incurred by the operator.

Arbitration

9.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Notices

10. Notices served under this Part shall be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed between the undertaker and the operator in writing.

PART 7

FOR THE PROTECTION OF THE BREAGH PIPELINE OWNERS

1. For the protection of the Breagh Pipeline Owners, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the Breagh Pipeline Owners.

2. In this Part of this Schedule—

“authorised project” has the same meaning as is given to this term in article 2 (interpretation) of this Order save that for the purposes of paragraphs 3 to 5 references to authorised project excludes Work No. 5;

“Breagh Pipeline” means the twenty inch (20”) diameter pipeline and associated three inch (3”) monoethylene glycol pipeline and fibre-optic cable extending from the field known as the

Breagh field located in UKCS blocks 42/12a and 42/13a to the onshore gas reception and processing terminal known as the Teesside Gas Processing Plant (located in Seal Sands, Teesside) owned by the Breagh Pipeline Owners and operated by the Breagh Pipeline Operator used at various times for the passage of natural gas and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962;

“Breagh Pipeline Operations” means the operations or property, including the leasehold interests, rights of access and easements relating to the construction and operation of the Breagh Pipeline, within the Order limits vested in the Breagh Pipeline Owners and/or the Breagh Pipeline Operator;

“Breagh Pipeline Operator” means the person, firm or company designated by the Breagh Pipeline Owners to operate the Breagh Pipeline on their behalf, being, at the date of this Order, INEOS E&P (UK) Limited (Company number 04376184) and including any successor or assign in such capacity;

“Breagh Pipeline Owners” means any company that owns the Breagh Pipeline being, at the date of this Order, INEOS E&P (UK) Limited (Company number 04376184) whose registered address is Hawkslease, Chapel Lane, Lyndhurst, Hampshire SO43 7FG and including any successors and assignees in such capacity;

“liability cap” means a level to be agreed between the parties;

“works details” includes so far as is reasonably relevant—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of any vehicle access routes for construction and operational traffic;
- (d) any further particulars provided in response to a request under paragraph 3; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

Consent under this Part

3. Before commencing any part of the authorised project which would have a material adverse effect on the operation or maintenance of or access to the Breagh Pipeline or the Breagh Pipeline Operations, the undertaker must submit to the Breagh Pipeline Owners the works details for the proposed works and such further particulars as the Breagh Pipeline Owners may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

4. No works comprising any part of the authorised project which would have a material adverse effect on the operation or maintenance of or access to the Breagh Pipeline or the Breagh Pipeline Operations are to be commenced until the works details in respect of those works submitted under paragraph 3 have been approved by the Breagh Pipeline Owners and to be deemed given if no response is given within 56 days of receipt of the works details.

5.—(1) Any approval of the Breagh Pipeline Owners required under paragraph 4 must not be unreasonably withheld or delayed and any refusal must be accompanied by written reasons, and approval may be given subject to such reasonable requirements as the Breagh Pipeline Owners may require to be made for—

- (a) the continuing safety and operational viability of the Breagh Pipeline (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by the Breagh Pipeline Owners to substantiate the need for these requirements); and
- (b) the requirement for the Breagh Pipeline Owners to have—
 - (i) uninterrupted and unimpeded emergency access to the Breagh Pipeline and the Breagh Pipeline Operations at all times; and

- (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the Breagh Pipeline and the Breagh Pipeline Operations.

(2) Where the Breagh Pipeline Owners can demonstrate by reference to objective evidence that the authorised project will significantly adversely affect the safety of the Breagh Pipeline and the Breagh Pipeline Operations they are entitled to withhold their authorisation until the undertaker can demonstrate to the reasonable satisfaction of the Breagh Pipeline Owners, acting reasonably, that the authorised project will not materially adversely affect the safety of the Breagh Pipeline and the Breagh Pipeline Operations.

(3) The authorised project must be carried out in accordance with the works details approved under paragraph 4 and any requirements imposed on the approval under sub-paragraph (1), unless otherwise agreed in writing between the Breagh Pipeline Owners and the undertaker acting reasonably.

(4) The undertaker is not required to comply with paragraphs 3 and 4 in a case of emergency but in that case must give notice to the Breagh Pipeline Owners as soon as is reasonably practicable and must provide a plan of any works carried out as soon as reasonably practicable.

Compliance with requirements, etc. applying to the Breagh Pipeline and the Breagh Pipeline Operations

6. In undertaking any works in relation to the Breagh Pipeline and the Breagh Pipeline Operations or exercising any rights relating to or affecting the Breagh Pipeline and the Breagh Pipeline Operations, the undertaker must comply with all relevant legislation and guidance as referred to in Chapter 19 of the Environmental Statement.

Indemnity

7.—(1) Subject to proper evidencing of costs and subject to the rest of this paragraph 7, if by direct reason or in direct consequence of the construction of any of the authorised project referred to in paragraph 4, any damage is caused to the Breagh Pipeline and the Breagh Pipeline Operations or there is any interruption in any service provided, or in the supply of any goods, by the Breagh Pipeline Owners, the undertaker must—

- (a) bear and pay the direct cost reasonably and properly incurred by the Breagh Pipeline Owners in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the Breagh Pipeline Owners for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by the Breagh Pipeline Owners, by reason or in direct consequence of any such damage or interruption,

up to the liability cap.

(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 the Breagh Pipeline Owners, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract, or loss of opportunity by the Breagh Pipeline Owners.

(3) The Breagh Pipeline Owners must give the undertaker reasonable notice of any such claim or demand and where the claim or demand arises from a claim or demand by another person—

- (a) shall consult with the undertaker at regular intervals regarding the progress and strategy of any settlement or compromise or of any proceedings necessary to resist the claim or demand and take into account reasonable representations of the undertaker in connection therewith;
- (b) on request from the undertaker, shall provide the undertaker with sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which the Breagh Pipeline Owners must continue to co-operate with the undertaker with regards to such claim or demand;

- (c) no settlement or admission of liability or compromise is to be made without the prior consent of the undertaker which, if it withholds such consent, has the sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which the Breagh Pipeline Owners must continue to co-operate with the undertaker with regards to such claim or demand.

(4) The Breagh Pipeline Owners must use their reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the provisions under this paragraph 7 applies. If requested to do so by the undertaker, the Breagh Pipeline Owners must provide an explanation of how the claim has been mitigated, minimised and provide details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 7 for claims reasonably and properly incurred by the Breagh Pipeline Owners and shall not be liable to the extent the claim could have been minimised by the Breagh Pipeline Owners.

Arbitration

8.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Notices

9. Notices served under this Part shall be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed between the undertaker and the Breagh Pipeline Owners in writing.

PART 8

FOR THE PROTECTION OF CATS NORTH SEA LIMITED

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

2.—(1) In this Part of this Schedule—

“authorised project” has the same meaning as is given to this term in article 2 (interpretation) of this Order save that for the purposes of paragraphs 3-5 and paragraph 9 below references to authorised project exclude Work No. 5;

“CATS” means CATS North Sea Limited (Company number 09250798) whose registered address is Suite 1, 7th Floor, 50 Broadway, London, United Kingdom, SW1H 0BL and any successor in title or function to the CATS pipelines;

“CATS pipeline(s)” means the following pipelines, owned by CATS and operated by Wood UK Ltd—

- (a) The 36” CATS pipeline (PL-774) transporting high pressure natural gas 411.84km (404km subsea, 7.84km onshore) from the CATS Riser Platform, located in the Central Graben Development of the North Sea, to processing facilities at the CATS Terminal in Teesside;
- (b) Onshore 6” Condensate export pipeline (PL-937) transporting natural gas condensate 2.87km from the CATS Terminal to Sabic, North Tees plant;
- (c) Onshore 6” Condensate export pipeline (PL-938) transporting natural gas condensate 2.45km from the CATS Terminal to the Navigator Terminals storage site;

(d) or any updates or amendments thereto as notified to the undertaker in writing;

“CATS system” means the facilities commonly known as the Central Area Transmission System gas pipeline and processing plant, as commonly abbreviated and known as the CATS pipeline and CATS processing plant including, without limitation, the CATS pipeline;

“function” includes a power or duty;

“liability cap” means a level to be agreed between the parties;

“plan” includes all designs, drawings, specifications and method statements that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“protective works” means the underpinning, strengthening and any other works the purpose of which is to prevent damage to or interference with the CATS pipelines that may be caused by the carrying out, maintenance or use of the authorised project;

“specified works” means any of the authorised project or activities undertaken in association with the authorised project which—

- (a) will or may be situated within 50 metres in any direction of the CATS system, or
- (b) in the case of explosives for blasting, are within 400 metres of any part of the CATS system

save that for the purposes of paragraph 5 below references to specified works exclude Work No. 5.

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of the works;
- (c) details of any vehicle access routes for construction and operational traffic;
- (d) any further particulars provided in response to a request under paragraph 3; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

(2) Where this Schedule provides that where—

- (a) the acknowledgement, approval, agreement, consent or authorisation of CATS or the undertaker is required; or
- (b) any thing must be done to CATS’ reasonable satisfaction,

that acknowledgement, approval, agreement, consent, authorisation or intimation of satisfaction shall not be unreasonably withheld or delayed.

(3) When carrying out any function under this Schedule, CATS (and any arbitrator appointed for the purposes of paragraph 14) must at all times have regard to the interests of safety and the efficient and economic execution, construction and operation of the authorised project.

Consent under this Part

3. Before commencing any part of the authorised project within 50 metres of the CATS pipelines, the undertaker must submit to CATS the works details for the proposed works and such further particulars as CATS may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require in line with all relevant legislation and guidance as referred to in Chapter 19 of the Environmental Statement’.

4.—(1) No works comprising any part of the authorised project within 50 metres of the CATS pipelines are to be commenced until the works details in respect of those works submitted under paragraph 3—

- (a) have been approved by CATS under paragraph 5;
- (b) are deemed to have been approved pursuant to paragraph 5; or
- (c) have been approved by an arbitrator following a reference under paragraph 14.

5.—(1) Following submission of works details under paragraph 3, CATS must within 56 days of the date of receipt thereof notify the undertaker in writing—

- (a) that its approval has been granted in respect of all or any part of those works details; or
- (b) that its approval has been refused in respect of all or any part of those works details, and the full reasons for its disapproval.

(2) Any approval of CATS given under sub-paragraph (1)(a) may be given subject to such reasonable conditions as CATS may notify to the undertaker in writing at the same time as CATS' decision under sub-paragraph (1)(a), with that notice setting out CATS' full reasons for those conditions.

(3) Conditions may only be imposed by CATS pursuant to sub-paragraph (2) to effect such modifications to the works details as may be reasonably necessary for the purpose of—

- (a) securing the CATS pipelines against interference or risk of damage;
- (b) providing or securing means of access to the CATS pipelines; or
- (c) the provision of any protective works by the undertaker (whether of a temporary or permanent nature).

(4) Any approval of CATS required under this paragraph 5 including any reasonable requirements required by CATS under sub-paragraph (3) must not be unreasonably withheld or delayed and in any event must be made in writing within a period of 56 days (unless a shorter period is otherwise agreed in writing between the undertaker and CATS) beginning with the date on which the works details were submitted to CATS under paragraph 3, after which approval is deemed to be given.

(5) The undertaker is not required to comply with paragraph 3 prior to the commencement of a specified work which forms part of any emergency works, but in that case it must as soon as is reasonably practicable in the circumstances—

- (a) give to CATS notice that it is carrying out works pursuant to this sub-paragraph; and
- (b) submit works details of any specified works carried out as part of those emergency works for information under this paragraph.

(6) In this paragraph, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Monitoring for damage to pipelines

6.—(1) When undertaking any works or exercising any rights within 50 metres of the CATS pipelines, the undertaker must monitor the CATS pipelines to establish whether damage has occurred.

(2) Where any damage occurs to the CATS pipelines as a result of the works, the undertaker must immediately cease all work in the vicinity of the damage and must notify CATS to enable repairs to be carried out to the reasonable satisfaction of CATS.

(3) If damage has occurred to the CATS pipelines as a result of the works the undertaker will, at the request and election of CATS—

- (a) afford CATS all reasonable facilities to enable it to fully and properly repair and test the CATS pipelines and pay to CATS its reasonable and proper costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected pipeline as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the reasonable satisfaction of CATS to have effectively repaired the affected pipeline before any backfilling takes place.

(4) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where CATS agrees otherwise in writing) provide CATS with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of any works within 50 metres of the CATS pipelines if damage is found to have occurred to any of the CATS pipelines as a result of the relevant works, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(6) In the event that the undertaker does not carry out necessary remedial work in a timely manner then CATS is entitled, but not obliged, to undertake the necessary remedial work and (subject to CATS complying with the requirements of paragraph 8) to recover the reasonable and proper cost of doing so from the undertaker.

7.—(1) If any damage occurs to a CATS pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and CATS must be notified immediately.

(2) Where there is leakage or escape, the undertaker must immediately—

- (a) evacuate all personnel from the immediate vicinity of the leak;
- (b) inform CATS;
- (c) prevent any approach by the public;
- (d) shut down any sources of ignition within at least 350 metres from the leakage; and
- (e) assist emergency services as may be requested.

Indemnity

8.—(1) Subject to the rest of this paragraph, if by reason or in consequence of the construction of any of the authorised project, any damage is caused to the CATS Pipelines, or there is any interruption in any service provided, or in the supply of any goods, by CATS, the undertaker must—

- (a) bear and pay the direct cost reasonably and properly incurred by CATS in making good such damage or restoring the supply; and
- (b) make reasonable compensation to CATS for any other expenses, loss, damages, penalty or costs incurred by CATS, by reason or in direct consequence of any such damage or interruption,

up to the liability cap.

(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 CATS, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract, loss of opportunity by CATS.

(3) CATS must give the undertaker reasonable notice of any such claim or demand as soon as reasonably practicable after CATS becomes aware of any such claim or demand.

(4) Where CATS raises a claim or demand under sub-paragraph (1) which arises from a claim or demand by another person—

- (a) CATS shall consult with the undertaker at regular intervals regarding the progress and strategy of any settlement or compromise or of any proceedings necessary to resist the claim or demand and take into account reasonable representations of the undertaker in connection therewith;
- (b) the undertaker shall also, on request, be provided sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which CATS must continue to co-operate with the undertaker with regards to such claim or demand; and
- (c) no settlement or admission of liability or compromise is to be made without the prior consent of the undertaker which, if it withholds such consent, has the sole conduct and

control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which CATS must continue to co-operate with the undertaker with regards to such claim or demand.

(5) CATS 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 8 applies. If requested to do so by the undertaker, CATS 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 8 for claims reasonably incurred by CATS.

Access

9. If the access to any of the CATS pipelines is materially obstructed as a result of the carrying out of the authorised project, the undertaker must provide such alternative means of access as will enable CATS to maintain or use the CATS pipelines no less effectively than was possible before such obstruction, unless otherwise agreed between the parties, acting reasonably.

Costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to CATS the expenses directly, reasonably and properly incurred by them in, or in connection with, the inspection, removal, alteration or protection of any CATS pipeline which may be required in consequence of the execution of any such works referred to or approved under this Part, including without limitation—

- (a) authorisation of works details in accordance with paragraphs 3 to 5;
- (b) the engagement of an engineer and their observation of the authorised works affecting the CATS pipelines and the provision of safety advice in accordance with the CATS requirements; and
- (c) any reasonable costs incurred by CATS in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary.

(2) CATS shall provide evidence of all such reasonable and properly incurred costs and expenses to which this paragraph applies.

Arbitration

11.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who has authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Notices

12. Notices served under this Part shall be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed between the undertaker and CATS in writing.

PART 9

FOR THE PROTECTION OF CF FERTILISERS UK LIMITED

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

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable CF Fertilisers to undertake its operations on the CF Fertilisers site in a manner not less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by CF Fertilisers;

“authorised project” has the same meaning as is given to this term in article 2 (interpretation) of this Order save that for the purposes of paragraphs 3 and 5 references to authorised project excludes Work No. 5;

“CF Fertilisers” means CF Fertilisers UK Limited (company number 03455690) whose registered address is Head Office Building, Ince, Chester, Cheshire CH2 4LB and any successor in title to the CF Fertilisers site;

“the CF Fertilisers site” means the land in between Haverton Hill Road and Belasis Avenue, adjacent to the Order limits and which is owned and operated by CF Fertilisers;

“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;

“liability cap” means a level to be agreed between the parties; and

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of any vehicle access routes for construction and operational traffic;
- (d) any further particulars provided in response to a request under paragraph 7; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

Removal of apparatus/access

3.—(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 or over which access to any apparatus is enjoyed or requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of CF Fertilisers to maintain that apparatus in that land must not be extinguished, until alternative apparatus (or alternative rights as the case may be) has been constructed (or granted) and is in operation to the reasonable satisfaction of CF Fertilisers in accordance with sub-paragraphs (3) to (6).

(2) If, in accordance with paragraph (1) apparatus is relocated or diverted for the purposes of carrying out the authorised development, any right of CF Fertilisers to gain access to it must not be extinguished, until alternative rights have been granted and access to it has been provided, to the reasonable satisfaction of CF Fertilisers in accordance with sub-paragraphs (3) to (6).

(3) If, in the exercise of powers conferred by this Order for the purposes of carrying out the authorised project, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to CF Fertilisers 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 CF Fertilisers reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (4), afford to CF Fertilisers 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.

(4) 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 (3), in the land in which the alternative apparatus or part of such apparatus is to be constructed, CF Fertilisers must, on receipt of a written notice to that effect from

the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(5) Any alternative apparatus to be constructed in land of 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 CF Fertilisers and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 14 (arbitration).

(6) CF Fertilisers must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 14 (arbitration), and after the grant to CF Fertilisers of any such facilities and rights as are referred to in sub-paragraph (3) or (4), 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.

(7) Regardless of anything in sub-paragraph (6), if the undertaker gives notice in writing to CF Fertilisers that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by CF Fertilisers, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of CF Fertilisers.

(8) Nothing in sub-paragraph (7) 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 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

4.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to CF Fertilisers 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—

- (a) upon such terms and conditions as may be agreed between the undertaker and CF Fertilisers or in default of agreement settled by arbitration in accordance with article 43; and
- (b) in compliance with all relevant health and safety, environmental and regulatory requirements and relevant industry standards, unless otherwise agreed between the parties acting reasonably.

(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 CF Fertilisers 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 may make such provision for the payment of compensation by the undertaker to CF Fertilisers as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained Apparatus

5.—(1) Prior to commencing any works comprised in the authorised project that may have a materially adverse effect on any apparatus the removal of which has not been required by the undertaker under paragraph 3(3), the undertaker must submit to CF Fertilisers the works details for the proposed works and such further particulars as CF Fertilisers may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No works referred to in sub-paragraph (1) are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by CF Fertilisers and if CF Fertilisers fails to give or refuse approval within 56 days of receiving the works details, such approval is deemed to have been given.

(3) Any approval of CF Fertilisers required under sub-paragraph (1) must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as CF Fertilisers may require to be made for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and CF Fertilisers is entitled to watch and inspect the execution of those works (for the avoidance of doubt any refusal shall be substantiated with a reasonable explanation and where the reasonable requirements relate to such matters, a reasoned explanation will be provided by CF Fertilisers to substantiate the need for these requirements).

(4) The works referred to in sub-paragraph (1) must be carried out in accordance with the works details approved under sub-paragraph (2) and any requirements imposed on the approval under sub-paragraph (3), unless otherwise agreed in writing between CF Fertilisers and the undertaker acting reasonably.

(5) If CF Fertilisers in accordance with sub-paragraph (3) 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, sub-paragraphs (1) to (7) of paragraph 3 apply as if the removal of the apparatus had been required by the undertaker under paragraph 3(3).

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any 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.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to CF Fertilisers notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Notices

6.—(1) Notices served under this Part shall be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed between the undertaker and CF Fertilisers in writing.

(2) Where notices are served on CF Fertilisers in accordance with this Part, they shall be served in writing on the registered company address and on the General Counsel at CF Fertilisers, Ince, Chester, Cheshire CH2 4LB unless otherwise agreed between the undertaker and CF Fertilisers in writing.

Expenses and costs

7.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to CF Fertilisers the reasonable and properly incurred expenses incurred by it 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 3(3).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part, that value being calculated and agreed after removal.

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

- (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 47 (arbitration) to be necessary,

then, if such placing involves cost in the construction of works under this Part 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 CF Fertilisers by virtue of sub-paragraph (1) is to be reduced by the amount of that excess. The provisions of this sub-paragraph (3) shall only apply where the alteration is at the election of CF Fertilisers and not where such change to the existing type, capacity, dimensions or depth is as a result of industry requirements, legislation or environmental or health and safety considerations.

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

- (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 3(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.

(5) An amount which apart from this sub-paragraph would be payable to CF Fertilisers in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on CF Fertilisers any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

(6) CF Fertilisers shall provide evidence of all such reasonable and properly incurred costs and expenses to which this paragraph applies.

8.—(1) Subject to rest of this paragraph, if by direct reason or in direct consequence of the construction of any works authorised by this Part of this Schedule, 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 CF Fertilisers, or there is any interruption in any service provided, or in the supply of any goods, by CF Fertilisers, the undertaker must—

- (a) bear and pay the cost reasonably and properly incurred by CF Fertilisers in making good such damage or restoring the supply; and
- (b) make reasonable compensation to CF Fertilisers for any other expenses, loss, damages, penalty or costs incurred by CF Fertilisers, by reason or in consequence of any such damage or interruption,

up to the liability cap.

(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 CF Fertilisers, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract, or loss of opportunity by CF Fertilisers.

(3) CF Fertilisers must give the undertaker reasonable notice of any such claim or demand as soon as reasonably practicable after such persons becomes aware of any such claims or demands.

(4) Where CF Fertilisers raises a claim or demand under sub-paragraph (1) which arises from a claim or demand by another person CF Fertilisers must—

- (a) Consult with the undertaker at regular intervals regarding the progress and strategy of any settlement or compromise or of any proceedings necessary to resist the claim or demand and take into account reasonable representations of the undertaker in connection therewith;

- (b) on request from the undertaker, provide the undertaker sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which CF Fertilisers must continue to co-operate with the undertaker with regards to such claim or demand;
 - (c) not settle or admit liability or compromise without the prior 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 subject to its obligations in sub-paragraph (5), during which CF Fertilisers must continue to co-operate with the undertaker with regards to such claim or demand;.
- (5) If the undertaker becomes responsible for a claim or demand pursuant to sub-paragraph (3) it must—
- (a) keep CF Fertilisers informed of the material elements of the proceedings;
 - (b) take account of the views of CF Fertilisers before taking any action in relation to the claim; and
 - (c) not bring the name of CF Fertilisers or any related company into disrepute and act in an appropriate and professional manner when disputing any claim.
- (6) CF Fertilisers 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 provisions under this paragraph 13 applies. If requested to do so by the undertaker, CF Fertilisers 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 13 for claims reasonably incurred by CF Fertilisers.

Arbitration

- 9.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).
- (2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

PART 10

FOR THE PROTECTION OF EXOLUM RIVERSIDE LIMITED AND EXOLUM SEAL SANDS LIMITED

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

Definitions

2. In this Part of this Schedule—

“Exolum” means Exolum Seal Sands Ltd (Company number 00465548) and Exolum Riverside Ltd (Company number 03422427), both of whose registered address is 1st Floor 55 King William Street, London EC4R 9AD and any successor in function to Exolum’s operations;

“the Exolum operations” means the operations and assets within the Order limits or operations and assets which have the benefit of rights (including access) over the Order limits vested in Exolum and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962;

“liability cap” means a level to be agreed between the parties;

“restricted works” means any works forming any part of the authorised project that are near to, or will or are likely to materially adversely affect the Exolum operations or access to them save that for purposes of paragraph 3(1)-3(5) and 3(7) references to restricted works excludes Work No.5; “works details” means—

- (a) plans and sections;
- (b) a method statement describing—
 - (i) details of the proposed method of working and timing of execution of the restricted works;
 - (ii) details of vehicle access routes for construction and operational traffic; and
 - (iii) any other information reasonably required by Exolum to assess the restricted works; and
- (c) any further particulars provided in response to a request under paragraph 3; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

Consent of restricted works under this Part

3.—(1) Before commencing the execution of any restricted works, the undertaker must submit to Exolum the works details for the restricted works and such further particulars as Exolum may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No restricted works are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by Exolum.

(3) Any approval of Exolum required under this paragraph 3 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Exolum may require to be made for—

- (a) the continuing safety and operational viability of the Exolum operations (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by Exolum to substantiate the need for these requirements); and
- (b) the requirement for Exolum to have reasonable access to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the Exolum operations.

(4) Any approval of Exolum required under this paragraph 3 including any reasonable requirements required by Exolum under sub-paragraph (3), must be made in writing within a period of 56 days beginning with the date on which the works details were submitted to Exolum under sub-paragraph (1), after which approval is deemed to have been given.

(5) The restricted works must be executed only in accordance with the works details approved by Exolum under this paragraph 3 including any reasonable requirements notified to the undertaker in accordance with sub-paragraph (3), unless otherwise agreed in writing between Exolum and the undertaker acting reasonably.

(6) Exolum shall be entitled to watch and inspect the execution of the restricted works.

(7) If Exolum in consequence of the restricted works proposed by the undertaker, reasonably requires the removal of any of the Exolum operations and gives written notice to the undertaker of that requirement, this Order applies as if the removal of the apparatus had been required by the undertaker.

(8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but (unless otherwise agreed in writing between the undertaker and Exolum) in no case less than 28 days before commencing the execution of any restricted works, new works details,

instead of the works details previously submitted, and having done so the provisions of this paragraph 3 apply to and in respect of the new works details.

(9) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Exolum notice as soon as is reasonably practicable and must provide a plan of any works carried out as soon as reasonably practicable.

Cathodic protection testing

4. Where in the reasonable opinion of Exolum or the undertaker—

- (a) the authorised project might interfere with the cathodic protection forming part of the Exolum operations; or
- (b) the Exolum operations might interfere with the proposed or existing cathodic protection forming part of the authorised project,

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 implement measures for providing or preserving cathodic protection.

Expenses

5.—(1) Subject to the following provisions of this paragraph 5, the undertaker must pay to Exolum the evidenced, reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Exolum in, or directly in connection with—

- (a) undertaking its obligations under this Order including—
 - (i) the execution of any works under this Order including for the protection of the Exolum operations; and
 - (ii) the review and assessment of works details in accordance with paragraph 3;
- (b) the watching of and inspecting the execution of the restricted works; and
- (c) imposing reasonable requirements in accordance with paragraph 3(3).

(2) Exolum shall provide evidence of all such reasonable and properly incurred costs and expenses to which this paragraph applies.

Indemnity

6.—(1) Subject to the rest of this paragraph, if by direct reason or in direct consequence of the construction of any restricted works, any damage is caused to the Exolum operations, or there is any interruption in any service provided, or in the supply of any goods, by Exolum, the undertaker must—

- (a) bear and pay the direct cost reasonably and properly incurred by Exolum in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Exolum for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by Exolum, by reason or in direct consequence of any such damage or interruption,

up to the liability cap.

(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 Exolum, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract, loss of opportunity by Exolum.

(3) Exolum must give the undertaker reasonable notice of any such claim or demand as soon as reasonably practicable after Exolum becomes aware of any such claims or demands,

(4) Where Exolum raises a claim or demand under sub-paragraph (1) which arises from a claim or demand by another person—

- (a) Exolum shall consult with the undertaker at regular intervals regarding the progress and strategy of any settlement or compromise or of any proceedings necessary to resist the claim or demand and take into account reasonable representations of the undertaker in connection therewith;
- (b) the undertaker shall also, on request, be provided sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which Exolum must continue to co-operate with the undertaker with regards to such claim or demand; and
- (c) no settlement or compromise is to be made without the prior consent of the undertaker which, if it withholds such consent, has the sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand during which Exolum must continue to co-operate with the undertaker with regards to such claim or demand.

(5) Exolum 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 provisions under this paragraph 6 applies.

(6) If requested to do so by the undertaker, Exolum 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).

(7) The undertaker shall only be liable under this paragraph 6 for claims reasonably incurred by Exolum.

Arbitration

7.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Notices

8. Notices served under this Part shall be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed between the undertaker and Exolum in writing.

PART 11

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC

Application

1.—(1) For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Gas 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 National Gas (but without prejudice to paragraph 11(3)(b)).

Interpretation

2. In this Part of this Schedule—

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

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised project” in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule save that for the purposes of paragraphs 5, 6 (in so far as it allows National Gas to request removal of its apparatus), 8 and 13 references to authorised works excludes Work No. 5;

“commence” and “commencement” has the same meaning as in article 2 (interpretation) of this Order save that for the purposes of this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment within 15 metres of any apparatus;

“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 National Gas (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, shall require the undertaker to submit for National Gas’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;

“liability cap” means a level to be agreed between the parties;

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

“National Gas” means National Gas Transmission plc (Company Number 02006000) whose registered office is at National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Network Code” means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter’s Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas’s Gas Transporters Licence, as both documents are amended from time to time;

“protective works” means works or procedures which shall include but will not be limited to compliance with T/SP/SSW/22 (“Specification for safe working in the vicinity of National Gas Transmission’s, High pressure Gas pipelines and associated installation requirements for third parties”), HSE’s “HS(~G)47 Avoiding Danger from underground services” and any other relevant guidance documents as may be issued or updated from time to time and any works including but not limited to the installation of protective measures;

“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;

“specified works” means any of the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (b) may in any way materially adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties”,

save that for the purposes of paragraphs 6, in so far as it allows National Gas to request removal of its apparatus, and 8 references to specified works excludes Work No. 5;

“undertaker” means the undertaker as defined in article 2(1) of this Order; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

On Street Apparatus

3. Except for paragraphs 8 (retained apparatus: protection), 9 (expenses) and 10 (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 National Gas, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Gas in closed streets

4.—(1) Where any street is closed under article 13 (temporary closure, alteration or diversion of streets and public rights of way), if National Gas has any apparatus in the street or accessed via that street the undertaker must grant to National Gas, or procure the granting to National Gas of, rights reasonably satisfactory to National Gas in respect of such apparatus and access to it prior to the closure of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Gas to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) Notwithstanding the temporary closure or diversion of any street under the powers of article 13 (temporary closure, alteration or diversion of streets and public rights of way), National Gas is

at liberty at all times to take all necessary access across any such closed highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain any apparatus which at the time of the closure or diversion was in that street.

Acquisition of apparatus

5.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus of National Gas for the purposes of carrying out the authorised works or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas, for the purposes of carrying out the authorised works, otherwise than by agreement.

(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 National Gas 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 National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, 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 National Gas and the undertaker the undertaker and National Gas 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 National Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Gas under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

6.—(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 National Gas 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 National Gas 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 National Gas 56 day's 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 for the purposes of carrying out the authorised works conferred by this Order National Gas 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 National Gas to its satisfaction (taking into account paragraph 8(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, National Gas will, 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 must not extend to the requirement for National Gas to use its compulsory purchase powers to this end unless it elects to so do.

(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 National Gas and the undertaker.

(5) National Gas 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 National Gas 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 Part of this Schedule.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Gas 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 Gas and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas.

(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 National Gas 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 15 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of gas undertaker

8.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) In relation to specified works the plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes, where known.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(4) Any approval of National Gas required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6) provided that any conditions are communicated to the undertaker within a period of 42 days beginning with the date on which a plan is submitted to National Gas in accordance with sub-paragraph (1); and,

(b) must not be unreasonably withheld or delayed.

(5) In relation to any specified works to which sub-paragraphs (1) and/or (2) apply, National Gas 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 (where a reasoned explanation is provided to the undertaker to substantiate the need for these requirements) or for the purpose of providing or securing proper and reasonable means of access to any apparatus and National Gas must notify the undertaker of such modifications within a period of 42 days beginning with the date on which the plan required under sub paragraph (1) has been submitted to National Gas.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(7) Where National Gas 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 National Gas' satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas in accordance with sub-paragraphs (5) or (7) 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 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) 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 will apply to and in respect of the new plan.

(10) 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 National Gas 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;

(11) At all times when carrying out the specified works, the undertaker must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised project the undertaker shall implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

Expenses

9.—(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an itemised invoice or claim from National Gas all charges, costs and expenses (but always excluding any consequential or indirect loss) reasonably anticipated within the following three months or reasonably and properly incurred and evidenced by National Gas 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 specified works including without limitation—

- (a) any costs reasonably and properly incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;
- (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;
- (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 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 15 (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 National Gas 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 National Gas 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 National Gas 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.

Indemnity

10.—(1) Subject to sub-paragraphs (2) and (3), if by direct reason or in direct consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the specified works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by 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 specified works) or property of National Gas, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas, or National Gas 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 National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and
- (b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party as aforesaid other than arising from any default of National Gas,

up to the liability cap.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Gas 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) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of National Gas, its officers, employees, servants, contractors or agents;
- (b) any specified works and/or any other works authorised by this Part of this Schedule carried out by National Gas 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 7 (consent to transfer benefit 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 11; and/or
- (c) any indirect or consequential loss or loss of use, revenue, profit, contract, production, increased cost of working or business interruption arising from any such damage or interruption;

(4) National Gas must give the undertaker reasonable written notice of any third party claim or demand as soon as reasonably practicable after National Gas become aware of any such claims or demands, and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Gas 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) National Gas 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 applies where it is within National Gas'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 National Gas's control and if reasonably requested to do so by the undertaker National Gas must provide an explanation of how the claim has been minimised, where relevant. The undertaker shall only be liable under this paragraph for claims reasonably incurred by National Gas.

Enactments and agreements

11. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Gas 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 National Gas 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

12.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Gas requires the removal of apparatus under paragraph 7(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 9, 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 National Gas's undertaking and National Gas shall use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

13. If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order for the purposes of carrying out the authorised works, the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction or as agreed with National Gas.

Arbitration

14. Any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 43 (arbitration).

Notices

15. Notwithstanding article 46 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 9 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 12

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Application

1. For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

Interpretation

2. In this Part of this Schedule—

“the 1989 Act” means the Electricity Act 1989;

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised project” has the same meaning as in article 2(1) (interpretation) of this Order and includes any associated development authorised by the Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the use and maintenance of the authorised project and construction of any works authorised by this Part, save that for the purposes of paragraphs 5 (in so far as it allows National Grid to request removal of its apparatus), 7 and 11 below references to authorised project excludes Work No.5;

“commence” and “commencement” has the same meaning as in article 2(1) of this Order and commencement is construed to have the same meaning save that for the purposes of this Part of this Schedule only the term commence and commencement includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment within 15 metres of any apparatus;

“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;

“liability cap” means a level to be agreed between the parties;

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

“National Grid” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the 1989 Act;

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

“specified works” means any of the specified works or activities undertaken in association with the specified works which may in any way materially adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), save that for the purposes of paragraph 7 below references to specified works exclude Work No.5;

“undertaker” means the undertaker as defined in article 2(1) of this Order; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

On Street Apparatus

3. Except for paragraphs 4 (apparatus of National Grid in streets subject to temporary stopping up), 7 (retained apparatus), 8 (expenses) and 9 (indemnity) of this Part which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, the other provisions of this Part do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Grid in streets subject to temporary closure

4. Notwithstanding the temporary closure or diversion of any street under the powers of article 13 (temporary closure, alteration or diversion of streets and public rights of way), National Grid will be at liberty at all times to take all necessary access across any such closed street in the case of emergency, and to take reasonable access across any such street in all other cases provided that 24 hours’ advanced notice is given to the undertaker, 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 closure or diversion was in that street.

Removal of apparatus

5.—(1) If, in the exercise of 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 National Grid 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 National Grid in accordance with sub-paragraphs (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 National Grid 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 for the purposes of carrying out the authorised project conferred by this Order National Grid 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 National Grid to its satisfaction (taking into account paragraph 6(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 alternative 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, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation must not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(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 reasonable manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid 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 National Grid 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 Part of this Schedule.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid 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 Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid acting reasonably.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above 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 National Grid 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 will be referred to arbitration in accordance with paragraph 12 (arbitration) of this Part of this Schedule and the arbitrator may make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

7.—(1) Before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to specified works the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe (insofar as reasonably relevant)—

- (a) the intended 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 apparatus;
- (e) by way of drawings, alterations proposed to be made to any such apparatus;
- (f) any intended maintenance regimes, where known.

(3) The undertaker must not commence any specified works to which sub-paragraph (2) applies until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub paragraph (6) or (8) provided that any conditions are communicated to the undertaker within a period of 42 days beginning with the date on which a plan is submitted to National Grid in accordance with sub-paragraph (1); and
- (b) must not be unreasonably withheld or delayed and in any event must be made in writing within a period of 42 days (unless a shorter period is otherwise agreed in writing between the undertaker and National grid) beginning with the date of which the plan was submitted to National Grid under sub-paragraph (1), after which approval is deemed to be given.

(5) In relation to any specified works to which sub-paragraph (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against risk of damage, for the provision of protective works (where a reasoned explanation is provided to the undertaker to substantiate the need for these requirements) or for the purpose of providing or securing proper and reasonable means of access to any apparatus and National Grid must notify the undertaker of such modifications within a period of 42 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to National Grid.

(6) Unless otherwise agreed in writing between National Grid and the undertaker, specified works executed under sub-paragraph (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 National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where National Grid 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 National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraph (5) or (7) 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 to 3, 5 and 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(9) 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 authorised project, 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.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out "emergency works" as defined in Part 3 of the 1991 Act but in that case it must give to National Grid 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 (12) at all times.

(11) At all times when carrying out any works authorised under the Order, the undertaker must comply with relevant legislation and guidance set out in Chapter 19 of the Environmental Statement.

Expenses

8.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses (but always excluding any consequential or indirect loss) reasonably and properly incurred and evidenced by National Grid 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 project including without limitation—

- (a) any costs reasonably and properly incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 5(3); or

- (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (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 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 12 (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 National Grid 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 National Grid 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 National Grid 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.

Indemnity

9.—(1) Subject to the rest of this paragraph, if by direct reason or in direct 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 project, 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 project), or there is any interruption in any service provided, or in the supply of any goods, by National Grid, the undertaker will—

- (a) bear and pay on demand the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) make reasonable compensation to National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs reasonably and properly incurred by direct reason or in direct consequence of any such damage or interruption,

up to the liability cap.

(2) 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 National Grid, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract, or loss of opportunity by National Grid.

(3) National Grid must give the undertaker reasonable notice of any such claim or demand under sub-paragraph (1) as soon as reasonably practicable.

(4) Where National Grid raises a claim under sub-paragraph (1) which arises from a claim or demand by another person—

- (a) National Grid shall consult with the undertaker at regular intervals regarding the progress and strategy of any settlement or compromise or of any proceedings necessary to resist the claim or demand and take into account reasonable representations of the undertaker in connection therewith;
- (b) the undertaker shall also, on request, be provided sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which National Grid must continue to co-operate with the undertaker with regards to such claim or demand;
- (c) no settlement, admission of liability, or compromise or demand is to 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, during which National Grid must continue to co-operate with the undertaker with regards to such claim or demand.

(5) National Grid 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 provisions under this paragraph 9 apply.

(6) If requested to do so by the undertaker, National Grid 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).

(7) The undertaker shall only be liable under this paragraph 9 for claims reasonably incurred by the operator.

Access

10. If in consequence of the powers granted under this Order for the purposes of the authorised project the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction, unless otherwise agreed between the parties acting reasonably.

Arbitration

11.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Notices

12. Notwithstanding article 46 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 7 must be submitted using the LSBUD system or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 13

FOR THE PROTECTION OF NAVIGATOR TERMINALS NORTH TEES LIMITED AND NAVIGATOR SEAL SANDS LIMITED

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

2. In this Part of this Schedule—

“liability cap” means a level to be agreed between the parties;

“authorised project” has the same meaning as is given to this term in article 2 (interpretation) of this Order save that for the purposes of paragraphs 3 to 5 references to authorised project excludes Work No. 5;

“Navigator Terminals” means Navigator Terminals Seal Sands Limited (company number 00829104) and Navigator Terminals North Tees Limited (company number 09889506) whose registered addresses are Oliver Road, Grays, RM20 3ED and any successor in title or function to the Navigator Terminals operations;

“the Navigator Terminals operations” means the operations within the Order limits vested in Navigator Terminals including the pipelines crossing the Order limits operated by Navigator Terminals used at various times for the passage of gas oil and crude oil and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962; and

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic;
- (d) any further particulars provided in response to a request under paragraph 3; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

Consent under this Part

3.—(1) Before commencing any part of the authorised project which would have a materially adverse effect on the operation or maintenance of the Navigator Terminals operations or all necessary and existing access to them, the undertaker must submit to Navigator Terminals the works details for the proposed works and such further particulars as Navigator Terminals may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require for approval by Navigator Terminals.

(2) No works for which the undertaker must submit works details to Navigator Terminals under sub-paragraph (1) are to be commenced until the works details have been approved by Navigator Terminals.

4.—(1) Any approval of Navigator Terminals required under paragraph 3 must not be unreasonably withheld or delayed and a determination shall be provided within 56 days of the first provision of works details and in the event that Navigator Terminals does not determine the request by the expiry of those 56 days, they are deemed to have approved the works details.

(2) The approval under sub-paragraph (1) may be given subject to such reasonable requirements as Navigator Terminals may require to be made for—

- (a) the continuing safety and operational viability of the Navigator Terminals operations (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be given by Navigator Terminals to the undertaker); and
- (b) the requirement for Navigator Terminals to have reasonable access to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the Navigator Terminals operations.

5. The authorised project must be carried out in accordance with the works details approved under paragraph 3 and any requirements imposed on the approval under paragraph 4(2) and all other statutory and other requirements or regulations, unless otherwise agreed in writing between Navigator and the undertaker acting reasonably.

Costs

6.—(1) Subject to the following provisions of this paragraph 6, the undertaker must pay to Navigator Terminals the evidenced, reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Navigator Terminals in, or in connection with—

- (a) undertaking its obligations under this Order including—
 - (i) the execution of any works under this Order including for the protection of the affected apparatus; and
 - (ii) the review and assessment of works details in accordance with paragraph 3;
- (b) the watching of and inspecting the execution of the works approved under paragraph 3(2); and
- (c) imposing reasonable requirements in accordance with paragraph 4.

(2) Navigator Terminals shall provide evidence of all such reasonable and properly incurred costs and expenses to which this paragraph applies.

Indemnity

7.—(1) Subject to sub-paragraphs (2) and (3), if by direct reason or in direct consequence of the construction of any of the works referred to in paragraph 2, any damage is caused to the Navigator Terminals operations (other than apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or there is any interruption in any service provided, or in the supply of any goods, by Navigator Terminals, the undertaker must—

- (a) bear and pay the direct cost reasonably and properly incurred by Navigator Terminals in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Navigator Terminals for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by Navigator Terminals, by direct reason or in direct consequence of any such damage or interruption,

up to the liability cap.

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

- (a) (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Navigator Terminals, its officers, employees, servants, contractors or agents; or
- (b) (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract or loss of opportunity by Navigator Terminals.

(3) Where Navigator Terminals raises a claim or demand under sub-paragraph (1) which arises from a claim or demand by another person—

- (a) Navigator Terminals must give the undertaker reasonable notice of any such claim or demand as soon as reasonably practicable after Navigator Terminals becomes aware of such claim or demand;
- (b) Navigator Terminals shall consult with the undertaker at regular intervals regarding the progress and strategy of any settlement or compromise or of any proceedings necessary to resist the claim or demand and take into account reasonable representations of the undertaker in connection therewith;
- (c) the undertaker shall also, on request, be provided sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which Navigator Terminals must continue to co-operate with the undertaker with regards to such claim or demand; and
- (d) no settlement, admission of liability or compromise is to be made without the prior consent of the undertaker which, if it withholds such consent, has the sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which Navigator Terminals must continue to co-operate with the undertaker with regards to such claim or demand.

(4) Navigator Terminals must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which this paragraph 7 applies.

(5) If requested to do so by the undertaker, Navigator Terminals must provide an explanation to substantiate any cost or compensation claimed pursuant to sub-paragraph (1) and how the claim has been minimised.

(6) The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by Navigator Terminals.

Arbitration

8.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Notices

9. Notices served under this Part shall be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed between the undertaker and Navigator Terminals in writing.

PART 14

FOR THE PROTECTION OF NET ZERO NORTH SEA STORAGE LIMITED

Interpretation

1. For the protection of NEP, the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in this Part—

“Alternative Apparatus” means alternative apparatus adequate to enable NEP to carry out its operations in a manner not less efficient than previously;

“LGF Apparatus” means the apparatus including the pipeline, cables, structures, mains, plant and ancillary apparatus which are or are to be used, owned, occupied or maintained by the undertaker within the Shared Area for the purposes of the authorised project;

“liability cap” means a level to be agreed between the parties;

“NEP Apparatus” means the pipeline, cables, structures to be owned, occupied or maintained by NEP within the Shared Area;

“NZT Order” means The Net Zero Teesside Order 2024 as amended at the date of the Order;

“NEP Project” means the construction, operation or maintenance of Project B as is defined by the NZT Order;

“NEP Project Site” means—

- (a) land on which any NEP Apparatus is situated; and
- (b) land on which NEP Apparatus is anticipated to be situated and insofar as the same has been notified by NEP in writing to the undertaker;

“NEP Specified Works” means so much of the NEP Project as is within the Shared Area;

“NEP” means Net Zero North Sea Storage Limited (company number 12473084) whose registered office is at Chertsey Road, Sunbury on Thames, Middlesex, United Kingdom, TW16 7BP;

“Parties” means NEP and the undertaker;

“Plans” includes so far as is reasonably relevant: sections, drawings, specifications design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation by the undertaker of any land for purposes of the Shared Area Works;

“Secretary of State” means the Secretary of State for Energy Security and Net Zero or any successor in function;

“Shared Area” means land included within both the NEP Project Site and the authorised project Order limits;

“Shared Area Works” means any part of the authorised project taking place within the Shared Area save that for the purposes of paragraphs 3, 4(2) and 6 references to Shared Area Works excludes Work No.5; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

Consent to works in the shared area

3.—(1) Before commencing the execution of any Shared Area Works the undertaker must submit to NEP the Plans for the Shared Area Works and such further particulars as NEP may, within 28 days from the day on which the Plans are submitted under this paragraph, reasonably require.

(2) No Shared Area Works are to be commenced until the Plans in respect of those Shared Area Works submitted under sub-paragraph (1) have been approved by NEP.

(3) Any approval of NEP required under this paragraph 3 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as NEP may require to be made for—

- (a) the continuing safety and operational viability of the NEP Apparatus; and
- (b) the requirement for NEP to have reasonable access to inspect, repair, replace and maintain and ensure the continuing safety and operational viability of the NEP Apparatus.

(4) Where the reasonable requirements relate to the matters in sub-paragraph (3) a reasoned explanation will be provided by NEP to substantiate the need for these requirements.

(5) Any approval of NEP required under this paragraph 3 including any reasonable requirements required by NEP under sub-paragraph (3) must not be unreasonably withheld or delayed and in any event must be made in writing within a period of 56 days (unless a shorter period is otherwise agreed in writing between the undertaker and NEP) beginning with the date on which the Plans were submitted to NEP under subparagraph (1), after which approval is deemed to be given.

(6) Any refusal shall be substantiated with a reasonable explanation.

(7) The authorised project must be executed only in accordance with the Plans approved by NEP under this paragraph 3 including any reasonable requirements notified to the undertaker in accordance with sub-paragraphs (3) and (4), unless otherwise agreed in writing between the undertaker and NEP acting reasonably.

(8) If NEP, in accordance with the requirements notified under sub-paragraphs (3) and (4) and in consequence of the Shared Area Works proposed by the undertaker, reasonably requires the removal of any of the NEP Apparatus and gives written notice to the undertaker of that requirement, this Order applies as if the removal of the NEP Apparatus had been required by the undertaker under paragraph 4.

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but (unless otherwise agreed in writing between the undertaker and NEP) in no case less than 28 days before commencing the execution of any works that are different from the approved Shared Area Works, new Plans, instead of the Plans submitted, and having done so the provisions of this paragraph 3 apply to and in respect of the new Plans.

(10) The undertaker is not required to comply with sub-paragraphs (1) and (2) in a case of emergency but in that case must give NEP notice as soon as is reasonably practicable and must provide a plan of any Shared Area Works carried out as soon as reasonably practicable.

Removal of apparatus/access

4.—(1) If, in the exercise of powers conferred by this Order, the undertaker acquires any interest in any land in which any NEP Apparatus is placed or requires that NEP Apparatus is relocated or diverted, that NEP Apparatus must not be removed under this Part, and any right of NEP to maintain that NEP Apparatus in that land must not be extinguished, until Alternative Apparatus (or alternative rights as the case may be) has been constructed (or granted) and is in operation to the reasonable satisfaction of NEP in accordance with sub-paragraphs (3) to (7).

(2) If, in accordance with paragraph (1) apparatus is relocated or diverted for the purposes of carrying out the shared area works, any right of NEP to gain access to it must not be extinguished, until alternative rights have been granted and access to it has been provided, to the reasonable satisfaction of NEP in accordance with sub-paragraphs (3) to (7).

(3) If, for the purpose of executing any Shared Area Works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any NEP Apparatus placed in, on or under that land, the undertaker must give to NEP 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 NEP reasonably needs to remove any NEP Apparatus) the undertaker must, subject to sub-paragraph (4), afford to NEP the necessary facilities and rights for the construction of Alternative Apparatus in other land of the undertaker and subsequently for the maintenance of that Alternative Apparatus.

(4) 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 (3) in the land in which the Alternative Apparatus or part of such apparatus is to be constructed, NEP must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the Alternative Apparatus is to be constructed.

(5) Any Alternative Apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between NEP and the

undertaker (acting reasonably) or in default of agreement settled by arbitration in accordance with paragraph 12.

(6) NEP must, after the Alternative Apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 12, and after the grant to NEP of any such facilities and rights as are referred to in sub-paragraph (3) or (4), proceed without unnecessary delay to construct and bring into operation the Alternative Apparatus and subsequently to remove any NEP Apparatus required by the undertaker to be removed under the provisions of this Part.

(7) Regardless of anything in sub-paragraph (6), if the undertaker gives notice in writing to NEP that it desires itself to execute any work, or part of any work, in connection with the construction or removal of NEP Apparatus in any land controlled by the undertaker, that work, instead of being executed by NEP must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of NEP.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to NEP facilities and rights for the construction and maintenance in land of the undertaker of Alternative Apparatus in substitution for NEP Apparatus to be removed, those facilities and rights must be granted—

- (a) upon such terms and conditions as may be agreed between the undertaker NEP (acting reasonably) or in default of agreement settled by arbitration in accordance with paragraph 12; and
- (b) in compliance with all health and safety, environmental and regulatory requirements and relevant industry standards.

(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 NEP than the facilities and rights enjoyed by it in respect of the NEP Apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator may make such provision for the payment of compensation by the undertaker to NEP as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Interaction with the NEP Project

6.—(1) Without limiting any other provision of this Part, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out of the authorised project and the NEP Project. For the purposes of this paragraph, “reasonable endeavours” means—

- (a) undertaking consultation on the design and programming of the Shared Area Works;
- (b) taking into consideration the proposed programme of works for the NEP Project as may be made available to the undertaker by NEP and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the Shared Area Works and the NEP Project;
- (c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised project; and
- (d) keeping NEP informed on the programme of works for the authorised project.

Regulation of Shared Area Works

7.—(1) The undertaker must give to NEP not less than 28 days’ written notice of its intention to commence the construction of any of the Shared Area Works and, not more than 14 days after completion of their construction, must give NEP written notice of the completion of construction and NEP will be entitled by its offer to watch and inspect the construction of such Shared Area Works.

(2) The undertaker must during construction of the Shared Area Works allow NEP and its officers, employees, servants, contractors and agents reasonable access to the Shared Area Works and reasonable facilities for inspection of the Shared Area Works.

(3) After the purpose of any temporary Shared Area Works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from NEP requiring the undertaker to do so, remove the temporary Shared Area Works in, on, under, over, or within the Shared Area.

(4) If the undertaker fails to remove the temporary Shared Area Works within a reasonable period of receipt of a notice pursuant to sub-paragraph (3), NEP may remove the temporary Shared Area Works and may recover the reasonable costs of doing so from the undertaker.

(5) If in consequence of the exercise of the powers conferred by the Order or the carrying out of the Shared Area Works the access to any of the NEP Specified Works is materially obstructed, the undertaker must provide such alternative means of access to the NEP Specified Works as is necessary for NEP to construct, maintain or operate the NEP Project.

(6) To ensure its compliance with this paragraph 7, the undertaker must before carrying out any of the Shared Area Works request up-to-date written confirmation from NEP of the location of any part of the NEP Specified Works.

Constructability principles

8.—(1) The undertaker must (unless otherwise agreed, in an emergency, or where it would render the LGF Apparatus, the Shared Area Works, the NEP Specified Works or NEP Apparatus unsafe, or put the undertaker in breach of its statutory duties or in breach of an obligation or requirement of the Order)—

- (a) notify NEP of any incidences which occur as a result of, or in connection with, the Shared Area Works which are required to be reported under the relevant Reporting of Injuries Diseases and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising; and
- (b) where requested in writing by NEP within 21 days of receipt of post-completion of construction notice pursuant to paragraph 7(1), provide as built drawings of the Shared Area Works as may be reasonably required by NEP (including, for the avoidance of doubt, buried pipelines) within three months of the completion of construction of each of the Shared Area Works.

Expenses

9.—(1) Save where otherwise agreed in writing between NEP and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NEP within 30 days of receipt of an itemised invoice from NEP all costs and expenses reasonably and properly incurred by NEP in the inspection, removal, relaying or replacing, alteration or protection of any NEP Apparatus or the construction of any Alternative Apparatus which may be required in consequence of the execution of any Shared Area Works including without limitation—

- (a) 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;
- (b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (c) the approval of Plans;
- (d) the carrying out of protective Shared Area Works;
- (e) the survey of any land, NEP Apparatus or Shared Area Works, the inspection and monitoring of Shared Area Works or the installation or removal of any temporary Shared Area Works reasonably necessary in consequence of the execution of any such Shared Area Works referred to in this Part.

(2) NEP shall provide evidence of all such reasonable and properly incurred costs and expenses to which this paragraph applies.

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

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

- (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 dispute resolution in accordance with paragraph 12 to be necessary, then, if such placing involves cost in the construction of works under this Part 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 NEP by virtue of subparagraph (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.

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

- (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.

(6) Any amount which apart from this sub-paragraph would be payable to NEP by virtue of sub-paragraph (1) will, if it confers any financial benefit on NEP by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

10.—(1) Subject to the rest of this paragraph, if by direct reason or in direct consequence of the construction of any Shared Area Works, any damage is caused to any NEP Apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the Shared Area Works), the undertaker will bear and pay the cost reasonably and properly incurred by NEP in making good such damage or restoring the supply up to the liability cap.

(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 NEP, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract, loss of opportunity by NEP.

(3) NEP must give the undertaker reasonable notice of any such claim or demand as soon as reasonably practicable after NEP becomes aware of any such claims or demands.

(4) NEP must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs to which this paragraph 10 applies.

(5) If requested to do so by the undertaker, NEP 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).

(6) The undertaker shall only be liable under this paragraph 10 for costs reasonably incurred by NEP.

Miscellaneous provisions

11. NEP and the undertaker must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

Dispute resolution

12.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Notices

13. Notices served under this Part shall be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed between the undertaker and NEP in writing.

PART 15

FOR THE PROTECTION OF NORTHERN GAS NETWORKS LIMITED AND NORTHERN GAS PROCESSING LIMITED

Application

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

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of Northern Gas Networks to enable Northern Gas Networks to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to Northern Gas Networks which it uses for the purposes of its undertaking;

“functions” includes powers and duties;

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

“liability cap” means the level agreed between the parties;

“maintain” and “maintenance” shall include the ability and right to do any of the following: construct, use, repair, alter, inspect, renew or remove;

“Northern Gas Networks” means Northern Gas Networks Limited (Company Number 05167070) whose registered office is at 1100 Century Way, Colton, Leeds, LS15 8TU;

“plan” or “plans” include insofar as reasonably relevant 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;

“works” means all works carried out by the undertaker to construct, lay, render operational, maintain, repair, renew, inspect and replace the authorised project or any part thereof including without limitation ancillary works of excavation, resurfacing, protecting, testing and drainage works, as affect the apparatus, save that for the purposes of paragraphs 6(3), 8(1)-8(6) and 11 references to works excludes Works No.5; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

3. Except for paragraphs 4 (apparatus of statutory undertaker in stopped up streets), 8 (retained apparatus: protection), 9 (expenses) and 10 (indemnity), this Part does not apply to apparatus in respect of which the relations between the undertaker and Northern Gas Networks are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of statutory undertaker in stopped up streets

4. Notwithstanding the temporary stopping up or diversion of any street under the powers conferred by article 13 (temporary closure, alteration or diversion of streets and public rights of way), Northern Gas Networks is at liberty at all times to take all necessary access across any such stopped up street in the case of emergency, and to take reasonable access across any such street in all other cases provided that 24 hours’ advanced notice is given to the undertaker, 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 stopping up or diversion was in that street, subject always to the undertaker’s unimpeded ability to carry out the works.

Acquisition of apparatus

5. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any apparatus of Northern Gas Networks otherwise than by agreement.

Removal or diversion of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in land in which the apparatus is placed, that apparatus must not be removed under this Part, and any right of Northern Gas Networks 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 Northern Gas Networks, provided that where Northern Gas Networks constructs the alternative apparatus, shall use all reasonable endeavours to construct and install such alternative apparatus as soon as reasonably practicable.

(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 or diversion of any apparatus placed in that land, it must give to Northern Gas Networks written notice of that requirement, together with a plan of the works and the removal or diversion works proposed, the proposed position of the alternative apparatus, and the proposed timeline for the works. Northern Gas Networks must reasonably approve these details within 28 days of receipt of such plan (unless a shorter period is otherwise agreed in writing between the undertaker and Northern Gas Network) after which approval is deemed to be given. The undertaker must afford to Northern Gas Networks, to their reasonable satisfaction, the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land; and
- (b) the maintenance of that alternative apparatus,

and Northern Gas Networks must complete the works and bring the alternative apparatus into operation and subsequently remove any apparatus required to be removed by the undertaker and must use its reasonable endeavours to meet the undertaker's proposed timeline, and in any event must do so without undue delay, in accordance with the details provided by the undertaker under this sub-paragraph or as otherwise reasonably agreed by the undertaker.

(3) If, in consequence of the works carried out by the undertaker, Northern Gas Networks reasonably needs to remove or divert any of its apparatus, it must without undue delay give the undertaker written notice of that requirement, together with a plan of the works proposed, the proposed position of the alternative apparatus and the proposed timeline for the works. The undertaker must reasonably approve these details and must afford to Northern Gas Networks, to their reasonable satisfaction, the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) the maintenance of that apparatus,

and Northern Gas Networks must complete the works and bring the alternative apparatus into operation and subsequently remove any apparatus required to be removed by the undertaker without undue delay and in accordance with the approved details and timeline.

(4) 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-paragraphs (2) and (3) in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Gas Networks must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible take such steps as are reasonable in the circumstances to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(5) Paragraphs 9 (expenses) and 10 (indemnity) of this Part of this Schedule apply to removal or diversions works under this paragraph 6, subject to Northern Gas Networks providing to the undertaker in advance and in writing (to the extent practicable) a reasonable cost estimate for works that it proposes to carry out.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to Northern Gas Networks 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 Gas Networks acting reasonably or in default of agreement settled by arbitration in accordance with paragraph 13 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus in the land of the undertaker, and the terms and conditions to which those facilities and rights are to be granted are, in the opinion of the arbitrator, less favourable on the whole to Northern Gas Networks 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 may make provision for the payment of appropriate compensation by the undertaker to Northern Gas Networks as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

8.—(1) Before commencing the execution of any works that will or may have a materially adverse effect on apparatus, the removal or diversion of which apparatus has not been required by the undertaker under paragraph 6(2) or otherwise or by Northern Gas Networks under paragraph 6(3), the undertaker must submit to Northern Gas Networks a plan showing the works and the apparatus.

(2) The plan to be submitted to Northern Gas Networks under sub-paragraph (1) shall be detailed including a method statement and describing (insofar as reasonably relevant)—

- (a) the 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 planned position of apparatus; and
- (e) by way of drawings, alterations proposed to be made to apparatus.

(3) Subject to sub-paragraph (4) the undertaker must not commence the construction or renewal of any works to which sub-paragraphs (1) or (2) apply until Northern Gas Networks has given written approval of the plan so submitted.

(4) Any approval of Northern Gas Networks required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
- (b) must not be unreasonably withheld or delayed and in any event must be made within a period of 56 days (unless a shorter period is otherwise agreed in writing between the undertaker and Northern Gas Network) beginning the date on which the plan was submitted under sub-paragraphs (1) and (2), after which approval is deemed to be given.

(5) In relation to works to which sub-paragraph (1) applies, Northern Gas Networks may require such modifications to be made to the plans as may be reasonably necessary for the continuing safety and operational viability of apparatus or for reasonable access to inspect, repair, replace and maintain and ensure the continuing safety and operational viability of the apparatus, provided that a reasoned explanation is provided by Northern Gas Networks to substantiate the need for such conditions.

(6) Unless otherwise agreed in writing between Northern Gas Networks and the undertaker acting reasonably, works executed under this Order to which this paragraph 8 applies must be executed only in accordance with the relevant plan, notified under sub-paragraph (1) and approved (with conditions, if applicable) under sub-paragraph (4), as amended from time to time by agreement between the undertaker and Northern Gas Networks acting reasonably.

(7) Northern Gas Networks is entitled to watch and inspect the execution of those works.

(8) Where Northern Gas Networks requires any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature), Northern Gas Networks must give the undertaker reasonable notice of such requirement (including a reasoned explanation to substantiate the need for such requirement) in its approval under sub-paragraph (3), and such protective works must be carried out to Northern Gas Networks' reasonable satisfaction prior to the carrying out of the relevant part of the works.

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of the relevant 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.

(10) The undertaker must not be required to comply with sub-paragraphs (1) or (2) in the case of emergency but in that case it must give to Northern Gas Networks notice as soon as is reasonably practicable and a plan of those works shall comply with the other requirements in this paragraph insofar as is reasonably practicable in the circumstances, provided that it always complies with sub-paragraph (10).

(11) At all times when carrying out any works authorised under the Order that may or will have a materially adverse effect on the apparatus, the undertaker must comply with the relevant legislation and guidance set out in chapter 19 of the environmental statement.

Expenses

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Gas Networks the charges, costs and expenses reasonably and properly incurred by Northern Gas Networks in, or in connection with, the inspection, removal or diversion, relaying or

replacing, alteration or protection of any apparatus or the construction of any alternative apparatus which may be reasonably required and necessary in consequence of the execution of any such works as are required and approved under this Part.

(2) Northern Gas Networks must use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any costs, expenses, loss, demands and penalties capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, Northern Gas Networks must provide an explanation of how the claimed expenses have been minimised or details to substantiate the cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable to pay expenses that have been reasonably and properly incurred by Northern Gas Networks. Northern Gas Networks shall provide evidence of all such reasonable and properly incurred costs and expenses to which this paragraph applies.

(3) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under this Part, that value being calculated after removal.

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

- (a) apparatus of a 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 an arbitrator under paragraph 13 to be necessary, then, if such placing involves cost in the construction of works under this Part 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 from this paragraph would be payable to the owner or operator in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus must 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 cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been determined.

(6) An amount which apart from this sub-paragraph would be payable to Northern Gas Networks in respect of works by virtue of sub-paragraph (1) must, if it confers a financial benefit on Northern Gas Networks, be reduced by the amount which represents that benefit.

Indemnity

10.—(1) Subject to the rest of this paragraphs if by direct reason or in direct consequence of the construction of any works referred to under this Part, 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 those works) of Northern Gas Networks, or there is any interruption in any service provided, or in the supply of any goods, by Northern Gas Networks, the undertaker must—

- (a) bear and pay the cost reasonably and properly incurred by Northern Gas Networks in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Northern Gas Networks for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by Northern Gas Networks, by direct reason or in direct consequence of any such damage or interruption,

up to the liability cap.

- (2) Nothing in sub-paragraph (1) shall impose 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 Gas Networks, its officers, employees, servants, contractors or agents; or
 - (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract or loss of opportunity by the Northern Gas Networks.
- (3) Northern Gas Networks must give the undertaker reasonable notice of any such claim or demand as soon as reasonably practicable after it becomes aware of any such claims or demands.
- (4) Where Northern Gas Networks raises a claim or demand under sub-paragraph (1) which arises from a claim or demand by another person—
- (a) Northern Gas Networks shall consult with the undertaker at regular intervals regarding the progress and strategy of any settlement or compromise or of any proceedings necessary to resist the claim or demand and take into account reasonable representations of the undertaker in connection therewith;
 - (b) the undertaker shall also, on request, be provided sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which Northern Gas Networks must continue to co-operate with the undertaker with regards to such claim or demand;
 - (c) no settlement or admission of liability or compromise is to 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, during which Northern Gas Networks must continue to co-operate with the undertaker with regards to such claim or demand.
- (5) Northern Gas Networks must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which this paragraph 10 applies.
- (6) If requested to do so by the undertaker, Northern Gas Networks 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).
- (7) The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by Northern Gas Networks.

Access

11. If in consequence of the powers granted under this Order to carry out the works, the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Northern Gas Networks to maintain or use the apparatus no less effectively than was possible before such obstruction, unless otherwise agreed between the parties acting reasonably.

Cathodic protection testing

12. Where in the reasonable opinion of either party—

- (a) the authorised project might interfere with the existing cathodic protection forming part of the apparatus; or
- (b) the apparatus might interfere with the proposed or existing cathodic protection forming part of the authorised project,

the parties shall 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.

Arbitration

13.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Notices

14. Notices served under this Part shall be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed between the undertaker and Northern Gas Networks in writing.

PART 16

FOR THE PROTECTION OF NORTHERN POWERGRID (NORTHEAST) PLC

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

Interpretation

2. In this Part—

“alternative apparatus” means alternative and / or replacement 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 lodged or which gives access to apparatus;

“authorised works” means so much of the works authorised by this Order which affect the operation or maintenance of existing Northern Powergrid’s apparatus within the Order limits, save that for the purposes of paragraphs 5 and 7(1)-7(4) below references to the authorised works excludes Work No. 5;

“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;

“liability cap” means a level to be agreed between the parties;

“Northern Powergrid” means Northern Powergrid (Northeast) PLC (Company Number 02906593) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne NE1 6AF

“Order” means the Lighthouse Green Fuels Project Development Consent Order 202[X];

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

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

Street works

3. This Part 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 13 of the Order (temporary closure, alteration or diversion of streets and public rights of way), Northern Powergrid is at liberty at all times to take all necessary access across any such street in the case of emergency, and to take reasonable access across any such street in all other cases provided that 24 hours' advanced notice is given to the undertaker, 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.

Removal, relocation and diversion of apparatus and alternative apparatus

5.—(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 Part, and any right of Northern Powergrid to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (3) to (6).

(2) If, in accordance with paragraph (1) apparatus is relocated or diverted for the purposes of carrying out the authorised works, any right of Northern Powergrid to gain access to it must not be extinguished, until alternative rights have been granted and access to it has been provided for a tenure no less than exists to the apparatus being relocated or diverted, to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (3) to (6).

(3) If, for the purpose of executing any authorised 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 reasonable 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.

(4) 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 (3), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be.

(5) Any alternative apparatus to be constructed in land of the undertaker under this Part 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 paragraph 16.

(6) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 16, and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph (3) or (4), 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.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part, 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 paragraph 16.

(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 may 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.

Authorised works

7.—(1) Not less than 56 days (unless a shorter period is agreed between the undertaker and Northern Powergrid acting reasonably) before starting the execution of any authorised works in, on or under any land purchased, held, appropriated or used under this Order that will or may have a materially adverse effect on any apparatus, the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to Northern Powergrid a plan, section and description of the authorised works to be executed and any such information as Northern Powergrid reasonably require 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 reasonable access to it, unless otherwise agreed acting reasonably.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it and a reasoned explanation will be provided by Northern Powergrid to substantiate the need for these requirements.

(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) Northern Powergrid is entitled to watch and inspect the execution of the works carried out under this paragraph.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 35 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.

(7) 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.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid the 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 5(3); and
- (b) in assessing and preparing a design for its apparatus including alternative apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all, provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 5(1) having first decommissioned such apparatus.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part has nil value, no sum will be deducted from the amount payable under sub-paragraph (1).

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

- (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 16 to be necessary, then, if such placing involves cost in the construction of works under this Part 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.

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

- (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(3); 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.

(5) An amount which apart from this sub-paragraph would be payable to Northern Powergrid in respect of works by virtue of sub-paragraph (1) must, if it confers a financial benefit on that person, be reduced by the amount that represents that benefit.

(6) Northern Powergrid shall provide evidence of all such reasonable and properly incurred costs and expenses to which this paragraph applies.

Indemnity

9.—(1) Subject to the rest of this paragraph, if by direct reason or in direct consequence of the construction of any of the authorised works referred to in paragraph 5(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 Part 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 there is any interruption in any service provided by Northern Powergrid, the undertaker must—

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

- (b) make reasonable compensation to Northern Powergrid for any other expenses, loss, damages, penalty, proceedings, claims or costs reasonably and properly incurred by Northern Powergrid by direct reason or in direct consequence of any such damage or interruption,

up to the liability cap.

(2) 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 act, neglect or default of Northern Powergrid, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract or loss of opportunity by Northern Powergrid.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand as soon as reasonably practicable after it becomes aware of any such claims or demands.

(4) Where Northern Powergrid raises a claim or demand under sub-paragraph (1) which arises from a claim or demand by another person—

- (a) Northern Powergrid shall consult with the undertaker at regular intervals regarding the progress and strategy of any settlement or compromise or of any proceedings necessary to resist the claim or demand and take into account reasonable representations of the undertaker in connection therewith;
- (b) the undertaker shall also, on request, be provided sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which Northern Powergrid must continue to co-operate with the undertaker with regards to such claim or demand;
- (c) no settlement or admission of liability or compromise is to be made without the prior 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, during which Northern Powergrid must continue to co-operate with the undertaker with regards to such claim or demand.

(5) 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 this paragraph 11 applies.

(6) 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).

(7) The undertaker shall only be liable under this paragraph 9 for claims reasonably incurred by Northern Powergrid.

Co-operation

10. 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 5 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 7, 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 project and the undertaker and Northern Powergrid shall use reasonable endeavours to co-operate with each other for those purposes.

11. The plans submitted to Northern Powergrid by the undertaker pursuant to this Part 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

12. Prior to carrying out any works within the Order Limits (as defined in the Order) 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.

13. 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 project.

Arbitration

14.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Notices

15. Notices served under this Part shall be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed between the undertaker and the third party in writing.

PART 17

FOR THE PROTECTION OF NORTHUMBRIAN WATER LIMITED

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

2. In this Part of this Schedule—

“apparatus” means the following items belonging to or maintained by NW within the Order limits—

(a) in the case of NW’s water undertaking—

- (i) mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations or other apparatus, structure, tunnel, shaft or treatment works or “accessories” (as defined in section 219(1) of the Water Industry Act 1991) belonging to or maintained or used by NW for the purposes of water supply; and
- (ii) any water mains or service pipes which at the date of this Order are the subject of a notice of intention to adopt under section 51A of the Water Industry Act 1991 provided that the undertaker is given such a notice of intention to adopt in accordance with paragraph 9; and

(b) in the case of NW’s sewerage undertaking—

- (i) any sewer, drain or disposal works vested in NW under the Water Industry Act 1991; and
- (ii) any sewer, drain or disposal works which at the date of this Order is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act provided that the undertaker is given such a notice of intention to adopt or agreement to adopt in accordance with paragraph 9,

and includes a sludge main, “disposal main” (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories (as defined in section 219(1) of the Water Industry Act 1991) forming part of any such

sewer, drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“authorised work” means any works contained within Schedule 1 of the Order save that in relation to paragraphs 3 to 5 references to authorised work or authorised works excludes Work No. 5;

“functions” includes powers and duties;

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

“liability cap” means a level to be agreed between the parties;

“NW” means Northumbrian Water Limited, company number 02366703, whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;

“plan” includes sections, drawings, specifications and method statements;

“the standard protection strips” means strips of land falling within the following distances to either side of the medial line of any relevant pipe or apparatus—

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres;
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres;
- (e) 6.5 metres where it is a sewer; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

Protection strips

3. The undertaker must not within the standard protection strips carry out any authorised work that interfere with or build over any apparatus within the Order limits or 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 the standard protection strips unless otherwise agreed in writing with NW, such agreement not to be unreasonably withheld or delayed and must be given within 56 days from the date the plan of authorised works proposed has been submitted otherwise NW are deemed to have given the necessary consent or approval, and this provision must be brought to the attention of any contractor responsible for carrying out any part of the authorised project on behalf of the undertaker.

Alteration, extension, removal or re-location of apparatus

4.—(1) The alteration, extension, removal or re-location of any apparatus for the purpose of the authorised works shall not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting Regulations 2016 or other replacement legislation and any other associated consents are obtained; and
- (b) if applicable, the undertaker has made the appropriate application under sections 106 (right to communicate with public sewers), 112 (requirement that proposed drain or sewer be constructed so as to form part of the general system) or 185 (duty to move pipes, etc. in certain cases) of the Water Industry Act 1991 as may be required by those provisions and has provided a plan of the works proposed to NW and NW has given the necessary consent or approval under the relevant provision, such agreement not to be unreasonably withheld or delayed and must be given within 56 days from the date the plan of works proposed has been submitted otherwise NW are deemed to have given the necessary consent or approval; and

(c) in the event that such works are to be executed by the undertaker, they are to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by NW for—

(i) the continuing safety and operational viability of the apparatus (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by NW to substantiate the need for these requirements); and

(ii) the requirement for NW to secure reasonable access to the apparatus.

(2) In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until NW has established to its reasonable satisfaction, without unnecessary delay, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

(3) Where in consequence of the proposed construction of any of the authorised works, the undertaker or NW requires the removal of apparatus or NW makes requirements for the protection or alteration of apparatus, the undertaker must use all reasonable endeavours to co-ordinate the execution of the authorised 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 NW's undertaking and NW must use all reasonable endeavours to co-operate with the undertaker for that purpose.

Alternative access

5. If in consequence of the exercise of the powers conferred by the Order for the purposes of carrying out any authorised work the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable NW to maintain or use the apparatus no less effectively than was possible before such obstruction or as agreed with NW.

Duty to co-operate

6.—(1) Where the undertaker identifies any apparatus which may belong to or be maintainable by NW but which does not appear on any statutory map kept for the purpose by NW, it shall inform NW of the existence and location of the apparatus as soon as reasonably practicable.

(2) Prior to NW carrying out any works within the Order Limits (as defined in the Order) NW must give 56 days' written notice (unless a shorter period is agreed between the parties) 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.

Costs and indemnification

7.—(1) Subject to the rest of this paragraph 7, if for any direct reason or in direct consequence of the construction of any of the authorised 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 NW, or there is any interruption in any service provided, or in the supply of any goods, by NW, the undertaker must—

- (a) bear and pay the direct cost reasonably incurred by NW in making good such damage or restoring the supply; and
- (b) make reasonable compensation to NW for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by NW, by direct reason or in direct consequence of any such damage or interruption,

up to the liability cap.

- (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 NW, its officers, employees, servants, contractors or agents; or
 - (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract or loss of opportunity by NW.
- (3) NW must give the undertaker reasonable notice of any such claim or demand as soon reasonably practicable after NW becomes aware of any such claims or demands.
- (4) Where NW raises a claim or demand under sub-paragraph (1) which arises from a claim or demands by another person—
- (a) NW shall consult with the undertaker at regular intervals regarding the progress and strategy of any settlement or compromise or of any proceedings necessary to resist the claim or demand and take into account reasonable representations of the undertaker in connection therewith;
 - (b) the undertaker shall also, on request, be provided sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which NW must continue to co-operate with the undertaker with regards to such claim or demand; and
 - (c) no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or any proceedings necessary to resist the claim or demand, during which NW must continue to co-operate with the undertaker with regards to such claim or demand.
- (5) NW must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which this paragraph 7 applies.
- (6) If requested to do so by the undertaker, NW 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).
- (7) The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by NW.

Arbitration

8.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Notices

9. Notices served under this Part shall be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed between the undertaker and NW in writing.

PART 18

FOR THE PROTECTION OF SABIC UK PETROCHEMICALS LIMITED

Benefit of protective provisions

1.—(1) The following provisions of this Schedule have effect for the benefit of SABIC, unless otherwise agreed between the undertaker and SABIC.

(2) Except to the extent as may be otherwise agreed in writing between the undertaker and SABIC under sub-paragraph (1), where the benefit of this Order is transferred or granted to another person under article 6 (benefit of the Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between SABIC and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to SABIC on or before the date of that transfer or grant.

(3) Sub-paragraph (1) applies to any agreement—

- (a) which states that it is “entered into for the purposes of the SABIC Protective Provisions”; and
- (b) whether entered into before or after the making of this Order.

Interpretation

2.—(1) In this Part of this Schedule—

“access roads” means Seal Sands Road and Huntsman Drive giving access to the pipeline;

“affected assets” means—

- (a) apparatus which may be materially adversely affected by the relevant works;
- (b) in relation to the exercise of an identified power, any apparatus which would be materially adversely affected by the exercise of that power.

“apparatus” means pipelines and cables owned or operated by SABIC and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Schedule in which apparatus is lodged or gives access to apparatus;
- (b) any cathodic protection, coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962, as if the pipelines were a “pipe-line” in section 65(1) of that Act;

“authorised project” has the same meaning as if given to the same term in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised project and construction of any works authorised by this Schedule, save that for the purposes of paragraphs 3, 4, 6, 8, 9, 11 and 14 references to authorised project excludes Work No.5;

“construction access plan” means a plan identifying how access will be maintained to apparatus during the proposed construction or maintenance work including—

- (a) any restrictions on general access by SABIC, including the timing of restrictions;
- (b) any alternative accesses or routes of access that may be available to the undertaker using the access roads; and
- (c) details of how emergency access will be provided for SABIC;

“construction or maintenance works” means any works to construct, maintain, or decommission the authorised project;

“damage” includes all damage which adversely impacts apparatus including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

“engineer” means an independent engineer appointed jointly by the undertaker and by SABIC for the purposes of some or all of this Schedule;

“liability cap” means a level to be agreed between the parties;

“major works” means works by SABIC requiring the closure, diversion or regulation of any roads serving the apparatus;

“owner” means, in relation to the access roads, any person—

- (a) with an interest in the access roads; or
- (b) with private rights of way on or over the access roads;

“pipeline corridor” means the corridor of land 3 metres measured in any direction from the centre of the pipeline in which SABIC has rights relating to the pipelines (including but not limited to right to install, operate, repair, maintain and renew the pipelines or a right to take access to the pipelines);

“pipeline” means the pipelines referred to as System 28, System 29, System 30, System 31, System 32, System 34, System 36 and System 134 and any apparatus owned or operated by SABIC located in the pipeline corridor at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of the relevant work, providing that any such additions have been notified to the undertaker;

“pipeline survey” means a survey of the pipeline corridor to establish—

- (a) the precise location of the pipeline;
- (b) the specification of the pipeline including composition, diameter and pressure;
- (c) any special requirements or conditions relating to the pipeline which differ from the requirements or conditions applying to standard pipelines of that type; and
- (d) the precise location of any easement widths or rights (where it is possible to establish this);

“protected land” means such parts of the Order land as fall within the pipeline corridor;

“relevant work” means any of the authorised project or activities undertaken in association with the authorised project which has been the subject of a works details notice save that for the purposes of paragraphs 3, 4, 6, 8, 9, 11 and 14 references to relevant work excludes Work No.5;

“SABIC” means—

- (a) SABIC UK Petrochemicals Limited (Company Number 03767075) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF and any successor in title to SABIC’s rights and interests in the protected land; and
- (b) SABIC Tees Holdings Limited (company number 06009440) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF.

“works details” includes so far as is reasonably relevant—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of any vehicle access routes for construction and operational traffic;
- (d) any further particulars provided in response to a request under paragraph 6; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

(2) Where this Schedule provides that the acknowledgement, approval, agreement, consent or authorisation of SABIC is required for any thing (or that any thing must be done to SABIC’s reasonable satisfaction)—

- (a) that acknowledgement, approval, agreement, consent or authorisation (or intimation that the matter in question has been done to SABIC’s reasonable satisfaction) shall not be unreasonably withheld or delayed and in any event must be made in writing within a period of 56 days unless a shorter period is otherwise agreed in writing between the undertaker and SABIC) beginning with the date on which a request for consent is made to SABIC, after which approval is deemed to be given; and
- (b) the grant or issue of such acknowledgement, approval, agreement, consent or authorisation (or intimation) by any one or more of the entities which constitute SABIC as defined in sub-paragraph (1) shall constitute approval, agreement, consent or

authorisation on behalf of all of them where any consent must be received from the SABIC company who owns the land, right or interest.

Pipeline survey

3.—(1) Before commencing any part of the authorised project in the pipeline corridor the undertaker must—

- (a) carry out and complete the pipeline survey; and
- (b) comply with sub-paragraph (3) below.

(2) The pipeline survey must be undertaken by a suitably qualified person and carried out in accordance with all relevant national standards and codes, as agreed between the parties acting reasonably.

(3) SABIC must provide the undertaker with such information, records and other background data as it may reasonably hold and which may be reasonably required to inform or facilitate the preparation of the pipeline survey.

(4) When the pipeline survey has been completed the undertaker must serve a copy of the pipeline survey on SABIC and SABIC must advise the undertaker within 14 days of receipt of the survey if SABIC considers that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker must finalise its pipeline survey.

Authorisation of works details affecting the pipeline

4.—(1) Before commencing any part of a relevant work the undertaker must submit to SABIC the works details in respect of any affected asset,

(2) The undertaker must as soon as reasonably practicable provide such further particulars as SABIC may, within 28 days from the receipt of the works details under sub-paragraph (1), reasonably require.

(3) Where the undertaker submits works details under sub-paragraph (1) or further particulars under sub-paragraph (2), SABIC shall as soon as reasonably practicable, and without unreasonable delay, provide the undertaker with a written acknowledgment or receipt in respect of those works details or further particulars (as the case may be).

(4) No part of the relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under sub-paragraph (1) have been authorised by SABIC;
- (b) the works details supplied in respect of that relevant work under sub-paragraph (1) have been authorised by an arbitrator under sub-paragraph 23.
- (c) authorisation is deemed to have been given following 56 days from provision of the works details under sub-paragraph (1).

(5) Any authorisation by SABIC required under sub-paragraph (1) may be given subject to such reasonable conditions as SABIC may require to be made for—

- (a) the continuing safety and operation of the affected asset;
- (b) the requirement for SABIC to have—
 - (i) emergency access to the affected asset; and
 - (ii) reasonable access to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(6) The requirements imposed under sub-paragraph (5) or refusal by SABIC must be accompanied by a reasoned explanation to substantiate the need for these requirements.

(7) The authorised project must be carried out in accordance with the works details authorised under paragraph 4, unless otherwise agreed in writing all parties acting reasonably, and any conditions imposed on the authorisation under sub-paragraph (5).

(8) The undertaker is not required to comply with paragraph 4 in the case of an emergency, but must provide SABIC with notice of such emergency works and submit works details of the relevant works carried out as part of those emergency works as soon as is reasonably practicable in the circumstances.

5. The undertaker must provide to SABIC a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions for the protection of the pipeline(s).

Further provisions about works

6.—(1) Before carrying out a relevant work the undertaker must—

- (a) provide SABIC with baseline data which will be used in the cathodic protection assessment of any existing pipeline; and
- (b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

7. No explosives are to be used within the protected land.

8.—(1) All piling within 2 metres of the centreline of a pipeline must be non-percussive.

(2) Where piling is required within 50 metres of the centreline of a pipeline to carry out a relevant work and which could have a materially adverse effect on the operation or maintenance of a pipeline or access to a pipeline, details of the proposed method for and location of the piling must be provided to SABIC for approval in accordance with paragraph 4.

9.—(1) Where excavation of trenches (including excavation by dredging) adjacent to a pipeline adversely affects its support, the pipeline must be supported in a manner approved by SABIC.

(2) Where the undertaker proposes to carry out excavations which might adversely affect above ground structures such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone of influence of those excavations and provide those calculations to SABIC under paragraph 4.

10.—(1) Where a trench is excavated across or parallel to the line of a pipeline, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to the pipeline.

(2) Proposed methods and locations of compacting must be notified to SABIC in accordance with paragraph 4.

(3) Compaction testing must be carried out once back filling is completed to establish whether the backfill has been adequately compacted as referred to in sub-paragraph (1) and what further works may be necessary, and the results of such testing must be supplied to SABIC.

(4) Where it is shown by the testing under sub-paragraph (3) to be necessary, the undertaker must carry out further compaction under sub-paragraph (1) and sub-paragraphs (1), (2) and (3) continue to apply until such time as the backfill has been adequately compacted.

(5) In the event that it is necessary to provide permanent support to a pipeline which has been exposed over the length of the excavation before backfilling and reinstatement is carried out, the undertaker must pay to SABIC a fair and reasonable capitalised sum representing the increase of the costs (if any) which may be expected to be reasonably incurred in maintaining, working and, when necessary, renewing any such alterations or additions.

(6) In the event of a dispute as to—

- (a) whether or not backfill has been adequately compacted under sub-paragraphs (1) to (4); or
- (b) the amount of any payment under sub-paragraph (5),

the undertaker or SABIC may refer the matter to an arbitrator for determination under paragraph 23.

11.—(1) A minimum clearance of 500 millimetres in respect of above ground apparatus must be maintained between any part of the relevant work and any affected asset (whether that part of the relevant work is parallel to or crosses the pipeline) unless otherwise agreed with SABIC.

Monitoring for damage to affected assets

12.—(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify SABIC to enable repairs to be carried out to the reasonable satisfaction of SABIC.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of SABIC—

- (a) afford SABIC reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to SABIC its reasonable and proper costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction
- (c) of SABIC to have effectively repaired the affected asset before any backfilling takes place.

(4) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where SABIC agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(6) In the event that the undertaker does not carry out necessary remedial work in a timely manner then SABIC is entitled, but not obliged, to undertake the necessary remedial work and recover the reasonable and properly incurred cost of doing so from the undertaker.

13.—(1) If any damage occurs to a pipeline as a result of the relevant work, which causes a leakage or escape from a pipeline, all work in the vicinity must cease and SABIC must be notified immediately.

(2) Where there is leakage or escape of gas or any other substance, the undertaker must immediately—

- (a) remove all personnel from the immediate vicinity of the leak;
- (b) inform SABIC; and
- (c) assist emergency services as may be requested.

Access for construction and maintenance

14.—(1) Before carrying out any construction or maintenance works affecting SABIC's rights over the access roads, the undertaker must prepare a draft construction access plan and consult on the draft construction access plan with SABIC.

(2) The undertaker must take account of the responses to any consultation referred to in sub-paragraph (1) before providing the final construction access plan to SABIC for their records.

15.—(1) In preparing a construction access plan under paragraph 14 the undertaker must—

- (a) establish the programme for SABIC's major works and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and

- (b) where it proposes to restrict or extinguish SABIC's access to the protected land, first provide an alternative or replacement means of access together with facilities and rights which are not materially less advantageous to SABIC.

(2) In this paragraph, "programmed", in relation to works, means works in respect of which the owner of the access roads has been notified of the specific dates between which the works are programmed to be carried out provided that the period covered by such dates must be the length of time the works are programmed to be carried out and not a period within part of which the works are to be carried out.

16.—(1) No works adversely affecting access rights over the access roads are to commence until 30 days after a copy of the final construction access plan is served on SABIC.

(2) In carrying out construction or maintenance works the undertaker must at all times comply with the construction access plan, unless otherwise agreed in writing, all parties acting reasonably.

Insurance

17.—(1) Before carrying out any part of the relevant work on the protected land, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place acceptable insurance and evidence of that insurance must be provided on request to SABIC.

(2) Not less than 30 days before carrying out any part of the relevant work on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify SABIC of details of the terms of the acceptable insurance that it proposes to put in place, including the proposed level of the cover to be provided.

18.—(1) If SABIC has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 17—

- (a) SABIC may refer the matter to an arbitrator for determination under paragraph 22; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the relevant work at its own risk whilst the determination under paragraph 22 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs and indemnification

19.—(1) The undertaker must repay to SABIC all evidenced, direct fees, costs, charges and expenses reasonably and properly incurred by SABIC in relation to these protective provisions in respect of—

- (a) authorisation of survey details submitted by the undertaker under paragraph 3(3), authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 4(5);
- (b) the engagement of an engineer and their observation of the authorised project affecting the pipelines and the provision of safety advice under paragraph 5;
- (c) responding to the consultation on piling under paragraph 8;
- (d) considering the effectiveness of any compacting which has taken place under paragraph 10, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;
- (e) the repair and testing of affected assets under paragraph 12;
- (f) considering and responding to consultation in relation to the construction access plan and providing details of their programme for major works to the undertaker under paragraphs 15 and 16; and
- (g) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraphs 17 and 18,

including the reasonable costs incurred by SABIC in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to allow SABIC to carry out its functions under these protective provisions.

(2) SABIC shall provide evidence of all such direct, reasonable and properly incurred costs and expenses to which this paragraph applies.

(3) Subject to the following provisions of this paragraph, if by reason or in consequence of the construction of any of the works referred to in paragraph 4, any damage is caused to the affected assets or property of SABIC, or there is any interruption in any service provided, or in the supply of any goods, by SABIC, the undertaker must—

- (a) bear and pay the cost reasonably incurred by SABIC in making good such damage or restoring the supply; and
- (b) make reasonable compensation to SABIC for any other expenses, loss, damages, penalty or costs incurred by SABIC, by reason or in consequence of any such damage or interruption,

up to the liability cap.

(4) The fact that any act or thing may have been done by SABIC on behalf of the undertaker or in accordance with plans approved by or on behalf of SABIC or in accordance with any requirement of the engineer appointed by SABIC or under his supervision does not excuse the undertaker from any liability under the provisions of this sub-paragraphs (2) and (3).

(5) Nothing in the preceding provisions of this paragraph 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 SABIC, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits loss of production, loss of business, loss of revenue, loss of contract or loss of opportunity by SABIC.

(6) SABIC must give the undertaker reasonable notice of any such claim or demand as soon as reasonably practicable after SABIC becomes aware of any such claim or demand.

(7) Where SABIC raises a claim or demand under sub-paragraph (1) which arises from a claim or demand by another person—

- (a) SABIC shall consult with the undertaker at regular intervals regarding the progress and strategy of any settlement or compromise or of any proceedings necessary to resist the claim or demand and take into account reasonable representations of the undertaker in connection therewith;
- (b) the undertaker shall also, on request, be provided sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which SABIC must continue to co-operate with the undertaker with regards to such claim or demand;
- (c) no settlement or compromise of such a claim or demand is to be made without the prior 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, during which time, SABIC must continue to co-operate with the undertaker with regards to such claim or demand.

(8) In the assessment of any sums payable to SABIC under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, SABIC if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

(9) SABIC must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which this paragraph applies.

(10) If requested to do so by the undertaker, SABIC must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to this paragraph.

(11) The undertaker shall only be liable under this paragraph for claims reasonably incurred by SABIC.

Further protection in relation to the exercise of powers under the Order

20. The undertaker must, following a written request by SABIC, provide SABIC, as soon as reasonably practicable, with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 48 (certification of plans and documents etc.) in electronic form.

21. Notices served under this Part shall be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed between the undertaker and SABIC in writing.

Arbitration

22.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(2) (2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Co-ordination

23. SABIC and the undertaker must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

PART 19

FOR THE PROTECTION OF SEMBCORP UTILITES (UK) LIMITED

Extent of this Schedule

1.—(1) The provisions of this Schedule have effect for the benefit of owners and operators in the Sembcorp Protection Corridor, owners and operators in the Wilton Complex and Sembcorp unless otherwise agreed in writing between the undertaker and Sembcorp and always excluding any third party owner or operator.

(2) The agreement referred to under sub-paragraph (1) includes any agreement—

(a) which states that it is “entered into for the purposes of the Sembcorp Protective Provisions”; and

(b) whether entered into before or after the making of this Order.

(3) Except to the extent as may be otherwise agreed in writing between the undertaker and Sembcorp, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between Sembcorp and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to Sembcorp on or before the date of that transfer or grant.

(4) Article 44 (procedure in relation to certain approvals) does not apply to any consent, agreement or approval required or contemplated by any of the provisions of this Schedule.

Interpretation of this Schedule

2. In this Schedule—

“alternative apparatus” means alternative apparatus adequate to serve the owner of the apparatus in question in a manner no less efficient than previously;

“apparatus” means mains, pipes, cables, sewers, drains, ditches, watercourses or other apparatus and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“authorised project” has the same meaning as is given to this term in article 2 (interpretation) of this Order save that for the purposes of paragraphs 5-7 below references to authorised project exclude Work No. 5;

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

“liability cap” means a level to be agreed between the parties;

“operator” means any person who is responsible for the construction, operation, inspection, adjustment, alteration, repair, maintenance, renewal, removal or replacement of any apparatus or alternative apparatus in the Sembcorp Protection Corridor or has rights to the use of such apparatus or alternative apparatus, but who is not an owner in relation to the Sembcorp Protection Corridor or the Wilton Complex and is not a third party owner or operator;

“owner” means—

- (a) in relation to the Sembcorp Protection Corridor, any person—
 - (i) with an interest in the Sembcorp Protection Corridor;
 - (ii) with rights in, on, under or over the Sembcorp Protection Corridor;
 - (iii) with apparatus in, on or under the Sembcorp Protection Corridor;
- (b) in relation to the Wilton Complex, any owner (as defined in article 2(1) of this Order) or occupier in the Wilton Complex,

but who is not a third party owner or operator.

“Sembcorp” means Sembcorp Utilities (UK) Limited (company number 04636301), whose registered office is at Sembcorp UK Headquarters, Wilton International, Middlesbrough, Cleveland, TS90 8WS and any successors in title or function to the Sembcorp operations in, under or over the Sembcorp Protection Corridor;

“Sembcorp operations” means—

- (a) the activities and functions carried on by Sembcorp in the Sembcorp Protection Corridor (including in relation to any access routes and laydown spaces associated with them or it);
- (b) the number 2 river tunnel between Bran Sands and North Tees crossing the Order limits under the River Tees (together with associated headhouses) operated by Sembcorp; and
- (c) other pipes and apparatus (including access routes and laydown spaces associated with such pipes and apparatus) operated—
 - (i) by Sembcorp; or
 - (ii) by any owner or operator within the Sembcorp Protection Corridor; or
 - (iii) by any owner or operator in the Wilton Complex;

“Sembcorp Protection Corridor” means for the purposes of this Order plots 9-43, 9-44, 9-45, 9-46, 9-47, 9-58, 9-60, 10-4, 12-9, 12-14, 12-15, 12-19, 12-20, 12-23, 12-24, 12-27, 12-28, 12-34, 12-35, 13-33, 13-34, 13-35, 13-46, 13-49, 13-53, 13-54, 13-59, 14-1, 14-4, 14-8, 14-9, 14-10, 14-11, 14-2, 14-13, 14-14, 14-15, 14-16, 14-17, 14-18, 14-19, 14-20, 16-1, 16-2, 16-3, 16-4, 18-17, 18-18, 18-19, 18-39, 18-40, 18-41, 18-46, 18-47, 18-48, 18-51, 18-54, 18-59, 18-60, 18-61, 18-62, 18-63, 19-1, 19-2, 19-3, 19-4, 19-5, 19-6 and 19-7 on the land plans;

“Sembcorp Protection Corridor protective provisions supporting plans” means the plans which are certified as the Sembcorp Protection Corridor protective provisions supporting plans by

the Secretary of State under article 48 (certification of plans etc.) for the purposes of this Order;

“third party owner or operator” means an owner or operator of apparatus the subject of a third party protective provision;

“third party protective provisions” means the protective provisions in 4-19 of this Order, and a third party protective provision means any one of the same;

“Wilton Complex” means the industrial and manufacturing plant shown outlined in blue on the Sembcorp Protection Corridor protective provisions supporting plans;

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic;
- (d) any further particulars provided in response to a request under paragraph 6; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

Separate approvals by third party owners or operators

3.—(1) If the approval of a third party owner or operator is required, sought or obtained under a third party protective provision on any matter to which this Schedule relates, this does not remove any obligation on the undertaker to seek consent from Sembcorp pursuant to this Schedule in respect of that matter.

(2) Where the undertaker seeks consent for works details from a third party owner or operator pursuant to a third party protective provision that also require consent from Sembcorp under this Schedule, the undertaker must provide Sembcorp with—

- (a) the same information provided to the third party owner or operator at the same time, insofar as it is relevant to Sembcorp; and
- (b) a copy of any approval from the third party owner or operator given pursuant to the third party protective provisions, where that third party owner or operator has consented to this approval being shared with Sembcorp, as soon as practicable after such approval is available.

Removal of apparatus

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any estate, interest or right in any land in which any apparatus is placed, the apparatus must not be removed, and any right to maintain that apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation and any necessary rights for the alternative apparatus have been granted to Sembcorp and, where relevant, the owner or operator of the apparatus.

(2) If, the undertaker requires the removal of any apparatus under sub-paragraph 4(1), it must give to the owner or operator in question and Sembcorp written notice of the 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 the undertaker must afford to the owner or operator and Sembcorp the necessary facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus in other land of the undertaker and subsequently for the maintenance of the alternative apparatus.

(3) 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 Sembcorp and the undertaker, acting reasonably and without delay.

(4) The owner or operator or Sembcorp in question must construct and bring into operation the alternative apparatus without unnecessary delay and subsequently remove any apparatus required to be removed by the undertaker under this Schedule, after—

- (a) the parties have agreed the alternative apparatus to be provided or constructed under sub-paragraph (3); and
- (b) the rights and facilities for construction under sub-paragraph (2) have been provided.

(5) The removal of apparatus under sub-paragraph 4(4) can be subject to any reasonable directions given to or requirements imposed on that owner or operator by Sembcorp and the undertaker.

(6) Notwithstanding sub-paragraph (4) , if the undertaker gives notice in writing to the owner or operator in question and Sembcorp that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the owner or operator or Sembcorp, must be executed by the undertaker without unnecessary delay to an appropriate standard and in a safe manner.

(7) If the works are executed by the undertaker in accordance with sub-paragraph (6), the owner or operator of the apparatus and Sembcorp must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.

(8) Nothing in sub-paragraph (6) 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 3,000 millimetres of the apparatus, without the written agreement of Sembcorp in accordance with sub-paragraph (3), such agreement not to be unreasonably withheld or delayed.

(9) 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 materially worse than the rights enjoyed by them in respect of the apparatus to be removed, the arbitrator must make such provision for the payment of compensation by the undertaker to the owner or operator and Sembcorp as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

Consent under this Schedule in connection with Sembcorp operations

5. Before commencing any part of the authorised project which would or may have a materially adverse effect on the operation or maintenance of the Sembcorp operations or access to them, and in all cases where such works are within 3,000 millimetres of the Sembcorp Protection Corridor, the undertaker must submit to Sembcorp the works details for the proposed works and such further particulars as Sembcorp may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

6. The works referred to in paragraph 5 must not be commenced until the works details in respect of those works submitted under that paragraph have been approved by Sembcorp.

7.—(1) Any approval of Sembcorp required under paragraph 6 must not be unreasonably withheld or delayed, and a determination shall be provided within 56 days from the day when the work details were first provided and in the event that Sembcorp does not determine the request by the expiry of those 56 days, they are deemed to have approved the works details.

(2) The approval under sub-paragraph (1) may be given subject to such reasonable requirements as Sembcorp may require to be made for—

- (a) the continuing safety and operational viability of the Sembcorp operations (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by Sembcorp to the undertaker to substantiate the need for these requirements); and
- (b) the requirement for Sembcorp to have reasonable access to the Sembcorp operations.

8. The authorised project must be carried out in accordance with the works details approved under paragraph 6, and any requirements imposed on the approval under paragraph 7, unless otherwise agreed in writing Sembcorp and the undertaker acting reasonably.

Insurance

9.—(1) Before carrying out any works forming part of the authorised project on any part of the Sembcorp Protection Corridor, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place a policy of insurance with a reputable insurer for a sum to be reasonably agreed in writing between the undertaker and Sembcorp, and evidence of that insurance must be provided to Sembcorp on request.

(2) Not less than 90 days before carrying out any works forming part of the authorised project on any part of the Sembcorp Protection Corridor or before proposing to change the terms of the insurance policy, the undertaker must notify Sembcorp of details of the terms or cover of the insurance policy that it proposes to put in place including the proposed level of the cover to be provided.

(3) The undertaker (or any contractor carrying out such works on behalf of the undertaker) must maintain insurance in relation to works or the use of the authorised project affecting the Sembcorp Protection Corridor during the operation of the authorised project at such level as may be reasonably agreed in writing between the undertaker and Sembcorp.

Expenses

10.—(1) Subject to the provisions of this paragraph, the undertaker must pay to the owner or operator in question and Sembcorp (as the case may be) the reasonable and properly incurred expenses incurred by them under this Schedule in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus under any provision of this Schedule;
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;
- (c) the survey of any land, apparatus or works, the watching, inspection, superintendence and monitoring of works or the installation or removal of any temporary works in consequence of the exercise by the undertaker of any power under this Order;
- (d) the design, project management, supervision and implementation of works;
- (e) the negotiation and grant of necessary rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus;
- (f) monitoring the effectiveness of any requirement referred to in paragraph 7 and the installation of any additional protective measures reasonably required in order to deal with any deficiency in the expected level of protection afforded by those requirements; and
- (g) any other work or thing reasonably required in consequence of the exercise by the undertaker of any power under this Order or by the service by the undertaker of any notice, plan, section or description,

within a reasonable time of being notified by the person in question that it has incurred such expenses, such notification to be provided by the owner or operator or Sembcorp (as the case may be).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under this Schedule, that value being calculated after removal.

(3) If in accordance with 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 an arbitrator under paragraph 12 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 from this paragraph would be payable to the owner or operator in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) In determining whether the placing of apparatus of a type or capacity or of particular dimensions or the placing of apparatus at a particular depth, as the case may be, are necessary under sub-paragraph (3), regard must be had to current health and safety requirements, current design standards, relevant good practice and process design specification.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus must 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 cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been determined.

(6) An amount which apart from this sub-paragraph would be payable to a person in respect of works by virtue of sub-paragraph (1) must, if it confers a financial benefit on that person, be reduced by the amount that represents that benefit.

(7) Sembcorp (or an owner or operator as the case may be) shall provide evidence of all such reasonable and properly incurred costs and expenses to which this paragraph applies.

Indemnity

11.—(1) Subject to the rest of this paragraph 11, if by direct reason or in direct consequence of the construction of the authorised project, including without limitation any of the works referred to in paragraph 4, or any subsidence resulting from any of these works, any damage is caused to the Sembcorp operations or property of an owner or operator or Sembcorp (other than apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or there is any interruption in any service provided, or in the supply of any goods, to or by an owner or operator or Sembcorp, or Sembcorp becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay the cost reasonably and properly incurred by the owner or operator in question or Sembcorp (as the case may be) in making good such damage or restoring the service, supply and/or operations; and
- (b) make reasonable compensation to the owner or operator in question or Sembcorp (as the case may be) for any other reasonable expenses, loss, damages, penalty or costs reasonably and properly incurred by that person, by reason or in consequence of any such damage or interruption,

up to the liability cap.

(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 Sembcorp or an owner or operator (or their officers, employees, servants, contractors or agents); and

- (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract, loss of opportunity by Sembcorp or an owner or operator.

(3) The person to whom the liability is owed under sub-paragraph (1) must give the undertaker reasonable notice of any such claim or demand as soon as reasonably practicable after such persons becomes aware of any such claims or demands.

(4) Where a person raises a claim or demand under sub-paragraph (1) which arises from a claim or demand by another person—

- (a) such person shall consult with the undertaker at regular intervals regarding the progress and strategy of any settlement or compromise or of any proceedings necessary to resist the claim or demand and take into account reasonable representations of the undertaker in connection therewith;
- (b) the undertaker shall also, on request, be provided sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which Sembcorp, and any relevant owner or operator must continue to co-operate with the undertaker with regards to such claim or demand;
- (c) no settlement or admission of liability or compromise is to be made without the prior consent of the undertaker which, if it withholds such consent, has the sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which Sembcorp, and any relevant owner or operator must continue to co-operate with the undertaker with regards to such claim or demand.

(5) The person to whom the liability is owed under sub-paragraph (1) must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, damages, and penalties to which this paragraph 11 applies.

(6) If requested to do so by the undertaker, the person to whom liability is owed 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).

(7) The undertaker shall only be liable under this paragraph 11 for claims reasonably incurred by the owner or operator in question or by Sembcorp (as the case may be).

Arbitration

12.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Notices

13. Notices served under this Part shall be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed between the undertaker and Sembcorp and any relevant owner or operator in writing.

PART 20

FOR THE PROTECTION OF NORTH SEA MIDSTREAM PARTNERS

1. For the protection of TGLP, TGPP and NGPL, the following provisions have effect, unless otherwise agreed in writing between the undertaker and TGLP, TGPP and NGPL.

2. In this Part of this Schedule—

“affiliates” means, as to a specified party, any other party that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such specified party. For the purposes of this definition, the concept of “control”, when used with respect to any specified party, shall signify the possession of the power to direct the management and policies of such party, whether through the ownership of voting securities or partnership or other ownership interests;

“design package” means the plans to be provided to the NSMP entity for consultation and agreement in accordance with the design approval process in paragraphs 6 to 9 including sections, drawings, specifications and method statements (where relevant);

“includes” or “including” means includes without limitation or including without limitation, as applicable;

“liability cap” means a level to be agreed between the parties;

“NGPL” means Northern Gas Processing Limited (Company number 2866642) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL;

“NGPL freehold” means the freehold property registered under Land Registry title number CE160127;

“NSMP entity” means together TGLP, TGPP and NGPL and any successor in title or function to the NSMP operations in whole or in part from time to time. Reference to an NSMP entity shall be to one or more of these entities and reference to NSMP entities will be to all of the foregoing, as the context admits;

“NSMP group” means the NSMP entity and its affiliates and its and their directors, officers, employees, contractors, sub-contractors, representatives and agents;

“NSMP operations” means all or any part of operations of the NSMP entities within Teesside from time to time including the ownership and enjoyment of all NSMP rights and NSMP property and the operation of all energy and other infrastructure at or relating to NSMP property, which currently comprises a plant to process gas from the UK North Sea and includes the NSMP pipelines;

“NSMP pipelines” means the low and high pressure pipelines owned and/or operated and/or used by the NSMP entities and/or over which the NSMP entities have rights from time to time within Teesside which are used at various times for the passage of natural gas and/or liquid natural gas and/or other products (including butane, propane and condensate output) and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962;

“NSMP property” means all property owned and/or enjoyed by an NSMP entity within Teesside from time to time, including the TGLP freehold and NGPL freehold itself together with the NSMP rights;

“NSMP rights” means without limitation all rights, benefits and privileges owned or enjoyed by an NSMP entity or in relation to which an NSMP entity has a benefit, whether legal, equitable, contractual or otherwise in existence from time to time relating to the NSMP entities, their business, operations and property including access, utilities, services (including surface water drainage) and all rights relating to the NSMP pipelines;

“parties” means the relevant NSMP entity and the undertaker;

“relevant works” means those parts of the authorised project which would have a materially adverse effect on the operation, safety, or maintenance of or access to the NSMP operations save that for the purposes of paragraphs 3 - 13 and 17 references to relevant works excludes Work No.5;

“TGLP” means Teesside Gas & Liquids Processing (Company number 02767808) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL and any successor in title or function and any successor in title to the TGLP freehold;

“TGLP freehold” means the freehold properties registered under Land Registry title numbers CE160125 and CE168304;

“TGPP” means Teesside Gas Processing Plant Limited (Company number 05740797) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL; and

“Work No.5” means the work described as such in Schedule 1, Part 1 to this Order together with all relevant associated development, further associated development and ancillary works as described in Schedule 1.

3. No relevant works are to be commenced until the design package has been developed and submitted by the undertaker and approved or deemed approved by the NSMP entity in accordance with the design approval process at paragraphs 6 to 9 below.

4. Following approval or deemed approval of the design package, the undertaker will submit any proposed changes (other than those which will have no materially adverse impact on the NSMP operations) to any of the documentation or drawings comprising the approved design package in accordance with the change approval process at paragraphs 10 to 13 below and prior to the changes being implemented. The undertaker shall only implement such changes to the documentation or drawings (as applicable) as are approved or deemed approved in advance by the NSMP entity under the change approval process.

5. The undertaker will design and carry out or will procure that the relevant works are designed and carried out in all respects in accordance with the approved design package (subject to any changes agreed as part of the change approval process).

Approval Process

Part A – Design Approval Process

6. This Part A sets out the approval process to be followed in respect of the consultation and agreement of the design package.

7. The undertaker shall submit the design package to the NSMP entity for consultation, review and approval.

8. Following submission of the design package to the NSMP entity, the parties agree to actively consult with each other so as to achieve approval by the NSMP entity within 28 days of receipt by the NSMP entity of the design package. As part of that consultation the parties agree to adhere to the following—

- (a) the NSMP entity must, within 28 days of the date of receipt of the design package, notify in writing the undertaker—
 - (i) of its approval of all or any part of the design package;
 - (ii) of its disapproval of all or any part of the design package and the reasons for disapproval of any part of the design package; or
 - (iii) any further or other information, data and documents that the NSMP entity reasonably requires, including, without limitation any modified documents or drawings.
- (b) within 28 days of the undertaker providing any further information pursuant to sub-paragraph (a)(iii) above or providing material reasons why any changes requested by the NSMP entity (as part of its response pursuant to sub-paragraph (a)(ii) or (iii)) cannot be implemented or further information cannot be provided, the NSMP entity and the undertaker will actively consult with each other for the purposes of agreeing the design package.
- (c) if agreement on the design package and approval by the NSMP entity cannot be reached before the relevant period pursuant to sub-paragraph (a) or (b) above (or such alternate timescales as are agreed between the parties), the matter will be treated as a dispute to be resolved in accordance with paragraph 19 of this Part unless otherwise agreed by the parties.

9. In the event the NSMP entity does not provide any response to the undertaker in accordance with the timescale set out in paragraph 8(a) or (b) the NSMP entity shall be deemed to have given their approval to the design package.

Part B – Change Approval Process

10. This Part B sets out the approval process to be followed in respect of the consultation and agreement of any changes (other than those which will have no materially adverse impact on the NSMP operations) required to the design package after its approval under the design approval process above.

11. The undertaker shall submit any such change required to the design package (other than those which will have no materially adverse impact on the NSMP operations) (a “change request”) to the NSMP entity for consultation, review and approval.

12. Following submission of the change request to the NSMP entity, the parties agree to actively consult with each other so as to achieve approval by the NSMP entity of the change request within 14 days of receipt by the NSMP entity of the change request. As part of that consultation the parties agree to adhere to the following—

- (a) the NSMP entity must, within 14 days of the date of receipt of the change request, notify in writing the undertaker—
 - (i) of its approval of all or any part of the change request;
 - (ii) of its disapproval of all or any part of the change request including the reasons for disapproval of any part of the change request; or
 - (iii) any further or other information, data and documents that the NSMP entity reasonably requires, including, without limitation any modified documents or drawings;
- (b) within 7 days of the undertaker providing any further information pursuant to sub-paragraph (a)(iii) above, or providing material reasons why any changes requested by the NSMP entity (as part of its response pursuant to sub-paragraph (a)(ii) or (iii)) cannot be implemented or further information cannot be provided, the NSMP entity and the undertaker will actively consult with each other for the purposes of agreeing the change request; and
- (c) if agreement between the parties cannot be reached before the end of the relevant period pursuant to sub-paragraph (a) or (b) above (or such alternate timescales as are agreed between the parties) the matter will be treated as a dispute to be resolved in accordance with paragraph 19 of this Part.

13. In the event the NSMP entity does not provide a response to the undertaker in accordance with the timescales set out in paragraph 12(a) or (b) above, the NSMP entity shall be deemed to have given their approval to the change request.

Part C – Approval Principles

14. Any approval of the NSMP entity required under Part A or Part B of this Part of this Schedule must not be unreasonably withheld or delayed and in considering any request to agree or approve details under Part A or B the NSMP entity must make its decision in accordance with the approval principles set out at paragraphs 15 and 16 of this Part.

15. It shall be only reasonable for the NSMP entity to withhold approval to any relevant works, or to impose conditions on any approval, to the extent reasonably necessary having regard to the requirement for—

- (a) uninterrupted and unimpeded emergency access to the NSMP operations; and
- (b) reasonable access to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the NSMP operations (for the avoidance of doubt where the conditions relate to such matters, a reasoned explanation will be provided by the NSMP entity to substantiate the need for these conditions).

16. The undertaker and the NSMP entity must, in carrying out their obligations in relation to the approval of the design package for the relevant works—

- (a) co-operate with each other with a view to ensuring—
 - (i) the compatibility of the authorised project and the NSMP operations; and
 - (ii) the co-ordination of the construction programming of the authorised project and the NSMP operations; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the authorised project and the NSMP operations, having regard always to the approval principles in paragraph 15.

Compliance with requirements, etc. applying to the NSMP operations

17. Unless otherwise agreed, in undertaking any relevant works in relation to the NSMP operations or exercising any rights relating to or affecting the NSMP operations, the undertaker must comply with such conditions, requirements or regulations relating to uninterrupted operation and access, health, safety, security and welfare as are operated in relation to access to or activities in the NSMP operations, provided the same are provided to the undertaker prior to approval of the design package.

Indemnity

18.—(1) Subject to the rest of this paragraph 18, if by direct reason or in direct consequence of the construction of any of the relevant works any damage is caused to NSMP operations (other than NSMP pipelines, the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or there is any interruption in any service provided, or in the supply of any goods, by the NSMP entity, the undertaker must—

- (a) bear and pay the direct cost reasonably and properly incurred by the NSMP entity in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the NSMP entity for any other expenses, loss, damage, penalty or costs reasonably and properly incurred by the NSMP entity, by direct reason or in direct consequence of any such damage or interruption,

up to the liability cap.

(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 the NSMP entity or its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits, loss of production, loss of business, loss of revenue, loss of contract, or loss of opportunity by NSMP.

(3) The NSMP entity must give the undertaker reasonable notice of any such claim or demand as soon as reasonably practicable after it becomes aware of any such claims or demands.

(4) Where an NSMP entity raises a claim or demand under sub-paragraph (1) which arises from a claim or demand by another person—

- (a) the NSMP entity shall consult with the undertaker at regular intervals regarding the progress and strategy of any settlement or compromise or of any proceedings necessary to resist the claim or demand and take into account reasonable representations of the undertaker in connection therewith;
- (b) the undertaker shall also, on request, be provided sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the claim or demand, during which the NSMP entity must continue to co-operate with the undertaker with regards to such claim or demand;
- (c) no settlement, admission of liability or compromise is to be made without the prior consent of the undertaker, which, if it withholds such consent, has the sole conduct and control of any settlement or compromise or of any proceedings necessary to resist the

claim or demand, during which the NSMP entity must continue to co-operate with the undertaker with regards to such claim or demand.

(5) The NSMP entity must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, damages, and penalties to which the provisions under this paragraph 18 applies.

(6) If requested to do so by the undertaker, the NSMP entity 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).

(7) The undertaker shall only be liable under this paragraph 18 for claims reasonably incurred by the NSMP entity.

Arbitration

19.—(1) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(2) If the dispute is not resolved in accordance with paragraph (1), the dispute shall, unless otherwise agreed in writing, be referred to and finally resolved by arbitration in accordance with article 43 (arbitration) of the Order.

Notices

20. Notices served under this Part shall be served in accordance with article 46 (service of notices) of the Order, unless otherwise agreed between the undertaker and the NSMP entity in writing.

SCHEDULE 12

Article 43

ARBITRATION

Primary objective

1.—(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the dispute between the parties (save as to costs) within four months from the date the arbitrator is appointed pursuant to article 43 (arbitration) of the Order.

(2) Any dispute shall, upon written request by either party, be referred to senior representatives of each party who have authority to settle the dispute, and the parties shall seek to resolve the dispute within 10 days of such request (or such longer period as may be agreed in writing).

(3) The arbitration will be deemed to have commenced when a party (the “claimant”) serves a written notice of arbitration on the other party (the “respondent”).

Time periods

2.—(1) All time periods in these arbitration rules will be measured in business days and this will exclude weekends and bank holidays.

(2) Time periods will be calculated from the day after the arbitrator is appointed which will be either—

- (a) the date the arbitrator notifies the parties in writing of their acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the President of the Law Society.

Timetable

3.—(1) The timetable for the arbitration will be that set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 15 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

- (a) a written statement of claim which describes the nature of the dispute between the parties, the legal and factual issues, the claimant's contentions as to those issues, and the remedy it is seeking; and
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 15 days of receipt of the claimant's statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with—

- (a) a written statement of defence responding to the claimant's statement of claim, its statement in respect of the nature of the dispute, the legal and factual issues in the claimant's claim, its acceptance of any element(s) of the claimant's claim, its contentions as to those element(s) of the claimant's claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and
- (c) any objections it wishes to make to the claimant's statements, comments on the claimant's expert report(s) (if submitted by the claimant) and explanations for the objections.

(4) Within five days of the respondent serving its statements under sub-paragraph (3), the claimant may make a statement of reply by providing both the respondent and the arbitrator with—

- (a) a written statement responding to the respondent's submissions, including its reply in respect of the nature of the dispute, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the respondent's submissions;
- (c) any expert report in response to the respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and
- (e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The arbitrator must make an award on the dispute based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters or a party requests for a hearing.

(2) Either party may, within two days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(3) Within five days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(4) Within ten days of the arbitrator advising the parties that he will hold a hearing, the date and venue for the hearing must be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which he considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 21 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(5) A decision must be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any expert(s) attending the hearing may be asked questions by the arbitrator.

(6) There will be no process of examination and cross-examination of experts, but the arbitrator will invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

- (a) at least 18 days before a hearing, the arbitrator will provide a list of issues to be addressed by the expert(s);
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within ten days of the issues being provided; and
- (c) the form and content of a joint report will be as directed by the arbitrator and must be provided at least three days before the hearing.

(7) Within ten days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(8) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the dispute within four months of the date on which they are appointed, unless both parties otherwise agree to an extension to the date for the award.

(9) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before them attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(10) The arbitrator's award must include reasons. The parties will accept that the extent to which reasons are given is to be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996(a), including the nonmandatory sections, save where modified by these rules.

(2) There will be no discovery or disclosure, except that the arbitrator has the power to order the parties to produce such documents as are reasonably requested by another party no later than the statement of reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales and/or procedure—

- (a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice; and then
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator must notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

(a) 1996 c. 23.

Costs

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Subject to sub-paragraph (3), the arbitrator will award recoverable costs on the general principle that the unsuccessful party bears the costs of the claim, unless otherwise directed by the arbitrator.

(3) The arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as defined within the National Planning Practice Guidance or such other guidance as may replace it.

Confidentiality

7.—(1) Subject to sub-paragraph (2), any arbitration hearing and documentation shall be confidential.

(2) Nothing in this paragraph prevents any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.

Consolidation

8.—(1) Where arbitration has commenced in respect of a dispute and another dispute is subsequently commenced and both disputes involve one or more questions that are substantially the same or related, prior to the appointment of an arbitrator in the subsequent dispute, the undertaker may give written notice requiring—

- (a) the concurrent consideration of the disputes by the same arbitrator; or
- (b) the consolidation of the disputes before the same arbitrator.

(2) Where the undertaker issues a notice under sub-paragraph (1), no arbitrator shall be appointed for the subsequent dispute till such time as an order under sub-paragraph (5)(b) has been issued, and references in this paragraph to “the arbitrator” are to the arbitrator appointed in the earlier dispute either by way of the agreement of the parties to the earlier dispute or by way of appointment by the Secretary of State.

(3) The notice referred to in sub-paragraph (1) must—

- (a) be served on all parties to each of the disputes and, where the arbitrator has already been appointed, on the arbitrator; and
- (b) shall contain reasons as to why the undertaker considers that the disputes involve one or more questions that are substantially the same or related.

(4) Within seven days of receiving the notice referred to in sub-paragraph (1) or the appointment of the arbitrator, whichever is later, the other parties to the disputes may submit to the arbitrator their objections, if any, to the concurrent consideration or consolidation of the disputes, as the case may be.

(5) Within ten days of receipt of the objections under sub-paragraph (4) or, where there are no such objections, within ten days of the notice referred to in sub-paragraph (1) or their appointment, whichever is later, the arbitrator shall—

- (a) where any one or more of the questions are substantially the same or related, order that the disputes are considered concurrently or consolidated, as the case may be; or
- (b) where none of the questions are substantially the same or related, order that there shall be no concurrent consideration or consolidation.

(6) In coming to their decision under sub-paragraph (5) the arbitrator shall take into account the likelihood and consequences of inconsistent decisions in case concurrent consideration or consolidation is not allowed.

(7) From the time of issuance of the notice referred to under sub-paragraph (1) till such time as the arbitrator issues their order under sub-paragraph (5) the time periods in respect of the earlier dispute provided in paragraphs 3 and 4 shall remain in abeyance.

(8) Where the arbitrator issues an order under sub-paragraph (5)(a) directing concurrent consideration, the time periods for the earlier dispute provided in paragraphs 3 and 4 shall remain in abeyance till such time as the subsequent dispute reaches the same stage, and the period in paragraph 4(8) shall be extended by the duration of such abeyance.

(9) Where the arbitrator issues an order under sub-paragraph (5)(a) directing consolidation, the date of such order will be deemed to be the date the arbitrator notifies the parties of their acceptance of an appointment by agreement of the parties for the purposes of paragraph 2(2)(a) and the time periods under paragraphs 3 and 4 for the consolidated dispute shall be calculated accordingly.

(10) Where the arbitrator issues an order under sub-paragraph (5)(a), he may after consultation with the parties, vary the timescales and/or procedure to avoid a breach of the rules of natural justice and to achieve fairness between the parties.

(11) Without prejudice to the generality of sub-paragraph (10), where the arbitrator issues an order under sub-paragraph (5)(a) directing consolidation, each party who was a claimant in every dispute so consolidated shall, for the purposes of paragraph 3, be considered as a claimant, and with respect to such claimant all other parties shall be considered as respondents, save that where a party's role as claimant or respondent differs as between the disputes so consolidated, the arbitrator shall direct how paragraph 3 is to apply as between the parties to the consolidated disputes.

(12) Where the arbitrator issues an order under sub-paragraph (5)(b) the time periods shall cease to be in abeyance, and the period in paragraph 4(8) shall be extended by the duration of such abeyance.

(13) Any information provided by a person under this paragraph 8 shall be treated as arbitration documentation for the purposes of paragraph 7.

SCHEDULE 13

Article 48

DOCUMENTS AND PLANS TO BE CERTIFIED

Table 8

<i>Document name</i>	<i>Document reference</i>	<i>Planning Inspectorate Reference</i>	<i>Revision number</i>	<i>Date</i>
Plans				
Land Plans	2.2		00	September 2026
Works Plans	2.3		00	September 2026
Access and Rights of Way Plans	2.4		00	September 2026
Environmental Statement				
Volume 6 Chapter 1 Introduction	6.1.1		00	September 2026
Volume 6 Chapter 2 Assessment Methodology	6.1.2		00	September 2026
Volume 6 Chapter 3 Site and Surrounding Area	6.1.3		00	September 2026
Volume 6 Chapter 4 Proposed Development	6.1.4		00	September 2026

Volume 6 Chapter 5 Construction Programme and Management	6.1.5	00	September 2026
Volume 6 Chapter 6 Alternatives	6.1.6	00	September 2026
Volume 6 Chapter 7 Planning and Energy Policy	6.1.7	00	September 2026
Volume 6 Chapter 8 Air Quality	6.1.8	00	September 2026
Volume 6 Chapter 9 Noise and Vibration	6.1.9	00	September 2026
Volume 6 Chapter 10 Terrestrial Ecology	6.1.10	00	September 2026
Volume 6 Chapter 11 Freshwater and Marine Ecology	6.1.11	00	September 2026
Volume 6 Chapter 12 Water Environment	6.1.12	00	September 2026
Volume 6 Chapter 13 Landscape and Visual Amenity	6.1.13	00	September 2026
Volume 6 Chapter 14 Greenhouse Gas Emissions	6.1.14	00	September 2026
Volume 6 Chapter 15 Climate Change Resilience	6.1.15	00	September 2026
Volume 6 Chapter 16 Materials and Waste	6.1.16	00	September 2026
Volume 6 Chapter 17 Socioeconomics	6.1.17	00	September 2026
Volume 6 Chapter 18 Traffic and Transport	6.1.18	00	September 2026
Volume 6 Chapter 19 Major Accidents and Disasters	6.1.19	00	September 2026
Volume 6 Chapter 20 Marine Navigation	6.1.20	00	September 2026
Volume 6 Chapter 21 Geology and Soils	6.1.21	00	September 2026
Volume 6 Chapter 22 Cumulative and Combined Effects	6.1.22	00	September 2026
Volume 6 Chapter 23 Summary of Significant Effects	6.1.23	00	September 2026
Volume 6 Project Glossary	6.1.24	00	September 2026
Volume 2 Figures	6.2	00	September 2026
Volume 3 Appendix 1A: Relevant Expertise and Competency	6.3.1	00	September 2026

Volume 3 Appendix 2A: Scoping Report	6.3.2	00	September 2026
Volume 3 Appendix 2B: Scoping Opinion Responses	6.3.3	00	September 2026
Volume 3 Appendix 8A: Air Quality Construction Assessment	6.3.6	00	September 2026
Volume 3 Appendix 8B: Air Quality Operational Assessment	6.3.7	00	September 2026
Volume 3 Appendix 9A: Baseline Noise Survey Report	6.3.8	00	September 2026
Volume 3 Appendix 10A: Preliminary Ecological Appraisal Update	6.3.9	00	September 2026
Volume 3 Appendix 10B: Bat Survey and Acoustic Analysis Report	6.3.10	00	September 2026
Volume 3 Appendix 10C: Breeding Birds Survey Report (Confidential)	6.3.11	00	September 2026
Volume 3 Appendix 10D: Wintering Birds Survey Report (Confidential)	6.3.12	00	September 2026
Volume 3 Appendix 10E: Riparian Mammals Survey Report	6.3.11	00	September 2026
Volume 3 Appendix 10F: Terrestrial Invertebrates Survey Report	6.3.14	00	September 2026
Volume 3 Appendix 11A: Marine Ecology Survey Report	6.3.17	00	September 2026
Volume 3 Appendix 13A: Landscape Baseline and Effects	6.3.19	00	September 2026
Volume 3 Appendix 13D: Landscape and Visual Impact Assessment Methodology	6.3.22	00	September 2026
Volume 3 Appendix 14A Greenhouse Gas Data and Assumptions	6.3.23	00	September 2026
Volume 3 Appendix	6.3.24	00	September 2026

18A: Transport Assessment			
Volume 3 Appendix 18B: Assessment of Construction Phase Effects	6.3.25	00	September 2026
Volume 3 Appendix 18C: Assessment of Operational Phase Effects	6.3.26	00	September 2026
Volume 3 Appendix 20A: Preliminary Navigation Risk Assessment	6.3.28	00	September 2026
Volume 3 Appendix 21A: Ground Conditions – Phase 1 Preliminary Risk Assessment Report	6.3.29	00	September 2026
Volume 3 Appendix 22A: Long list of Other Developments	6.3.30	00	September 2026
Volume 3 Appendix 23A: Commitments Schedule	6.3.31	00	September 2026
Volume 4 Non-Technical summary	6.4	00	September 2026
Framework Plans			
Volume 5 Framework Landscape and Biodiversity Mitigation and Enhancement Strategy	5.8	00	September 2026
Volume 3 Appendix 5A: Framework Construction Environmental Management Plan	6.3.4	00	September 2026
Volume 3 Appendix 5B: Framework Site Waste Management Plan	6.3.5	00	September 2026
Volume 3 Appendix 13C: Framework Lighting Strategy	6.3.21	00	September 2026
Volume 3 Appendix 18D: Framework Construction Traffic Management Plan	6.3.27	00	September 2026
Figure 4.2: Main Site and Wider Site	6.2.6	00	September 2026
Other Documents			
Design Approach Document	5.3.1	00	September 2026
Outline Design	5.3.2	00	September 2026

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation and maintenance of a sustainable aviation fuel facility and a combined heat and power generating station of over 50MWe in the boroughs of Stockton-On-Tees and Redcar and Cleveland, together with associated development and further associated development. This Order imposes requirements in connection with the development and authorises the compulsory acquisition of land (including rights in land) and the right to use land and to override easements and other rights.

This Order also grants a deemed marine licence under Part 4 of the Marine and Coastal Access Act 2009 in connection with the associated development for construction and operation of a quay. The marine licence imposes conditions in connection with the deposits and works for which it grants consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 48 (certification of plans etc.) together with a copy of any guarantee or alternative form of security approved by the Secretary of State pursuant to article 36 (funding) may be inspected free of charge at Billingham Library, Library, Kingsway, Stockton-on-Tees, Billingham TS23 2LN.



www.lighthousegreenfuels.co.uk

