STATUTORY INSTRUMENTS

# 2025 No. 509

# INFRASTRUCTURE PLANNING

## The Viking CCS Carbon Dioxide Pipeline Order 2025

*Made - - - -* *9th April 2025*

*Coming into force* *1st May 2025*

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(**a**) ("the 2008 Act") in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**b**) for an order granting development consent.

The application was examined by a panel of three members appointed by the Secretary of State as Examining Authority ("the Panel") in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

The Panel, having considered the representations made and not withdrawn and the application together with the accompanying documents, has, in accordance with section 74(2)(**d**) of the 2008 Act, submitted a report and recommendation to the Secretary of State.

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(**a**) 2008 c. 29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to, the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264.
(**c**) S.I. 2010/103.
(**d**) Section 74(2) was amended by paragraph 29 of Schedule 13 to the Localism Act 2011 (c. 20).

The Secretary of State has considered the representations made and not withdrawn, and the report and recommendation of the Panel, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(**a**), and has had regard to the documents and matters referred to in section 105(2)(**b**) of the 2008 Act.

The Secretary of State is satisfied that common land and open space within the Order land, when burdened with any new rights authorised for compulsory acquisition under the terms of this Order, will be no less advantageous than it was before such acquisition, to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that, accordingly, section 132(3) of the 2008 Act applies.

The Secretary of State is satisfied that common land within the Order land does not exceed 200 square metres in extent and the giving of other land in exchange for the order right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public, and that, accordingly, section 132(5) of the 2008 Act applies.

The Secretary of State, having decided the application, has determined to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(**c**), 115(**d**), 117(**e**), 120(**f**), 122(**g**), 123(**h**) and 132(**i**) of the 2008 Act, makes the following Order—

# PART 1

## Preliminary

### Citation and commencement

**1.**—(1) This Order may be cited as the Viking CCS Carbon Dioxide Pipeline Order 2025.

(2) This Order comes into force on 1st May 2025.

### Interpretation

**2.**—(1) In this order –

"1961 Act" means the Land Compensation Act 1961(**j**);

"1965 Act" means the Compulsory Purchase Act 1965(**k**);

"1980 Act" means the Highways Act 1980(**l**);

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(**a**) S.I. 2017/572.
(**b**) Section 105(2) was amended by paragraph 50 of Schedule 13 to the Localism Act 2011.
(**c**) Section 114 was amended by paragraph 55 of Schedule 13 to the Localism Act 2011.
(**d**) Section 115 was amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**e**) Section 117 was amended by paragraph 58 of Schedule 13 and paragraph 1 of Schedule 25 to the Localism Act 2011.
(**f**) Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13 to, the Localism Act 2011.
(**g**) Section 122 was amended by paragraph 62 of Schedule 13 to the Localism Act 2011.
(**h**) Ibid.
(**i**) Section 132 was amended by section 24 of the Growth and Infrastructure Act 2013 (c. 27).
(**j**) 1961 c. 33.
(**k**) 1965 c. 56.
(**l**) 1980 c. 66.

"1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**a**);

"1984 Act" means the Road Traffic Regulation Act 1984(**b**);

"1990 Act" means the Town and Country Planning Act 1990(**c**);

"1991 Act" means the New Roads and Street Works Act 1991(**d**);

"2003 Act" means the Communications Act 2003(**e**);

"2008 Act" means the Planning Act 2008(**f**);

"access and rights of way plans" means the plans certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;

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

"AGI" means above ground installation, being a secure compound above ground level containing equipment relating to a pipeline which is necessary for its operation and/or maintenance, including PIG facilities, ancillary infrastructure (including lighting and parking provisions), and electrical and instrumentation kiosks;

"ancillary works" means the ancillary works described in Part 2 of Schedule 1 (ancillary works) and any other works authorised by this Order that are not development within the meaning of section 32 (meaning of "development") of the 2008 Act;

"apparatus" has the same meaning as in section 105(1) (minor definitions) of the 1991 Act;

"authorised development" means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order that is development within the meaning of section 32 of the 2008 Act;

"bank holiday" means a bank holiday in England and Wales under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(**g**);

"block valve" means an intermediate underground valve which can rapidly stem the flow of the carbon dioxide;

"book of reference" means the document certified as the book of reference by the Secretary of State for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"business day" means a day other than a Saturday or Sunday or a bank holiday;

"BVS" means block valve station, being a secure compound above ground level containing equipment relating to the pipeline which is necessary for its operation and/or maintenance, including a block valve, ancillary infrastructure (including lighting, parking provisions), and above ground electrical and instrumentation kiosks;

"carriageway" has the same meaning as in the 1980 Act;

"CEMP" means the construction environment management plan to be approved under requirement 5;

"commence" means beginning to carry out a material operation, as defined in section 155 (when development begins) of the 2008 Act, comprised in or carried out for the purposes of the authorised development other than site preparation works, remediation works, environmental (including archaeological) surveys and investigation, site, utility or soil survey, erection of temporary fencing to site boundaries or marking out of site boundaries, installation of temporary amphibian and reptile fencing, the diversion or laying of services or environmental mitigation measures and any such temporary accesses that may be required in

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(**a**) 1981 c. 66.
(**b**) 1984 c. 27.
(**c**) 1990 c. 8.
(**d**) 1991 c. 22.
(**e**) 2003 c. 21.
(**f**) 2008 c. 29.
(**g**) 1971 c. 80.

association with these, and "commencement", "commenced" and cognate expressions are to be construed accordingly;

"electronic transmission" means a communication transmitted—

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

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

and in this definition "electronic communications network" has the same meaning as in section 32(1) (meaning of electronic communications networks and services) of the 2003 Act;

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

"existing pipeline" means the existing natural gas pipeline, constructed in accordance with a pipeline construction authorisation issued by the Secretary of State on 2nd April 1987, which pipeline is to be repurposed under this Order;

"general arrangement plans" means the Immingham Facilities Plot Plan, the Theddlethorpe Facility Plot Plan, the Washingdales Lane Block Valve Station plan, the Thoroughfare Block Valve Station plan, and the Louth Road Block Valve Station plan certified as the general arrangement plans by the Secretary of State for the purposes of this Order;

"highway", "highway authority" and "local highway authority" have the same meaning as in the 1980 Act and "highway" includes part of a highway;

"land plans" means the document certified as the land plans by the Secretary of State for the purposes of this Order;

"limits of deviation" means the limits of deviation referred to in article 6 (limits of deviation);

"maintain" includes inspect, assess, repair, test, cleanse, adjust, landscape, preserve, make safe, divert or alter the authorised development, and remove, clear, reconstruct, re-new, re-lay, re-furbish, improve, replace, dismantle, demolish, abandon or decommission any part of the authorised development, provided these activities do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement, but must not include the renewal, re-laying, reconstruction or replacement of the entirety of the new pipeline; and any derivative of "maintain" is to be construed accordingly;

"new pipeline" means the pipeline to be constructed and operated as part of the authorised development forming Work Nos. 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 43;

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

"Order limits" means the limits shown on the works plans within which the authorised development may be carried out;

"outline archaeological written scheme of investigation" means the document certified as the outline archaeological written scheme of investigation by the Secretary of State for the purposes of this Order;

"outline construction environment management plan" means the document certified as the outline construction environment management plan by the Secretary of State for the purposes of this Order;

"outline construction traffic management plan" means the document certified as the outline construction traffic management plan by the Secretary of State for the purposes of this Order;

"outline landscape and ecological management plan" means the document certified as the outline landscape and ecological management plan by the Secretary of State for the purposes of this Order;

"outline operational phase mitigation plan" means the document certified as the outline operational phase mitigation plan by the Secretary of State for the purposes of this Order;

"outline surface water drainage strategy" means the document certified as the outline surface water drainage strategy by the Secretary of State for the purposes of this Order;

"the permit scheme" means the Lincolnshire Permit Scheme for Road Works and Street Works Order 2016, which scheme is made under Part 3 of the Traffic Management Act 2004(**a**);

"PIG" means pipeline inspection gauge, a device used for internal maintenance, cleaning, and monitoring of a pipeline;

"pipeline works " means Work Nos. 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 43 as described in Part 1 of Schedule 1 (authorised development);

"relevant planning authority" means in any given provision of this Order (including the requirements), the local planning authorityfor the area of land to which the provision relates is situated;

"requirements" means those matters set out in Schedule 2 (requirements) to this Order and a reference to a numbered requirement is a reference to the requirement imposed by the corresponding numbered paragraph of that Schedule;

"statutory undertaker" means any person falling within section 127(8) (statutory undertakers' land) of the 2008 Act and a public communications provider as defined in section 151 (interpretation of chapter 1) of the 2003 Act;

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

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act(**c**);

"Theddlethorpe Facility" means an AGI for the control and interface of the pipeline to the Theddlethorpe facility, within the location shown as Work No. 44 on Sheet 35 of the Works Plans;

"traffic authority" has the same meaning as in the 1984 Act;

"trenchless installation techniques" means the installation of the new pipeline and/or associated electronic communications cabling by means of boring techniques including horizontal directional drilling, auger boring and micro-tunnelling;

"tribunal" means the Lands Chamber of the Upper Tribunal;

"undertaker" means, subject to article 7 (benefit of the order), Chrysaor Production (U.K.) Limited, incorporated under company number 00524868 and having its registered office at 151 Buckingham Palace Road, London, England SW1W 9SZ;

"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;

"works plans" means the plan or plans certified as such by the Secretary of State for the purposes of this Order.

(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 creation of rights 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, areas and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

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(**a**) 2004 c. 18.
(**b**) Section 48 was amended by section 124 of the Local Transport Act 2008 (c. 26).
(**c**) "Street authority" is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the relevant plans.

(6) References in this Order to numbered works are references to the works as numbered in Part 1 of Schedule 1 (authorised development).

(7) References to any statutory body includes that body's successor bodies from time to time that have jurisdiction over the authorised development.

(8) In this Order, the expression "includes" is to be construed without limitation.

# PART 2

## Principal Powers

### Development consent etc. granted by the Order

**3.**—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted—

(a) development consent for the authorised development; and

(b) consent for the ancillary works,

to be carried out within the Order limits.

### Operation and use of the authorised development

**4.**—(1) The undertaker may at any time operate and use the authorised development and the existing pipeline except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) Subject to the provisions of this Order the undertaker is granted consent to use the existing pipeline for the conveyance of carbon dioxide.

(3) The consent granted under paragraphs (1) and (2) does not relieve the undertaker from compliance with any obligation under the Pipeline Safety Regulations 1996(**a**).

### Power to maintain the authorised development

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

(2) Paragraph (1) does not authorise diversion of the authorised development—

(a) outside the limits of deviation; or

(b) which would result in the authorised development varying from the description in Schedule 1 (authorised development).

### Limits of deviation

**6.**—(1) In carrying out or maintaining the authorised development, the undertaker may—

(a) deviate the works laterally within the extent of the limits of deviation for those works shown on the works plans;

(b) deviate the pipeline works vertically upwards to a limit of not less than 1.2 metres below the surface of the ground (except where ground conditions make compliance with this upwards limit impracticable in which case the upwards limit is 0.7 metres below the surface of the ground);

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(**a**) S.I. 1996/825.

(c) in respect of those sections of the pipeline works which may be constructed and installed using trenchless installation techniques, deviate the pipeline works vertically downwards to such extent as may be found necessary or convenient subject to a maximum depth of 20 metres;

(d) deviate works other than the pipeline works vertically—

(i) upwards or above ground level to the height limits set for those works in Schedule 2 (requirements); and

(ii) downwards to any extent as may be found necessary or convenient.

(2) The maximum limits of vertical deviation specified in paragraphs (1)(b), (c) and (d) do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects to those identified in the environmental statement.

**Benefit of the Order**

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

(2) Subject to paragraph (3), 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 and such related statutory rights as may be agreed between the undertaker and the transferee; and

(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 and such related statutory rights as may be so agreed.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (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.

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

(5) Where an agreement has been made in accordance with paragraph (2), references in this Order to the undertaker, except in paragraph (3), shall include references to the transferee or the lessee.

# PART 3

## Streets

**Application of the permit scheme**

**8.**—(1) The permit scheme applies to the construction and maintenance of the authorised development and will be used by the undertaker in connection with the exercise of any powers conferred by this Part.

(2) For the purposes of this Order—

(a) a permit may not be refused or granted subject to conditions which relate to the imposition of moratoria; and

(b) a permit may not be granted subject to conditions where compliance with those conditions would constitute a breach of this Order or where the undertaker would be unable to comply with those conditions pursuant to the powers conferred by this Order.

(3) References to moratoria in paragraph (2) mean restrictions imposed under section 58 (restriction on works following substantial road works) or section 58A (restriction on works following substantial street works) of the 1991 Act.

(4) Without restricting the undertaker's recourse to any alternative appeal mechanism which may be available under the permit scheme or otherwise, the undertaker may appeal any decision to refuse to grant a permit or to grant a permit subject to conditions pursuant to the permit scheme in accordance with the mechanism set out in Part 2 of Schedule 2 (requirements) of this Order.

**Street works**

**9.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Part 1 (streets subject to permanent street works) and Part 2 (streets subject to temporary street works) of Schedule 3 (streets subject to street works) as is within the Order limits and may without the consent of the street authority—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) tunnel 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 or under the street;

(e) maintain, alter or renew apparatus in or under the street or change its position;

(f) demolish, remove, replace and relocate any street furniture within the street;

(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) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Without limiting the scope of the powers conferred by paragraph (1) but subject to paragraph (4), the undertaker may, for the purposes of the authorised development, or for purposes ancillary to it, enter on so much of any other street whether or not within the Order limits, for the purposes of carrying out the works set out in paragraph (1).

(4) The powers conferred by paragraph (3) must not be exercised without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld or delayed.

(5) If a street authority that receives an application for consent under paragraph (4) fails to notify the undertaker of its decision within 42 days beginning with the date on which the application was received by that street authority, that authority will be deemed to have granted consent.

(6) In this article "apparatus" has the same meaning as in Part 3 of the 1991 Act save that "apparatus" includes pipelines (and parts thereof), fibre optic or other telecommunication cables, aerial markers, cathodic protection test posts, field boundary markers, monitoring kiosks, and electricity cabinets.

**Power to alter layout, etc. of streets**

**10.**—(1) The undertaker may for the purposes of carrying out the authorised development temporarily alter the layout of, or carry out any works in, a street specified in column (2) Part 1 (streets subject to permanent street works) of Schedule 3 (streets subject to street works) or column (2) Part 2 (streets subject to temporary street works) of Schedule 3 (streets subject to street

works) in the manner specified in relation to that street in column (3) of the relevant Part of that Schedule.

(2) Without limitation on the specific powers conferred by paragraph (1), but subject to paragraph (4), the undertaker may, for the purposes of constructing and maintaining the authorised development, permanently or temporarily alter the layout of any street (and carry out works ancillary to such alterations) whether or not within the Order limits and the layout of any street having a junction with such a street and, without limiting the scope of this paragraph, the undertaker may—

(a) increase the width of the carriageway of the street by reducing the width of any footpath, footway, cycle track, central reservation or verge within the street;

(b) alter the level or increase the width of any such street, footpath, footway, cycle track, central reservation or verge;

(c) reduce the width of the carriageway of the street;

(d) execute any works to widen or alter the alignment of pavements;

(e) make and maintain crossovers and passing places;

(f) execute any works of surfacing or resurfacing of the highway;

(g) carry out works for the provision or alteration of parking places, loading bays and cycle tracks;

(h) execute any works necessary to alter or provide facilities for the management and protection of pedestrians;

(i) execute any works to provide or improve sight lines required by the highway authority;

(j) execute and maintain any works to provide hard and soft landscaping;

(k) carry out re-lining and placement of new temporary markings; and

(l) remove and replace kerbs and flume ditches for the purposes of creating permanent and temporary accesses.

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

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld or delayed.

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was received by that street authority, it is deemed to have granted consent.

**Application of the 1991 Act**

**11.**—(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—

(a) the carrying out of works under articles 9 (street works) and 10 (power to alter layout, etc. of streets);

(b) the temporary restriction, temporary alteration or temporary diversion of a public right of way by the undertaker under article 12 (temporary restriction of public rights of way); and

(c) the temporary restriction, temporary alteration or temporary diversion of a street by the undertaker under article 13 (temporary restriction of use of streets),

whether or not the carrying out of the works or the restriction, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act(**a**) 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);

(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 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 restriction, 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 (power to give directions as to timing of street works);

(b) section 56A (power to give directions as to placing of apparatus);

(c) section 58 (restriction on works following substantial road works);

(d) section 58A (restriction on works following substantial street works);

(e) section 61 (protected streets); and

(f) Schedule 3A (restriction on works following substantial street works).

**Temporary restriction of public rights of way**

**12.**—(1) The undertaker may, in connection with the carrying out of the authorised development, temporarily restrict, prevent use of or close each of the public rights of way specified in column (2) of Schedule 5 (public rights of way to be temporarily restricted) to the extent specified in column (3), by reference to the numbered points shown on the access and rights of way plans.

(2) The public rights of way specified in Schedule 5 (public rights of way to be temporarily restricted) may not be temporarily closed under this article unless an alternative public right of way is first provided by the undertaker to the reasonable satisfaction of the relevant local highway authority.

(3) The relevant alternative route provided under paragraph (2) will be subsequently maintained by the undertaker until the re-opening of the relevant public right of way specified in paragraph (1).

(4) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) If a highway authority which receives an application for confirmation that an alternative public right of way is satisfactory under paragraph (2) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was received by that highway authority, it is deemed to have granted consent.

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

**Temporary restriction of use of streets**

**13.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, alter or divert any street and may for any reasonable time—

(a) divert the traffic or a class of traffic from the street; and

(b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limiting paragraph (1), the undertaker may use any street temporarily closed under the powers conferred by this article within the Order limits as a temporary working site.

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

(4) The undertaker must not temporarily close, alter, divert or use as a temporary working site any street other than those referred to in Schedule 3 (streets subject to street works) and Schedule 5 (public rights of way to be temporarily restricted) without the consent of the street authority, which may attach reasonable conditions to the consent, but such consent is not to be unreasonably withheld or delayed.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was received by that street authority, it is deemed to have granted consent.

**Access to works**

**14.**—(1) The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) Subject to paragraph (3), the power set out in paragraph (1) may not be exercised without the undertaker having first obtained the consent of the street authority, which may attach reasonable conditions to the consent, but such consent is not to be unreasonably withheld or delayed following consultation by the street authority with the relevant planning authority.

(3) If the street authority which has received an application for consent under paragraph (2) fails to notify the undertaker of its decision before the end of the 42 day period beginning with the date on which the application was received by that street authority, it is deemed to have granted consent.

(4) The consent of the street authority is not required for the formulation, laying out or improvement of a new or existing means of access as described in Schedule 1 (authorised development) and Schedule 4 (new means of access).

**Agreements with street authorities**

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

(a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;

(b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;

(c) any stopping up, alteration or diversion of a street authorised by this Order; or

(d) the carrying out in the street of any of the works referred to in article 9 (street works).

(2) Such an 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;

(b) include an agreement between the undertaker and street authority specifying a reasonable time for completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

**Use of private roads**

**16.**—(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, or in connection with, the construction and maintenance of the authorised development.

(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 32 (temporary use of land for carrying out the authorised development) and article 33 (temporary use of land for maintaining the authorised development) is capable of being exercised under those articles in relation to that land.

**Traffic regulation**

**17.**—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which may attach reasonable conditions to any consent but which consent must not be unreasonably withheld or delayed, the undertaker may at any time, for the purposes of, or in connection with, the construction of the authorised development—

(a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;

(b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;

(c) authorise the use as a parking place of any road;

(d) make provision as to the direction or priority of vehicular traffic on any road; and

(e) permit or prohibit vehicular access to 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 consult the chief officer of police and seek the consent of the traffic authority in whose area the road is situated by complying with the provisions of paragraph (3).

(3) The undertaker must not exercise the powers conferred by paragraph (1) unless it has—

(a) given not less than 42 days' notice in writing of its intention so to do to the chief officer of police and 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 as provided for in sub-paragraph (a).

(4) Any prohibition, restriction or other provision made by the undertaker under paragraph (1)—

(a) has effect as if duly made by, as the case may be—

(i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

(b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(**a**).

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (1) at any time.

(6) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(7) If the traffic authority fails to notify the undertaker of its decision within 42 days of receiving an application for consent under paragraph (1) the traffic authority is deemed to have granted consent.

# PART 4

## Supplemental powers

### Discharge of water

**18.**—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may inspect, 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 pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(**b**).

(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 carry out any works to 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 such 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 not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must, unless otherwise authorised under the provisions of this Order or any environmental permit relating to the discharge of water in connection with the authorised development, take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

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(**a**) 2004 c. 18.

(**b**) 1991 c. 56. Section 106 was amended by sections 35(8)(a) and 43(2) of, and paragraph 1 of Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and section 32 of, and paragraph 16(1) of Schedule 3 to, the Flood and Water Management Act 2010 (c. 29).

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016(**a**) in respect of a water discharge activity or groundwater permit.

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**b**) have the same meaning as in that Act.

(9) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 42 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

**Maintenance of drainage works**

**19.**—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article "drainage" has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(**c**).

**Authority to survey and investigate the land**

**20.**—(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 development and—

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes or pits 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 environmental, utility 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.

(2) The power conferred by paragraph (1) includes without prejudice to the generality of that paragraph the power to take, and process, samples of or from any of the following found on, in or over the land—

(a) water;

(b) air;

(c) soil or rock;

(d) its flora;

(e) bodily excretions, or dead bodies, of non-human creatures; or

(f) any non-living thing present as a result of human action.

(3) 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.

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(**a**) S.I. 2016/1154.
(**b**) 1991 c. 57.
(**c**) 1991 c. 59.

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

(a) must, if so required before or after 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 or pits.

(5) No trial holes or pits 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,

which authority may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld or delayed.

(6) 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 as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) If either a highway authority or a street authority which receives an application for consent under paragraph (5) fails to notify the undertaker of its decision within 42 days of receiving the application for consent, that authority is deemed to have granted consent.

(8) 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.

**Protective work to buildings**

**21.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the day on which that part of the authorised development first becomes operational.

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage, and place on, leave on and remove from the building any apparatus and equipment for use in connection with the survey.

(4) For the purpose of carrying out protective works to a building under this article, the undertaker may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land that is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

(a) a power under paragraph (1) to carry out protective works to a building;

(b) a power under paragraph (3) to enter a building and land within its curtilage;

(c) a power under paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a power under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise the power and, in a case falling within sub-paragraph (a), (c) or (d), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 48 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of the powers.

(8) Where—

(a) protective works are carried out under this article to a building; and

(b) within the period of five years beginning with the day on which the part of the authorised development carried out in the vicinity of the building first becomes operational it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

(12) In this article "protective works", in relation to a building, means—

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused to the building by the carrying out, maintenance or use of the authorised development; and

(b) any works the purpose of which is to remedy any damage that has been caused to the building by the carrying out, maintenance or use of the authorised development.

# PART 5

## Powers of Acquisition

### Compulsory acquisition of land

**22.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required to carry out or to facilitate, or is incidental to, the authorised development.

(2) This article is subject to article 23 (time limit for exercise of authority to acquire land compulsorily), paragraph (2) of article 24 (compulsory acquisition of rights and restrictive covenants), article 29 (acquisition of subsoil or airspace only), article 31 (rights under or over streets), article 32 (temporary use of land for carrying out the authorised development), article 34 (statutory undertakers) and article 41 (Crown rights).

**Time limit for exercise of authority to acquire land compulsorily**

**23.**—(1) After the end of the period of five years beginning on the day on which this Order is made—

(a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act(**a**) as applied by article 28 (application of the 1981 Act).

(2) The authority conferred by article 32 (temporary use of land for carrying out the authorised development) 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.

(3) The applicable period for the purposes of section 4 of the 1965 Act (time limit for giving notice to treat) and section 5A of the 1981 Act (time limit for general vesting declaration) (as modified by this Order) is the period of five years beginning on the day on which this Order is made.

**Compulsory acquisition of rights and restrictive covenants**

**24.**—(1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 22 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) Subject to articles 27 (private rights), 34 (statutory undertakers) and 41 (Crown rights), in the case of the Order land specified in column (1) of Schedule 7 (land in which only new rights etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of new rights in the land or the imposition of restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 4(9) of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights) 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 creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights or the imposition of restrictive covenants under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights or impose restrictive covenants to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

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(**a**) Section 4 was amended by sections 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

**Statutory authority to override easements and other rights**

**25.**—(1) The carrying out or use of the authorised development 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, despite it involving—

(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 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 or use of the authorised development and the operation of section 158 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.

(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.

**Compulsory acquisition of land: minerals**

**26.** 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) paragraph 8(3) is not incorporated;

(b) for "acquiring authority" substitute "undertaker";

(c) for "undertaking" substitute "authorised development"; and

(d) for "compulsory purchase order" substitute "this Order".

**Private rights**

**27.**—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 22 (compulsory acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 22—

(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) (powers of entry) of the 1965 Act(**a**),

whichever is the earlier.

(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 24 (compulsory acquisition of rights and restrictive covenants) 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**) Section 11(1) was amended by sections 186 to 188 of the Housing and Planning Act 2016 (c. 22) and Schedule 4 to the Acquisition of Land Act 1981 (c. 67).

(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 earlier.

(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 as if it were a dispute under Part 1 (determination of questions of disputed compensation) 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.) of the 2008 Act or article 34 (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 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 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) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

**Application of the 1981 Act**

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

(2) The 1981 Act, as applied, 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) In section 5(2) (earliest date for execution of declaration) omit the words from "and this subsection" to the end.

(5) In section 5B(1) (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 Planning Act 2008 (legal challenges relating to applications for orders granting development consent)".

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

(7) In section 7 (constructive notice to treat), in subsection (1)(a) omit "(as modified by section 4 of the Acquisition of Land Act 1981)".

(8) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(9) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and as modified by article 30 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of the land under this Order.

**Acquisition of subsoil or airspace only**

**29.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil or airspace of the land referred to in paragraph (1) of article 22 (compulsory acquisition of land) and paragraph (1) of article 24 (compulsory acquisition of rights and restrictive covenants) 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 or airspace of land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 30 (modification of Part 1 of the 1965 Act) or paragraph 4(9) of Schedule 8 as the case may be) from applying where the undertaker acquires any part of, or rights in a cellar, vault, arch or other construction forming part of a house, building or manufactory.

(4) 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 to the 1965 Act (as modified by article 30 (modification of Part 1 of 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) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

**Modification of Part 1 of the 1965 Act**

**30.**—(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) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008".

(3) In section 11A (powers of entry: further notices of entry)—

(a) in subsection (1)(a), after "land" insert "under that provision" and;

(b) in subsection (2), after "land" insert "under that provision".

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

(a) for paragraphs 1(2) and 14(2) substitute—

"(2) But see article 29(3) (acquisition of subsoil or airspace only) of The Viking CCS Carbon Dioxide Pipeline Order 2025 which excludes the acquisition of subsoil only from this Schedule"; and

(b) after paragraph 29 insert—

# "PART 4

## INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 21 (protective work to buildings), article 32 (temporary use of land for carrying out the authorised development) or article 33 (temporary use of land for maintaining the authorised development) of The Viking CCS Carbon Dioxide Pipeline Order 2025.".

### Rights under or over streets

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

(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 appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing of 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 development

**32.**—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 23 (time limit for exercise of authority to acquire land compulsorily)—

(a) enter on and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 6 (land of which only temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule;

(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 (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;

(b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from the land referred to in sub-paragraph (a);

(c) construct temporary works (including the provision of means of access), structures and buildings on the land referred to in sub-paragraph (a);

(d) use the land referred to in sub-paragraph (a) for the purposes of a working site with access to the working site in connection with the authorised development;

(e) construct any works on the land referred to in sub-paragraph (a) as are mentioned in Schedule 1 (authorised development); and

(f) carry out mitigation works required pursuant to the requirements in Schedule 2 (requirements).

(2) 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 and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

(3) The undertaker 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 development specified in relation to that land in column (4) of Schedule 6 (land of which only temporary possession may be taken); or

(b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by 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, 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; but the undertaker is not required to—

(a) replace a building or structure removed under this article;

(b) remove any drainage works installed by the undertaker under this article;

(c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 3 (streets subject to streets works);

(d) restore the land on which any permanent works (including ground strengthening works) have been constructed under paragraph (1)(e); or

(e) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) 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 powers 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, is to be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) 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 development, 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 to be precluded from—

(a) acquiring new rights over any part of that land under article 24 (compulsory acquisition of rights and restrictive covenants); or

(b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 29 (acquisition of subsoil or airspace only).

(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 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) of the 2008 Act.

(11) Paragraph (1) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 22 (compulsory acquisition of land) or article 24 (compulsory acquisition of rights and restrictive covenants).

**Temporary use of land for maintaining the authorised development**

**33.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

(a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and

(b) 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 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 development for which possession of the land was taken.

(5) 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.

(6) 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.

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

(8) 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 maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(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) In this article "the maintenance period", in relation to any part of the authorised development, means the period following completion of that part of the authorised development until the commencement of decommissioning.

(12) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

(a) the authorised development or any of its parts;

(b) the public; or

(c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practicable in the circumstances.

**Statutory undertakers**

**34.** Subject to the provisions of Schedule 9 (protective provisions) the undertaker may—

(a) acquire compulsorily, 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 described in the book of reference; and

(b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

**Recovery of costs of new connections**

**35.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 34 (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 34 (statutory undertakers), any person who is—

(a) the owner or occupier of premises the drains of which communicated with that 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 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 2003 Act(**a**); and

"public utility undertaker" has the same meaning as in the 1980 Act.

# PART 6

## Miscellaneous and general

**Application and modification of legislative provisions**

**36.**—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation for the purpose of, or in connection with, the construction of the authorised development or any maintenance of any part of the authorised development—

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(**a**) 2003 c. 21.

(a) regulation 12 (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**a**) in respect of a flood risk activity only;

(b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the appropriate agency) to the Water Resources Act 1991(**b**);

(c) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(**c**);

(d) sections 23 (prohibition on obstructions etc. in watercourses) and 30 (authorisation of drainage works in connection with a ditch) of the Land Drainage Act 1991; and

(e) the provisions of the Neighbourhood Planning Act 2017(**d**) in so far as they relate to the temporary possession of land under articles 32 (temporary use of land for carrying out the authorised development) and 33 (temporary use of land for maintaining the authorised development).

(2) Notwithstanding the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 (meaning of "development") of the Community Infrastructure Levy Regulations 2010(**e**) any building comprised in the authorised development must be deemed to be—

(a) a building into which people do not normally go; or

(b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

**Defence to proceedings in respect of statutory nuisance**

**37.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(**f**) in relation to a nuisance falling within paragraphs (g) (noise emitted from premises so as to be prejudicial to health or a nuisance) and (ga) (noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road) 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 the defendant shows that the nuisance—

(a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development 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(**g**); or

(b) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development; or

(c) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(d) is a consequence of complying with a requirement of this Order and that it cannot reasonably be avoided; or

(e) is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

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(**a**) S.I. 2016/1154.
(**b**) 1991 c. 57.
(**c**) 1991 c. 59. Section 66 was amended by paragraph 38 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and section 86 of the Water Act 2014 (c. 21).
(**d**) 2017 c. 20.
(**e**) S.I. 2010/948.
(**f**) 1990 c. 43.
(**g**) 1974 c. 40.

(2) For the purposes of paragraph (1) above, compliance with the controls and measures relating to noise described in the CEMP will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.

(3) Where a relevant planning authority is acting in accordance with section 60(4) and section 61(4) of the Control of Pollution Act 1974 in relation to the construction of the authorised development then the local authority must also have regard to the controls and measures relating to noise referred to in the CEMP approved under Schedule 2 (requirements).

(4) Section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

(5) In this article "premises" has the same meaning as in section 79 of the Environmental Protection Act 1990.

**Application of landlord and tenant law**

**38.**—(1) This article applies to any agreement entered into by the undertaker under article 7 (benefit of the Order) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(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) No enactment or rule of law to which paragraph (2) applies is to apply 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.

**Felling or lopping of trees and removal of hedgerows**

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

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must—

(a) do no unnecessary damage to any tree, shrub or hedgerow; and

(b) 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 as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits.

(5) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(**a**).

**Trees subject to Tree Preservation Orders**

**40.**—(1) The undertaker may fell, lop or prune any part of any tree which is within, over or under land within the Order limits or cut back its roots, if it reasonably believes it to be necessary in order to prevent the tree—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any damage arising from such activity; and

(b) the duty in section 206(1) (replacement of trees) of the 1990 Act will not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

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

**Crown rights**

**41.**—(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 otherwise than by or on behalf of the Crown.

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

**Protective provisions**

**42.** Schedule 9 (protective provisions) has effect.

**Planning legislation**

**43.** —(1) 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.

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(**a**) S.I. 1997/1160.

(2) Any planning permission which has been initiated prior to the commencement of the authorised development pursuant to this Order may continue to be lawfully implemented thereafter notwithstanding any physical incompatibility with the authorised development or inconsistency with any provision of this Order.

(3) As from the date on which the authorised development is commenced, any conditions of a planning permission granted pursuant to Part 3 (control over development) of the 1990 Act (whether express or otherwise) which relate to land within the Order limits or land adjacent to the Order limits cease to have effect to the extent they are inconsistent with the authorised development or with anything done or approved under the requirements in Schedule 2 (requirements).

(4) As from the date of this Order where planning permission (whether express or otherwise) is granted (whether prior to the date of this Order or after) pursuant to Part 3 of the 1990 Act in respect of land within the Order limits for development not forming part of the authorised development, the carrying out of development pursuant to such planning permission is not to operate to prevent the undertaker from carrying out further works for the development of the authorised development pursuant to the terms of this Order.

(5) Nothing in this Order restricts the undertaker from seeking or implementing, or the relevant planning authority from granting, planning permission for development within the Order limits.

**Certification of plans, etc.**

**44.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

(a) the access and rights of way plans (consisting of a key plan and sheets 1 to 36 inclusive) (document number 4.20);

(b) the land plans (consisting of a key plan and sheets 1 to 36 inclusive) (document number 4.3);

(c) the crown land plans (consisting of a key plan and sheets 1 to 2 inclusive) (document number 4.4);

(d) the special category land plans (consisting of a key plan and sheets 1 to 4 inclusive) (document number 4.5);

(e) the works plans (consisting of a key plan and sheets 1 to 36 inclusive) (document number 4.2);

(f) the general arrangement plans comprising the Immingham Facilities Plot Plan (document number 4.6); Theddlethorpe Facility Plot Plan (document number 4.7); Washingdales Lane Block Valve Station plan (document number 4.14); Thoroughfare Block Valve Station plan (document number 4.15); Louth Road Block Valve Station plan (document number 4.16);

(g) the book of reference (document number 3.3);

(h) the environmental statement (consisting of 4 volumes) (document numbers 6.1 to 6.4.20.1);

(i) the outline construction environment management plan (document number 6.4.3.1);

(j) the outline landscape and ecological management plan (document number 6.8);

(k) the outline construction traffic management plan (document number 6.4.12.5);

(l) the outline drainage strategy (document number 6.4.11.3);

(m) the outline archaeological written scheme of investigation (document number 6.4.8.3);

(n) outline operational phase mitigation plan (document number 6.4.3.6); and

(o) any other plans or documents referred to in this Order as requiring certification,

for certification that they are true copies of the documents referred to in this Order.

(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.

**Service of notices**

**45.**—(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 (5) 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.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(**a**) 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 a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the 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 any 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 name or 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 a 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) the notice or document is 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 7 days of receipt that the recipient requires a paper copy of all or 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 electronic transmission given 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.

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(**a**) 1978 c. 30.

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

(10) In this article "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

**No double recovery**

**46.** 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.

**Requirements, appeals, etc.**

**47.**—(1) Where an application is made to, or a request is made of, the relevant planning authority or any other relevant person for any agreement or approval required or contemplated by any of the provisions of this Order, such agreement or approval must, if given, be given in writing and must not be unreasonably withheld or delayed.

(2) Part 2 (procedure for discharge of requirements) of Schedule 2 has effect in relation to all agreements or approvals granted, refused or withheld in relation to the requirements included in Part 1 of that Schedule.

**Arbitration**

**48.**—(1) Any difference under any provision of this Order, unless otherwise provided for, is be referred to and settled in arbitration in accordance with the rules at Schedule 10 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

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

Signed by authority of the Secretary of State for Energy Security and Net Zero

*David Wagstaff*
Deputy Director Energy Infrastructure Planning
Department for Energy Security and Net Zero

9th April 2025

# SCHEDULE 1

Article 2

## PART 1

### Authorised development

A nationally significant infrastructure project as defined in sections 14 and 21 of the 2008 Act, comprising—

*Work No.01* – Construction of AGI at the Immingham facility comprising equipment for the control of the authorised development, within the location shown on Sheet 1 of the Works Plan, including:

(a) a fenced compound area containing;
    (i) security lighting;
    (ii) parking;
    (iii) cathodic protection measures (including grounded);
    (iv) CCTV cameras, intrusion detection systems and access control systems;
    (v) PIG launcher and receiver facilities (including a projectile blast wall);
    (vi) local equipment room;
    (vii) control mechanisms and electrical and instrumentation kiosk;
    (viii) venting system including vent pipework, valves and vent stack;
    (ix) analyser house; and
    (x) supporting utilities;
(b) above ground control boxes;
(c) above/below ground pipework and isolation valves;
(d) below ground cables and cable ducts;
(e) hard standing;
(f) drainage works, including creation of connections to existing drainage system; and
(g) landscaping.

*Work No.02* – Construction of a 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.1km length between Work No. 1 and Work No. 3 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including pipeline installation in existing crossing sleeve, on existing pipe racks, trenchless installation technique pit works, the creation of reception pits, and launch pits, and installation of concrete-lined sleeve tunnels;
(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
(c) installation of buried fibre optic cables for transfer of electronic communications;
(d) construction of a haul road, temporary construction accesses and working areas and laydown area;
(e) reinstatement, ecological and environmental works; and
(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 1 of the Works Plan.

*Work No.03* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.2km length between Work No.1 and Work No.4 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;
(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
(c) installation of buried fibre optic cables for transfer of electronic communications;
(d) construction of a haul road, temporary construction accesses and working areas and laydown area;
(e) reinstatement, ecological and environmental works; and
(f) drainage works including creation of connections to existing drainage system

as shown on Sheets 1 and 2 of the Works Plan.

*Work No.04* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1km length between Work No. 3 and Work No. 5 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of buried fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 2 of the Works Plan.

*Work No.05* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 300 metres length between Work No. 2, Work No. 4, and Work No. 6 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of buried fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 2 of the Works Plan.

*Work No.06* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.4km length between Work No. 5 and Work No. 8 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 3 of the Works Plan.

*Work No.07* – The creation and use of a temporary logistics and construction compound (North Construction Compound) for the use during the construction of the authorised development, within the location shown on Sheet 4 of the Works Plan, including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) power supplies and lighting;

(d) pipe equipment and fittings storage;

(e) plant storage;

(f) a fabrication area;

(g) workshop/repair facility;

(h) a plant wheel wash area;

(i) waste management areas; and

(j) fencing and gating.

*Work No.08* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.8km length between Work No. 6 and Work No. 9 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 5 of the Works Plan.

*Work No.09* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.7km length between Work No. 8 and Work No. 10 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 6 of the Works Plan.

*Work No.10* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.5km length between Work No. 9 and Work No. 11 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 7 of the Works Plan.

*Work No.11* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.6km length between Work No. 10 and Work No. 12 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 8 of the Works Plan.

*Work No.12* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.4km length between Work No. 11 and Work No. 13 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 9 of the Works Plan.

*Work No.13* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.6km length between Work No. 12 and Work No. 14 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 10 of the Works Plan.

*Work No.14* – Construction of a BVS at Washingdales Lane, within the location shown on Sheet 10 of the Works Plan, including:

(a) a fenced compound area containing:
  (i) security lighting and CCTV cameras;
  (ii) block valve;
  (iii) parking area;
  (iv) cathodic protection measures;
  (v) instrumentation and control kiosk; and
  (vi) vent stack;
(b) below ground pipework;
(c) above ground control boxes;
(d) hard standing;
(e) soakaway type drainage system;
(f) landscaping;

and the following temporary requirements during construction activities:

(g) welfare and security facilities;
(h) parking area;
(i) plant and materials storage area; and
(j) temporary waste management facility.

*Work No.15* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 2.0km length between Work No. 13 and Work No. 16 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;
(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
(c) installation of underground fibre optic cables for transfer of electronic communications;
(d) construction of a haul road, temporary construction accesses and working areas and laydown area;
(e) reinstatement, ecological and environmental works; and
(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 11 of the Works Plan.

*Work No.16* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.9km length between Work No. 15 and Work No. 17 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;
(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 12 of the Works Plan.

*Work No.17* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.7km length between Work No. 16 and Work No. 18 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 13 of the Works Plan.

*Work No.18* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.7km length between Work No. 17 and Work No. 19 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage systems

as shown on Sheet 14 of the Works Plan.

*Work No.19* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.6km length between Work No. 18 and Work No. 20 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 15 of the Works Plan.

*Work No.20* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.6km length between Work No. 19 and Work No. 21 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 16 of the Works Plan.

*Work No.21* – Construction of a BVS at Thoroughfare Road within the location shown on Sheet 16 of the Works Plan, including:

(a) a fenced compound area containing:

(i) security lighting and CCTV cameras;

(ii) block valve;

(iii) parking area;

(iv) cathodic protection measures

(v) instrumentation and control kiosk;

(vi) vent stack.

(b) below ground pipework;

(c) above ground control boxes;

(d) hard standing;

(e) soakaway type drainage system;

(f) landscaping;

and the following temporary requirements during construction activities:

(g) welfare and security facilities;

(h) parking area;

(i) plant and materials storage area; and

(j) temporary waste management facility.

*Work No.22* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.6km length between Work No. 21 and Work No. 23 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 17 of the Works Plan.

*Work No.23* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.7km length between Work No. 22 and Work No. 24 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 18 of the Works Plan.

*Work No.24* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.5km length between Work No. 23 and Work No. 25 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 19 of the Works Plan.

*Work No.25* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.9km length between Work No. 24 and Work No. 26 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 20 of the Works Plan.

*Work No.26* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.6km length between Work No. 25 and Work No. 27 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 21 of the Works Plan.

*Work No.27* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.7km length between Work No. 26 and Work No. 28 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 22 of the Works Plan.

*Work No.28* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.7km length between Work No. 27 and Work No. 29 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 23 of the Works Plan.

*Work No.29* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.7km length between Work No. 28 and Work No. 30 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 24 of the Works Plan.

*Work No.30* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.5km length between Work No. 29 and Work No. 31 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 25 of the Works Plan.

*Work No.31* – Construction of a BVS at Louth Road within the location shown on Sheet 25 and Sheet 26 of the Works Plan, including:

(a) a fenced compound area containing:

(i) security lighting and CCTV cameras;

(ii) block valve;

(iii) parking area;

(iv) cathodic protection measures;

(v) instrumentation and control kiosk;

(vi) vent stack;

(b) below ground pipework;

(c) above ground control boxes;

(d) hard standing;

(e) soakaway type drainage system;

(f) landscaping;

and the following temporary requirements during construction activities:

(g) welfare and security facilities;

(h) parking area;

(i) plant and materials storage area; and

(j) temporary waste management facility.

*Work No.32* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.7km length between Work No. 31 and Work No. 33 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 26 of the Works Plan.

*Work No.33* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.5km length between Work No. 32 and Work No. 34 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 27 of the Works Plan.

*Work No.34* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.5km length between Work No. 33 and Work No. 35 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 28 of the Works Plan.

*Work No.35* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.8km length between Work No. 34 and Work No. 36 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 29 of the Works Plan.

*Work No.36* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.7km length between Work No. 35 and Work No. 37 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 30 of the Works Plan.

*Work No.37* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.9km length between Work No. 36 and Work No. 38 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 31 of the Works Plan.

*Work No.37a* – Construction and use of a temporary access and laydown location at Lordship Road for use during the construction of the authorised development at the location shown on Sheet 31 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste management facilities; and

(e) fencing and gating.

*Work No.38* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.9km length between Work No. 37 and Work No. 39 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 32 of the Works Plan.

*Work No.39* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.6km length between Work No. 38 and Work No. 40 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 33 of the Works Plan.

*Work No.40* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 1.5km length between Work No. 39 and Work No. 41 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 34 of the Works Plan.

*Work No.41* – Construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 437 metres length between Work No. 40 and Work No. 43 including:

(a) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(c) installation of underground fibre optic cables for transfer of electronic communications;

(d) construction of a haul road, temporary construction accesses and working areas and laydown area;

(e) reinstatement, ecological and environmental works; and

(f) drainage works including creation of connections to existing drainage system

as shown on Sheet 35 of the Works Plan.

*Work No.43 –*

(a) construction of a buried 24-inch (610 millimetre) external diameter Carbon Dioxide (CO2) pipeline section of approximately 304 metres length between Work No. 41 and Work No. 44 including:

(i) construction and installation of the pipeline by trenched and trenchless methods, including trenchless installation technique pit works, the creation of reception pits, and launch pits;

(ii) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

(iii) installation of underground fibre optic cables for transfer of electronic communications;

(iv) construction of a haul road, temporary construction accesses and working areas and laydown area;

(v) reinstatement, ecological and environmental works; and

(vi) drainage works including creation of connections to existing drainage system

as shown on Sheet 35 of the Works Plan.

*Work No.44 –*

(a) construction of an AGI comprising equipment for the control and interface of the pipeline to the Theddlethorpe Facility, within the location shown on Sheet 35 of the Works Plan, including:

(i) a fenced compound area containing;

(aa) security lighting;

(bb) parking;

(cc) cathodic protection measures (including groundbeds)

(dd) CCTV cameras, intrusion detection systems and access control systems;

(ee) PIG launcher and receiver facilities (including a projectile blast wall);

(ff) local equipment room;

(gg) supporting infrastructure;

(hh) control mechanisms and electrical and instrumentation kiosk; and

(ii) venting system including vent pipework, valves and vent stack;

(ii) above ground control boxes

(iii) above/below ground pipework and isolation valves;

(iv) below ground cables and cable ducts;

(v) hard standing;

(vi) drainage works, including creation of connections to existing drainage system; and

(vii) landscaping.

*Work No.47* – The creation and use of a temporary logistics and construction compound (Southern Construction Compound) for the use during the construction of the authorised development, within the location shown on Sheet 35 of the Works Plan, including:

(a) welfare and security facilities;

(b) a parking area;

(c) temporary lighting;

(d) pipe equipment and fittings storage;

(e) plant storage;

(f) a plant wheel wash area;

(g) waste processing and management areas; and

(h) fencing and gating.

*Work No.48* – Removal and replacement of an existing isolation valve with a new isolation valve at the Dune Valve Station, within the location shown on Sheet 36 of the Works Plan.

**Associated Development**

Associated development within the meaning of section 115(2) of the 2008 Act comprising—

*Work No.01a* – The creation and use of a temporary working area for use during the construction of the AGI works at the Immingham facility, within the location shown on Sheet 1 of the Works Plan, including;

(a) office, welfare and security facilities;

(b) a parking area;

(c) plant and materials storage;

(d) waste processing and management areas; and

(e) fencing and gating.

*Work No.01b* – The creation and use of a vehicular access to Work No. 1 from Rosper Road, within the location shown on Sheet 1 of the Works Plan, including;

(a) improvement of road surfacing and provision of new hard surfacing;

(b) creation of a new bellmouth junction and visibility splays; and

(c) installation of utilities.

*Work No.01c* – Installation and use of cables and fibre optic cables within Rosper Road to the Immingham facility as shown on Sheet 1 of the Works Plan for supply of electricity and electronic communications.

*Work No.03a* – Construction and use of a temporary access and laydown location at Humber Road for use during construction of the authorised development at the location shown on Sheet 1 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area; and

(c) fencing and gating.

*Work No.03b* – Construction and use of a temporary access and laydown location at A1173 – Manby Road for use during the construction of the authorised development at the location shown on Sheet 1 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste management facilities; and

(e) fencing and gating.

*Work No.06a* – Construction and use of a temporary access and laydown location at Habrough Road for use during the construction of the authorised development at the location shown on Sheet 3 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste management facilities; and

(e) fencing and gating.

*Work No.07a* – Creation and use of temporary access from Habrough Road, within the location shown on Sheet 4 of the Works Plan, including:

(a) improvement of an existing junction with the public road; and

(b) improvement of road surfacing (i.e. temporary stone surface).

*Work No.07b* – Installation and use of cables and fibre optic cables from within Habrough Road as shown on Sheet 4 of the Works Plan for supply of electricity and electronic communications.

*Work No.08a* – Construction and use of a temporary access and laydown location at Roxton Road for use during the construction of the authorised development at the location shown on Sheet 5 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste management facilities; and

(e) fencing and gating.

*Work No.09a* – Creation and use of a temporary access from Roxton Road for construction of the authorised development, within the location shown on Sheet 6 of the Works Plan, including:

(a) improvement of an existing junction with the public road; and

(b) improvement of road surfacing (i.e. temporary stone surface).

*Work No.10a* – Construction and use of a temporary access and laydown location at Keelby Road for use during the construction of the authorised development at the location shown on Sheet 7 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste management facilities; and

(e) fencing and gating.

*Work No.11a* – Construction and use of a temporary access and laydown location at A1173 – Riby Road for use during the construction of the authorised development at the location shown on Sheet 8 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste management facilities; and

(e) fencing and gating.

*Work No.12a* – Creation and use of a temporary access on Lay-By off A18 – Barton Street for construction of the authorised development, within the location shown on Sheet 9 of the Works Plan, including:

(a) improvement of an existing junction with the public road; and

(b) improvement of road surfacing (i.e. temporary stone surface).

*Work No.12b* – Creation and use of a temporary access on Lay-By off A18 – Barton Street for construction of the authorised development, within the location shown on Sheet 9 of the Works Plan, including:

(a) improvement of an existing junction with the public road; and

(b) improvement of road surfacing (i.e. temporary stone surface).

*Work No.13a* – Construction and use of a temporary access and laydown location at Washingdales Lane for use during the construction of the authorised development at the location shown on Sheet 10 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste management facilities; and

(e) fencing and gating.

*Work No.14a* – Creation and use of a vehicular access from Washingdales Lane to Work No. 14, within the location shown on Sheet 10 of the Works Plan, including:

(a) improvement of road surfacing and provision of new hard surfacing;

(b) creation of a new bellmouth junction and visibility splays; and

(c) installation of utilities.

*Work No.14b* – Installation and use of cables and fibre optic cables within A18 (Barton Street) to Work No. 14 as shown on Sheet 10 of the Works Plan for supply of electricity and electronic communications.

*Work No.15b* – Construction and use of a temporary access and laydown location at Road A46 for use during the construction of the authorised development at the location shown on Sheet 11 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste management facilities; and

(e) fencing and gating.

*Work No.15c* – Construction and use of a temporary access and laydown location at Old Main Road for use during the construction of the authorised development at the location shown on Sheet 11 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste management facilities; and

(e) fencing and gating.

*Work No.16b* – The creation and use of a temporary logistics and construction compound (Central Construction Compound) for use during the construction of the authorised development, within the location shown on Sheet 12 of the Works Plan including:

(a) office, welfare and security facilities;

(b) a parking area;

(c) temporary lighting;

(d) pipe equipment and fittings storage;

(e) plant storage;

(f) a plant wheel wash area;

(g) waste management areas; and

(h) fencing and gating.

*Work No.16c* – Creation and use of a temporary access from Road A18 (Barton Street) for construction of the authorised development, within the location shown on Sheet 12 of the Works Plan, including:

(a) creation of a new bellmouth junction with the public highway; and

(b) improvement of road surfacing (i.e. temporary stone surface).

*Work No.17a* – Construction and use of a temporary access and laydown location at Beelsby Road for use during the construction of the authorised development at the location shown on Sheet 13 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste management facilities; and

(e) fencing and gating.

*Work No.17b* – Creation and use of a temporary access from Road A18 (Barton Street) for construction of the authorised development, within the location shown on Sheet 13 of the Works Plan, including:

(a) creation of a new bellmouth junction with the public road; and

(b) improvement of road surfacing (i.e. temporary stone surface).

*Work No.18a* – Creation and use of a temporary access for construction of the authorised development within the location shown on Sheet 14 of the Works Plan, including:

(a) creation of a new bellmouth junction with the public road; and

(b) installation of road surfacing (i.e. temporary stone surface).

*Work No.21a* – Creation and use of a vehicular access from Thoroughfare Road to Work No. 21, within the location shown on Sheet 16 of the Works Plan, including:

(a) improvement of road surfacing and provision of new hard surfacing;

(b) creation of a new bellmouth junction and visibility splays; and

(c) installation of utilities.

*Work No.21b* – Installation and use of cables and fibre optic cables within Thoroughfare Road to Work No. 21 as shown on Sheet 16 of the Works Plan for supply of electricity and electronic communications.

*Work No.21c* – Creation and use of a temporary access from Thoroughfare Road for construction of the authorised development, within the location shown on Sheet 16 of the Works Plan, including:

(a) improvement of an existing junction with the public road; and

(b) improvement of road surfacing (i.e. temporary stone surface).

*Work No.24a* – Construction and use of a temporary access and laydown location at White Road for use during the construction of the authorised development at the location shown on Sheet 19 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste management facilities; and

(e) fencing and gating.

*Work No.24b* – Creation and use of a temporary access from White Road for construction of the authorised development, within the location shown on Sheet 19 of the Works Plan, including:

(a) improvement of an existing junction with the public road; and

(b) improvement of road surfacing (i.e. temporary stone surface).

*Work No.24c* – Construction and use of a temporary access and laydown location at White Road for use during the construction of the authorised development at the location shown on Sheet 19 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area; and

(c) fencing and gating.

*Work No.25a* – Creation and use of a temporary access from Road A16 for construction of the authorised development, within the location shown on Sheet 20 of the Works Plan, including:

(a) improvement of an existing junction with the public road; and

(b) improvement of road surfacing (i.e. temporary stone surface).

*Work No.25b* – Creation and use of a temporary access from Road A16 for construction of the authorised development, within the location shown on Sheet 20 of the Works Plan, including:

(a) improvement of an existing junction with the public road; and

(b) improvement of road surfacing (i.e. temporary stone surface).

*Work No.25c* – Construction and use of a temporary access and laydown location at Road A16 – Louth Road for use during the construction of the authorised development at the location shown on Sheet 20 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area; and

(c) fencing and gating.

*Work No.26a* – Construction and use of a temporary access and laydown location at Pear Tree Lane for use during the construction of the authorised development at the location shown on Sheet 21 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste management facilities; and

(e) fencing and gating.

*Work No.28a* – Construction and use of a temporary access and laydown location at Fotherby Road (Little Grimsby Lane) for use during the construction of the authorised development at the location shown on Sheet 23 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area; and

(c) fencing and gating.

*Work No.29a* – Creation and use of a temporary construction access from Brackenborough Road for construction of the authorised development, within the location shown on Sheet 24 of the Works Plan, including:

(a) creation of a new bellmouth junction with the public road; and

(b) improvement of road surfacing (i.e. temporary stone surface).

*Work No.29b* – Creation and use of a temporary construction access from Brackenborough Road for construction of the authorised development, within the location shown on Sheet 24 of the Works Plan, including:

(a) creation of a new bellmouth junction with the public road; and

(b) improvement of road surfacing (i.e. temporary stone surface).

*Work No.31a* – Creation and use of a vehicular access from Louth Road to Work No. 31, within the location shown on Sheet 25 and Sheet 26 of the Works Plan, including:

(a) improvement of road surfacing and provision of new hard surfacing;

(b) creation of a new bellmouth junction and visibility splays; and

(c) installation of utilities.

*Work No.31b* – Installation and use of cables and fibre optic cables within Louth Road to Work No. 30 as shown on Sheet 25 and Sheet 26 of the Works Plan for supply of electricity and electronic communications.

*Work No.32a* - Construction and use of a temporary access and laydown location at Louth Road for use during the construction of the authorised development at the location shown on Sheet 25 and Sheet 26 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste management facilities; and

(e) fencing and gating.

*Work No.33a* – Construction and use of a temporary access and laydown location at Louth Road for use during the construction of the authorised development at the location shown on Sheet 27 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste management facilities; and

(e) fencing and gating.

*Work No.34a* – Construction and use of a temporary access and laydown location at Marsh Lane for use during the construction of the authorised development at the location shown on Sheet 28 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area; and

(c) fencing and gating.

*Work No.34b* – Creation and use of a temporary construction access from Red Leas Lane for construction of the authorised development, within the location shown on Sheet 28 of the Works Plan, including:

(a) creation of a new bellmouth junction with the public road; and

(b) improvement of road surfacing (i.e. temporary stone surface).

*Work No.34c* – Creation and use of a temporary construction access from Pick Hill Lane for construction of the authorised development, within the location shown on Sheet 28 of the Works Plan, including:

(a) creation of a new bellmouth junction with the public road; and

(b) improvement of road surfacing (i.e. temporary stone surface).

*Work No.36a* – Creation and use of a temporary construction access from B1200 - Manby Middlegate Road for construction of the authorised development, within the location shown on Sheet 30 of the Works Plan, including:

(a) creation of a new bellmouth junction with the public road; and

(b) improvement of road surfacing (i.e. temporary stone surface).

*Work No.36b* – Construction and use of a temporary access and laydown location at B1200 – Manby Middlegate Road for use during the construction of the authorised development at the location shown on Sheet 30 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste management facilities; and

(e) fencing and gating.

*Work No.36c* – Construction and use of a temporary access and laydown location at B1200 Manby Middlegate Road for use during the construction of the authorised development at the location shown on Sheet 30 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste management facilities; and

(e) fencing and gating.

*Work No.36d* – Improvement and use of an existing track as a temporary access for construction of the authorised development within the location shown on Sheet 30 of the Works Plan, including:

(a) improvement of an existing track access; and

(b) improvement of the track surfacing (i.e. temporary stone surface).

*Work No.40a* – Construction and use of a temporary access and laydown location at Mill Road for use during the construction of the authorised development at the location shown on Sheet 34 of the Works Plan including:

(a) temporary office, welfare and security facilities;

(b) a parking area; and

(c) fencing and gating.

*Work No.41a* – Creation and use of a temporary construction access from A1031- Maplethorpe Road for construction of the authorised development, within the location shown on Sheets 34 and 35 of the Works Plan, including:

(a) creation of a new bellmouth junction with the public road; and

(b) improvement of road surfacing and provision of new hard surfacing.

*Work No.41b* – Construction and use of a temporary access and laydown location at Maplethorpe Road for use during the construction of the authorised development including trenchless crossing installation works at A1031- Maplethorpe Road within the location shown on Sheets 34 and 35 of the Works Plan, including:

(a) office, welfare and security facilities;

(b) a parking area;

(c) laydown / materials storage area;

(d) waste processing and management areas; and

(e) fencing and gating.

*Work No.44a* –improvement and use of an existing vehicular access from A1031- Maplethorpe Road to Work No. 44, within the location shown on Sheet 35 of the Works Plan, including improvement of existing road surfacing.

*Work No.45* – Installation and use of cables and fibre optic cables to the Theddlethorpe Facility within the location shown on Sheet 35 of the Works Plan for supply of electricity and electronic communications.

*Work No.46* – Creation and use of a temporary access for construction of the authorised development, within the location shown on Sheet 35 of the Works Plan, including:

(a) creation of a new bellmouth junction with the existing road; and

(b) improvement of road surfacing (i.e. temporary stone surface).

*Work No.47a* – Improvement and use of an existing vehicular access for construction of the authorised development from A1031- Maplethorpe Road to Work No. 47, within the location shown on Sheet 35 of the Works Plan, including improvement of existing road surfacing.

*Work No.48a* –

(a) installation and use of cables and fibre optic cables from Work No. 44 to Work No. 48 as shown on Sheets 35 and 36 of the Works Plan for supply of electricity and electronic communications;

*Work No.48b* – The creation and use of a vehicular access to Work No. 48 from North End Road, Mablethorpe within the location shown on Sheet 36 of the Works Plan including;

(a) installation of any required visibility splay at an existing junction with the public road;

(b) road surfacing and provision of new hard surfacing; and

(c) installation of utilities.

*Work No.48c* – The creation and use of a temporary working area for use during the construction of the authorised development, within the location shown on the Works Plan, including construction of a temporary construction accesses and laydown area.

**Further Associated Development**

In connection with any of those works, within the Order limits, development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development which fall within the scope of work assessed in the environmental statement, including—

(a) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soil stripping and storage and site levelling) and pre-construction drainage works;

(b) installation of wires, cables, conductors, pipes and ducts;

(c) establishment of winching points and installation of temporary scaffolding;

(d) construction works including—

(i) works to enable power supplies and temporary lighting;

(ii) establishment of temporary working areas;

(iii) installation of demarcation fencing/stockproof fencing/heras fencing or similar;

(iv) earthworks;

(v) aerial markers, cathodic protection test posts, cathodic protection rectifier cabinets, sacrificial anodes, field boundary markers, manholes, marker posts, underground markers, tiles and tape;

(e) works to place, alter, divert, relocate, remove or maintain the position of apparatus, services, plant and other equipment in a street, or in other land, including mains, sewers, drains, pipes, lights and cables;

(f) works to alter the course of, or otherwise interfere with a watercourse, drainage works, attenuation ponds and temporary culverts;

(g) landscaping, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;

(h) works for the benefit or protection of land, structures, apparatus or equipment affected by the authorised development;

(i) works for the purpose of habitat creation;

(j) the felling, planting and maintenance of trees and hedgerows; and

(k) such other works as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development.

## PART 2

### Ancillary works

**1.** Works within the Order limits which fall within the scope of the work assessed by the environmental statement comprising works for the benefit or protection of land affected by the authorised development.

# SCHEDULE 2

Article 2

## Requirements

## PART 1

### Requirements

**Interpretation**

**1.** In this Schedule—

"AOD" means above Ordnance Datum;

"carbon dioxide storage permit" means any carbon dioxide storage permit granted in terms of The Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 or such other licence, authorisation or consent as may replace it;

"commissioning" means the process during which plant components and systems forming part of the authorised development, having been constructed or modified, are tested and verified to

be in accordance with design assumptions and to have met the appropriate safety criteria, and are made operational;

"contaminated land" has the same meaning as that given in section 78A of the Environmental Protection Act 1990(**a**);

"CTMP" means construction traffic management plan;

"DEMP" means decommissioning environmental management plan;

"discharging authority" means any body responsible for giving any consent, agreement or approval required by a requirement included in Part 1 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement;

"LEMP" means the landscape and ecological management plan;

"offshore pipeline and storage works" means works for the offshore carbon dioxide transportation and storage infrastructure into which the authorised development will connect;

"relevant planning authority" means–

(a) Lincolnshire County Council, North Lincolnshire Council and North East Lincolnshire Council for the purposes of–

(i) Requirement 6 (construction traffic)

(ii) Requirement 7 (highway accesses)

(iii) Requirement 8 (surface water drainage)

(iv) Requirement 10 (archaeology)

(b) East Lindsey District Council, North Lincolnshire Council, North East Lincolnshire Council and West Lindsay District Council for the purposes of–

(i) Requirement 2 (time limits)

(ii) Requirement 3 (stages of authorised development)

(iii) Requirement 4 (scheme design)

(iv) Requirement 5 (construction environmental management plan)

(v) Requirement 9 (contaminated land and groundwater)

(vi) Requirement 11 (landscape and ecological management plan)

(vii) Requirement 12 (ecological surveys)

(viii) Requirement 13 (construction hours)

(ix) Requirement 14 (restoration of land)

(x) Requirement 15 (operational phase mitigation plan)

(xi) Requirement 16 (decommissioning environmental management plan)

and "relevant planning authorities" and "relevant planning authority" means Lincolnshire County Council, North Lincolnshire Council, North East Lincolnshire Council, East Lindsay District Council and West Lindsay District Council, as applicable; and

"requirement consultee" means any body named in a requirement as a body to be consulted by the discharging authority in discharging that requirement.

**Time limits**

**2.**—(1) The authorised development must not commence later than the expiration of five years beginning with the date on which this Order comes into force.

(2) Notice of commencement of the authorised development must be given to the relevant planning authorities no later than 14 days before the date on which the authorised development is intended to be commenced.

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(**a**) 1990 c. 43.

**Stages of authorised development**

**3.**—(1) The authorised development must not commence until a written scheme setting out all stages of the authorised development and including a plan indicating when each stage will be constructed has been submitted to each relevant planning authority, which scheme may subsequently be amended from time to time as notified to the relevant planning authority.

(2) The written scheme must be implemented as notified under sub-paragraph (1).

**Scheme design**

**4.**—(1) Subject to sub-paragraph (2), Works Nos. 1, 14, 21, 31 and 44 must be carried out in general accordance with the general arrangement plans.

(2) The authorised development will not be in general accordance with the general arrangement plans if any departure from the general arrangement plans would give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(3) The authorised development must be designed in accordance with the parameters specified in Table 1 below and the works plans and implemented in accordance with approved plans and any other approvals given by the relevant planning authority pursuant to these requirements.

**Table 1**

| *Work Type* | *Parameter* | *Part(s) of authorised development* | *Maximum value(s) and unit* |
|---|---|---|---|
| AGI | Maximum fenced area at the Immingham facility | Work No. 1 | 10,500m2 |
| AGI | Maximum height of buildings and structures at the Immingham facility, excluding the vent stack | Work No. 1 | 5m from ground level |
| AGI | Maximum height of the vent stack at the Immingham facility | Work No. 1 | 25m from ground level |
| AGI | Maximum height of fencing and gating at the Immingham facility | Work No. 1 | 3.2m from ground level |
| AGI | Maximum fenced area at the Theddlethorpe facility | Work No. 44 | 13,500m2 |
| AGI | Maximum height of buildings and structures at the Theddlethorpe facility, excluding the vent stack | Work No. 44 | 5m from ground level |
| AGI | Maximum height of the vent stack at the Theddlethorpe facility | Work No. 44 | 25m from ground level |
| AGI | Maximum height of fencing and gating at the Theddlethorpe facility | Work No. 44 | 3.2m from ground level |
| BVS | Maximum fenced | Work Nos. 14, 21, 31 | 2,000m2 |

| | | | |
|---|---|---|---|
| | area of each BVS | | |
| BVS | Maximum height of buildings and structures | Work Nos. 14, 21, 31 | 4m from ground level |
| BVS | Maximum height of fencing and gating | Work Nos. 14, 21, 31 | 3.2m from ground level |

(4) The buildings and structures identified in Table 1 must only be constructed within the area for the Work No. of which they form part as shown in the works plans.

**Construction environmental management plan**

**5.**—(1) No stage of the authorised development may commence until a CEMP which includes that stage has been submitted to and approved by the relevant planning authority following consultation with the Environment Agency and Lincolnshire County Council.

(2) The CEMP must be substantially in accordance with the outline construction environment management plan and include management plans, working methods and mitigation measures including—

(a) details of lighting during construction;

(b) noise and vibration management plan;

(c) dust management plan;

(d) materials management plan;

(e) soil management plan;

(f) water management plan;

(g) site waste management plan;

(h) emergency response plan;

(i) stakeholder communication plan;

(j) public right of way management plan;

(k) construction ecological management plan;

(l) species protection plans; and

(m) invasive non-native species method statement.

(3) Each stage of the authorised development must be undertaken in accordance with the approved CEMP for that stage, or with such changes to that document as approved by the relevant planning authority.

**Construction traffic**

**6.**—(1) No stage of the authorised development may commence until a CTMP for that stage, in accordance with the outline construction traffic management plan, has been submitted to and approved by the relevant planning authority and, in respect of effects on the strategic road network, National Highways following consultation with the relevant highway authority and Network Rail.

(2) The CTMP for each stage must include a construction worker travel plan in accordance with the interim worker travel plan and include measures to be taken to promote sustainable travel options and minimise use of private vehicles.

(3) Each stage of the authorised development must be implemented in accordance with the approved CTMP for that stage.

**Highway accesses**

**7.**—(1) Construction of any new permanent or temporary means of access to a highway, or alteration to any access, must not commence until an access plan for that access has been submitted to and approved by the relevant highway authority.

(2) The access plan must include details of the siting, design, layout, visibility splays, access management measures and a maintenance programme relevant to the access it relates to.

(3) The relevant highway authority must be consulted on the access plan before it is submitted for approval.

(4) The highway accesses (including visibility splays) must be implemented in accordance with the approved details.

**Surface water drainage**

**8.**—(1) No development of Work Nos 1, 14, 21, 31 or 44 may commence until, for that Work No, a surface water drainage plan for permanent works relevant to that stage, in accordance with the relevant part of the outline surface water drainage strategy, has been submitted to and approved by the relevant planning authority following consultation with Anglian Water.

(2) The surface water drainage system for each stage must be implemented in accordance with the approved details.

**Contaminated land and groundwater**

**9.**—(1) In the event that contamination is found at any time when carrying out the authorised development then works in that location must cease immediately and the contamination must be reported in writing to the relevant planning authority as soon as reasonably practicable.

(2) Where contamination has been reported to the relevant planning authority in accordance with sub-paragraph (1), an investigation and risk assessment must be completed in accordance with a contamination scheme to assess the nature and extent of any contamination on the part of the Order limits within which works are being carried out, whether or not that contamination originates on that part of the Order limits; and—

(a) the contents of that scheme are subject to the approval of the relevant planning authority, following consultation with the Environment Agency; and

(b) that investigation and risk assessment must be undertaken within timescales agreed with the relevant planning authority and in accordance with the approved contamination scheme and a written report of the findings must be submitted to the relevant planning authority, following consultation with the Environment Agency.

(3) Where remediation is determined by the relevant planning authority to be required having had regard to the results of an investigation and risk assessment carried out under sub-paragraph (2), a detailed remediation scheme must be prepared and submitted for the approval of the relevant planning authority, following consultation with the Environment Agency.

(4) The approved remediation scheme must be implemented in accordance with its terms.

**Archaeology**

**10.**—(1) No stage of the authorised development with the potential to affect buried archaeological assets may commence until a written scheme for the investigation of areas of archaeological interest relevant to that stage (if any) as identified in the outline archaeological written scheme of investigation has been submitted to and approved by the relevant planning authority following consultation with Historic England.

(2) The scheme approved under sub-paragraph (1) must be in accordance with the outline archaeological written scheme of investigation, and identify the measures to be taken to investigate, protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works carried out under the approved scheme must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(4) Any archaeological works must be implemented in accordance with the approved scheme.

**Landscape and ecological management plan**

**11.**—(1) Subject to sub-paragraph (4), no stage of the authorised development may commence until a LEMP for that stage, substantially in accordance with the outline landscape and ecological management plan, has been submitted to and approved by the relevant planning authority in consultation with Lincolnshire County Council.

(2) The LEMP must include:

(a) an implementation timetable; and

(b) measures for the protection of existing features adjacent to the Works as detailed in the Environmental Statement.

(3) Each stage of the authorised development must be implemented in accordance with the approved LEMP for that stage.

(4) Sub-paragraph (1) only applies to those stages of the authorised development in respect of which any landscape and ecological management measures are to be implemented by the undertaker, as identified in the outline LEMP.

**Ecological surveys**

**12.** No stage of the authorised development may commence until it has been established by survey work whether any European protected species are present within the Order limits or may be affected by that stage of the authorised development.

**Construction hours**

**13.**—(1) Subject to sub-paragraphs (2), (3), and (4), construction works must only take place between 0700 and 1900 on weekdays and 0700 and 1330 on Saturdays (with no works on Sundays or public or bank holidays), except in the event of an emergency, unless a scheme for the carrying out of those works specifying the hours in which they may be carried out has been submitted to and approved by the relevant planning authority. Where such a scheme is approved under this requirement, the works set out in that scheme must be carried out in accordance with the approved scheme.

(2) In the event of an emergency, notification of that emergency must be given to the relevant planning authority and the relevant highway authority as soon as reasonably practicable.

(3) The following operations may where necessary continue or take place outside the working hours referred to in sub-paragraph (1)—

(a) trenchless construction techniques which cannot be interrupted;

(b) filling, testing, dewatering and drying; and

(c) commissioning of the pipeline works.

(4) Nothing in sub-paragraph (1) precludes—

(a) the receipt of oversize deliveries to site and the undertaking of non-intrusive activities;

(b) start-up and shut-down activities up to an hour either side of the stated working hours and undertaken in compliance with the CEMP;

(c) works on a traffic sensitive street where so directed by the relevant highway authority; and

(d) works to make construction sites safe in the event of extreme weather.

(5) In this requirement—

"emergency" means a situation where, if the relevant action is not taken, there will 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

"trenchless construction techniques which cannot be interrupted" means drilling, tunnelling, boring or similar construction methods used to create an underground route for the pipeline without trenching from the surface, and includes any necessary ancillary activities to that drilling, tunnelling or boring; but does not include operations to prepare for drilling, tunnelling and boring, and specifically does not include works of excavation of pits, or works to remediate the site of pits used for drilling, tunnelling and boring.

**Restoration of land**

**14.** Subject to article 32 (temporary use of land for carrying out the authorised development), any land within the Order limits which is used temporarily for or in connection with construction must be reinstated to a condition fit for its former use, or such other condition as the relevant planning authority may approve, within 12 months of completion of the authorised development.

**Operational phase mitigation plan**

**15.**—(1) The undertaker must, no later than three months prior to the planned completion of commissioning of the authorised development, submit to the relevant planning authorities the operational phase mitigation plan (or plans) which details the monitoring and management requirements of the authorised development, including post-construction monitoring.

(2) The operational phase mitigation plans submitted under sub-paragraph (1) must be in accordance with the outline operational phase mitigation plan, and developed having regard to the approved CEMP(s) and the LEMP(s).

(3) Operation of the authorised development must be implemented in accordance with the submitted operational phase mitigation plan(s).

**Decommissioning environmental management plan**

**16.**—(1) The undertaker must, no later than six months prior to the planned permanent cessation of operation of the authorised development, submit a DEMP to the relevant planning authorities and, in respect of effects on the strategic road network, National Highways, for approval following consultation with the Environment Agency and Lincolnshire County Council.

(2) The DEMP submitted under sub-paragraph (1) must include the details required by the demolition management plan and specifically including:

(a) details of any below ground apparatus to be left in situ;

(b) method statements for the decommissioning and dismantlement of above ground infrastructure;

(c) traffic management plan for the decommissioning works; and

(d) waste management plan for the decommissioning works.

(3) Decommissioning of the authorised development must be implemented in accordance with the approved DEMP.

**Donna Nook Air Weapon Range**

**17.**—(1) The undertaker must notify the Ministry of Defence, at least 14 days prior to the commencement of Work Nos 01 and 44, in writing, of the following information—

(a) the date of the commencement of the erection of any vent stack, or tall or narrow profile structure over 15 metres high;

(b) the maximum height of any construction equipment to be used in the erection of any vent stack;

(c) the date the vent stack is brought into use;

(d) the latitude and longitude and maximum heights of the vent stack.

(2) The Ministry of Defence must be notified of any changes to the information supplied in accordance with this requirement and of the completion of the construction of the development.

**Written approval**

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

**Amendments to approved details**

**19.**—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority or another discharging authority, the authorised development must be carried out in accordance with the approved details unless an application for an amendment or variation is submitted by the undertaker and agreed by the relevant planning authority or another discharging authority as specified in the relevant requirement, in accordance with sub-paragraph (2) and in consultation with any body specified in the relevant requirement.

(2) No amendments to or variations from the approved details may be approved if their likely significant effects on the environment are not assessed in the environmental statement, or have not been subject to such further assessment as the relevant planning authority or that other discharging authority may require; provided that such approval must not be given except where it has been demonstrated that the subject-matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

(3) The approved details must be taken to include any amendments that may subsequently be approved by the relevant planning authority or that other discharging authority.

(4) Subject to sub-paragraph (2), if a relevant planning authority which receives an application for approval of any amendments to approved details under sub-paragraph (1) fails to notify the undertaker of its decision before the end of the period of 56 days beginning with the date on which the application was made, or such longer period as may be agreed in writing by the undertaker and the relevant authority, it is deemed to have granted consent.

**Offshore consents**

**20.** No part of the authorised development may commence until details of the following have been submitted to and approved by the Secretary of State—

(a) evidence that a carbon dioxide storage permit for the offshore pipeline and storage works is in place;

(b) evidence of any pipeline works authorisation required by section 14 of the Petroleum Act 1998 for the offshore pipeline and storage works.

**Biodiversity net gain**

**21.**—(1) No development may commence until a scheme securing the provision of biodiversity net gain of 10% or greater for habitats affected by the construction of AGIs or BVSs forming part of the authorised development (as calculated using Natural England Biodiversity Metric 4.0, or such other biodiversity metric approved by the relevant planning authority in consultation with the relevant statutory nature consultation body), has been submitted to and approved in writing by the relevant planning authority.

(2) Where such a scheme is approved under this requirement, the works set out in that scheme must be carried out in accordance with the approved scheme.

**Anticipatory steps towards compliance with any requirement**

**22.** If, before the coming into force of this Order, the undertaker or any other person has taken any steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

# PART 2

## Procedure for discharge of Requirements

**Applications made under requirements**

**23.**—(1) Where an application has been made to a discharging authority for any consent, agreement or approval under a requirement, the relevant discharging authority must give notice to the undertaker of its decision on the application within a period of 56 days beginning with—

(a) where no further information is requested under paragraph 25, the day immediately following that on which the application is received by the authority;

(b) where further information is requested under paragraph 25, the day immediately following that on which further information has been supplied by the undertaker to the discharging authority; or

(c) such longer period as may be agreed in writing by the undertaker and the discharging authority.

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

(3) Any application made to a discharging authority pursuant to sub-paragraph (1) must—

(a) 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; and

(b) include confirmation that the application has been notified and provided to the requirement consultees in accordance with sub-paragraph (5), if the provision governing or requiring the application specifies that consultation with a requirement consultee is required.

(4) Where an application has been made to a discharging authority for any consent, agreement or approval under a requirement and the relevant discharging 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)(a) 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) the discharging authority consider 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,

then the application is to be taken to have been refused by the discharging authority at the end of that period.

(5) Where an application has been made to a discharging authority for any discharge, the undertaker will also submit a copy of that application to any requirement consultee.

**Multiple discharging authorities**

**24.** Where an application is required to be made to more than one discharging authority for any single consent, agreement or approval under a requirement, the undertaker may submit a request for comments in respect of its proposed application to each discharging authority and, where it does so, each discharging authority must provide its comments in writing on the proposed application within a period of 20 days beginning with the day immediately following that on which the request is received by the authority, or such longer period as may be agreed in writing by the undertaker and the relevant authority or authorities, so as to enable the undertaker to prepare a consolidated application to each discharging authority in respect of the consent, agreement or approval required by the requirement.

**Further information**

**25.**—(1) Where an application has been made under paragraph 23 the discharging authority may, subject to complying with the requirements of this paragraph, request such reasonable further information from the undertaker as it considers is necessary to enable it to consider the application.

(2) If the discharging authority considers further information is necessary and the requirement does not specify that consultation with a requirement consultee is required, the discharging authority must, within 21 days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement specifies that consultation with a requirement consultee is required, the discharging authority must issue the consultation to the requirement consultee within 10 days of receipt of the application and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 10 days of receipt of such a request and in any event within 20 business days of receipt of the application.

(4) If the discharging authority does not give the notification mentioned in sub-paragraphs (2) or (3) or such longer period as may be agreed in writing by the undertaker and the relevant authority, or otherwise fails to request any further information within the timescales provided for in this paragraph, 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**

**26.**—(1) Where an application is made to the approving authority for agreement or approval in respect of a requirement the fee for the discharge of conditions as specified in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (or any regulations replacing the same) is to be paid by the undertaker to the approving authority in accordance with these regulations.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 35 days of—

(a) the application or request being rejected as invalidly made; or

(b) the relevant planning authority failing to determine the application or to provide written comments within 56 days from the date on which the application is received, or such longer period as may be agreed in writing under paragraph 23, unless within that period the undertaker agrees in writing that the fee may be retained by the relevant planning authority and credited in respect of a future application or a future request for comments.

**Appeals**

**27.**—(1) The undertaker may appeal if—

(a) the discharging authority refuses, or is deemed to have refused, an application for–

(i) any consent, agreement or approval required by a requirement or any document referred to in any requirement; or

(ii) any other consent, agreement or approval required under this Order, or grants it subject to conditions to which the undertaker objects;

(b) having received a request for further information under paragraph 25 the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or

(c) having received any further information requested, the discharging 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.

(2) The procedure for appeals is as follows—

(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or the determination, or (where no decision or determination has been made) the expiry of the time period set out in paragraph 23, giving rise to the appeal referred to in sub-paragraph (1);

(b) the undertaker must submit to the Secretary of State a copy of the application submitted to the discharging authority and any supporting documents which the undertaker may wish to provide ("the appeal documents");

(c) the undertaker must on the same day provide copies of the appeal documents to the discharging authority and the requirement consultee (if applicable);

(d) within 28 days of receiving the appeal documents the Secretary of State must appoint a person to determine the appeal ("the appointed person") and notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person must be sent;

(e) the discharging authority and the requirement consultee (if applicable) may submit any written representations in respect of the appeal to the appointed person within 21 days beginning with the first day immediately following the date on which the appeal parties are notified of the appointment of the appointed person 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;

(f) the appeal parties may make any counter-submissions to the appointed person within 21 days beginning with the first day immediately following the date of receipt of written representations pursuant to sub-paragraph (d) above; and

(g) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) If the appointed person considers that further information is necessary to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information must be submitted.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person.

(5) The appeal parties may submit written representations to the appointed person concerning matters contained in the further information.

(6) Any such representations must be submitted to the appointed person and made available to all appeal parties within 10 business days of the date mentioned in sub-paragraph (3).

**Outcome of appeals**

**28.**—(1) On an appeal under paragraph 27, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(2) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under paragraph 27.

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

(4) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review within six weeks of the date of the appointed person's decision.

(5) Any consent, agreement or approval given by the appointed person pursuant to this Schedule is deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the discharging authority.

(6) The discharging 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.

(7) Except where a direction is given pursuant to sub-paragraph (8) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(8) On application by the discharging 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 as to the costs of the appeal parties and the terms on which it is made, the appointed person must have regard to the Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

**Interpretation**

**29.** In this Part of this Schedule—

"the appeal parties" means the discharging authority, the requirement consultee and the undertaker;

"discharging authority" means the body responsible for giving a consent, agreement or approval under this Schedule; and

"requirement consultee" means any body named in a requirement which is the subject of an appeal as a body to be consulted by the relevant authority in discharging that requirement.

# SCHEDULE 3

Articles 9 and 10

## Streets subject to street works

## PART 1

### Streets subject to permanent street works

| *(1) Area* | *(2) Streets subject to street works* | *(3) Description of the street works* |
|---|---|---|
| In the borough of North Lincolnshire | Rosper Road | Construction of a permanent access to the Immingham facility using existing access ways at either Point 1-AA (Option 1) or Point 1-AB (Option 2) between Points 1- SA and 1-SB as |

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| | | shown on sheet 1 of the access and rights of way plans. |
| In the borough of North Lincolnshire | A160 | Construction and installation of the pipeline by trenchless techniques within the A160 to the extent covered by Work No.3 on Sheet 1 the Works Plan. |
| In the borough of North Lincolnshire | Rosper Road, Humber Road | Installation and use of cables and fibre optic cables at a designated location along Rosper Road, running through Humber Road to the Immingham facility (between point 1-SA and 1-SB) as shown on sheet 1 of the access and rights of way plans. |
| In the borough of North Lincolnshire | A180 | Construction and installation of the pipeline by trenchless techniques within the A180 to the extent covered by Work No.8 on Sheet 5 the Works Plan. |
| In the borough of North East Lincolnshire | Washingdales Lane | Construction of a permanent access to the Work No. 14, point 10-AB as shown on sheet 10 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Barton Street (A18), Washingdales Lane | Installation and use of cables and fibre optic cables at a designated location along Barton Street running through Washingdales Lane to the Work No. 14 (between point 10-SA and 10-SC) as shown on sheet 10 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Thoroughfare | Construction of a permanent access to Work No. 21, point 16-AB as shown on sheet 16 of the access and rights of way plans. |
| In the district of East Lindsey | Louth Road | Construction of a permanent access to Work No. 31, point 25-AA as shown on sheet 26 of the access and rights of way plans, and Work No. 31a. Installation and use of cables and fibre optic cables at a designated location along Louth Road to Work No. 31 (between point 25-SA and 26-SA) as shown on sheets 25 and 26 of the access and rights of way plans. |

# PART 2

## Streets subject to temporary street works

| *(1) Area* | *(2) Streets subject to street works* | *(3) Description of the street works* |
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| In the borough of North Lincolnshire | Rosper Road | Works (as may be required) for the use of existing accesses as temporary access points, including maintenance and restoration works and installation |

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| | | of any required visibility splays at points 1-AA or 1-AB between points 1-SA and 1-SB as shown on sheet 1 of the access and rights of way plans. |
| In the borough of North Lincolnshire | Rosper Road | Works (as may be required) for the use of existing access as temporary access point, including maintenance and restoration works and installation of any required visibility splays at point 1-AC between points 1-SB and 1-SC as shown on sheet 1 of the access and rights of way plans. |
| In the borough of North Lincolnshire | Humber Road | Works for the construction, use, maintenance and restoration of temporary access and any required visibility splays at point 1-AE between points 1-SD and 1-SE as shown on sheet 1 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Manby Road | Works (as may be required) for the use of an existing access as a temporary access, including maintenance and restoration works and installation of any required visibility splays at point 1-AF between points 1-SF and 1-SG as shown on sheet 1 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Manby Road | Works (as may be required) for the use of an existing access as a temporary access, including maintenance and restoration works and installation of any required visibility splays at point 1-AG between points 1-SH and 1-SI as shown on sheet 1 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Manby Road | Works for the construction, use, maintenance and restoration of temporary access and any required visibility splays at point 1-AH between points 1-SH and 1-SI as shown on sheet 1 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Mill Lane | Works for the construction, use, maintenance and restoration of temporary access/plant crossing and any required visibility splays at points marked 3-AA and 3-AB between points 3-SA and 3-SB as shown on sheet 3 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Habrough Road, Immingham (B1210) | Works for the construction, use, maintenance and restoration of temporary access/plant crossing and any required visibility splays at points marked 3-AC and 3-AD between |

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| | | points 3-SC and 3-SD as shown on sheet 3 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Habrough Road | Installation and use of cables and fibre optic cables at a designated location along Habrough Road (between points 4-SA and 4-SB) to the "North Construction Compound" as shown on sheet 4 of the access and rights of way plans, and Work No. 7b. |
| In the borough of North East Lincolnshire | Roxton Road | Works for the construction, use, maintenance, and restoration of temporary access/plant crossing and any required visibility splays at points marked 5-AA and 5-AB (between points 5-SC and 5-SD) as shown on sheet 5 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Roxton Road | Works (as may be required) for the use of an existing access as a temporary access, including maintenance and restoration works and installation of any required visibility splays at point 6-AA between points 6-SA and 6-SB as shown on sheet 6 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Keelby Road | Works for the construction, use, maintenance and restoration of temporary access/plant crossing and any required visibility splays at points marked 6-AB and 7-AA (between points 7-SA and 7-SB) as shown on sheet 7 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Riby Road | Works for the construction, use, maintenance and restoration of temporary plant crossing and any required visibility splays at points marked 8-AA and 8-AB (between points 8-SA and 8-SB) as shown on sheet 8 of the access and rights of way plans. |
| In the county of Lincolnshire | Wells Road | Works for the construction, use, maintenance and restoration of temporary access/plant crossing and any required visibility splays at points 8-AC and 8-AD (between points 8-SC and 8-SD) as shown on sheet 8 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Lay-By on Barton Street (A18) | Works for the construction, use, maintenance and restoration of temporary access and any required visibility splays at point 9-AA (between points 9-SA, 9-SB, 9-SC and 9-SD) as shown on sheet 9 of the access and rights of way plans. |

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| In the borough of North East Lincolnshire | Washingdales Lane | Works for the construction, use, maintenance and restoration of temporary access/plant crossing and any required visibility splays at points marked 10-AA and 10-AB (between points 10-SA and 10-SB) as shown on sheet 10 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Old Main Road | Works for the construction, use, maintenance and restoration of temporary access and any required visibility splays at points marked 11-AB and 11-AC (between points 11-SC and 11-SD) as shown on sheet 11 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Barton Street | Works for the construction, use, maintenance and restoration of temporary access and any required visibility splays at point 12-AA (between points 12-SA and 12-SB) as shown on sheet 12 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Barton Street | Works for the construction, use, maintenance and restoration of temporary access and any required visibility splays at point 13-AA (between points 13-SC and 13-SD) as shown on sheet 13 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Beelsby Road | Works for the construction, use, maintenance and restoration of temporary access/plant crossing and any required visibility splays at points marked 13-AB and 13-AC (between points 13-SE and 13-SF) as shown on sheet 13 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Brigsley Road | Works for the construction, use, maintenance and restoration of temporary plant crossing and any required visibility splays at points marked 15-AA and 15-AB (between points 15-SA and 15-SB) as shown on sheet 15 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Thoroughfare | Works for the construction, use, maintenance and restoration of temporary access/plant crossing and any required visibility splays at points marked 16-AA and 16-AB (between points 16-SA and 16-SB) as shown on sheet 16 of the access and rights of way plans. |
| In the county of Lincolnshire | Grainsby Lane | Works for the construction, use, maintenance and restoration of temporary access/plant crossing and any required visibility splays at points |

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| | | marked 17-AA and 18-AA (between points 18-SA and 18-SB) as shown on sheet 18 of the access and rights of way plans. |
| In the county of Lincolnshire | White Road | Works for the construction, use, maintenance and restoration of temporary access/plant crossing and any required visibility splays at points marked 19-AA and 19-AB (between points 19-SA and 19-SB) as shown on sheet 19 of the access and rights of way plans. |
| In the county of Lincolnshire | Main Road (A16) | Works (as may be required) for the use of an existing access as a temporary access, including maintenance and restoration works and installation of any required visibility splays at points marked 20-AA and 20-AB (between points 20-SA and 20-SB) as shown on sheet 20 of the access and rights of way plans. |
| In the county of Lincolnshire | Main Road (A16) | Works for the construction, use, maintenance and restoration of temporary access/plant crossing and any required visibility splays at points marked 20-AC and 20-AD (between points 20-SC and 20-SD) as shown on sheet 20 of the access and rights of way plans. |
| In the county of Lincolnshire | Station Road | Works for the construction, use, maintenance and restoration of temporary access/plant crossing and any required visibility splays at points marked 21-AA and 21-AB (between points 21-SA and 21-SB) as shown on sheet 21 of the access and rights of way plans. |
| In the district of East Lindsey | Pear Tree Lane | Works for the construction, use, maintenance and restoration of temporary access/plant crossing and any required visibility splays at points marked 21-AC and 21-AD (between points 21-SC and 21-SD) as shown on sheet 21 of the access and rights of way plans. |
| In the district of East Lindsey | Ings Lane | Works for the construction, use, maintenance and restoration of temporary plant crossing and any required visibility splays at points marked 23-AA and 23-AB (between points 23-SA and 23-SB) as shown on sheet 23 of the access and rights of way plans. |
| In the district of East Lindsey | Fotherby Road | Works for the construction, use, maintenance and restoration of temporary access/plant crossing and any required visibility splays at points |

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| | | marked 23-AC and 23-AD (between points 23-SC and 23-SD) as shown on sheet 23 of the access and rights of way plans. |
| In the district of East Lindsey | Brackenborough Road | Works for the construction, use, maintenance and restoration of temporary plant crossing and any required visibility splays at point 24-AA (between points 24-SA and 24-SB) as shown on sheet 24 of the access and rights of way plans. |
| In the district of East Lindsey | Brackenborough Road | Works for the construction, use, maintenance and restoration of temporary plant crossing and any required visibility splays at point 24-AB (between points 24-SC and 24-SD) as shown on sheet 24 of the access and rights of way plans. |
| In the district of East Lindsey | Brackenborough Road | Works for the construction, use, maintenance, and restoration of temporary access/plant crossing and any required visibility splays at points marked 24-AC and 24-AD (between points 24-SE and 24-SF) as shown on sheet 24 of the access and rights of way plans. |
| In the district of East Lindsey | Louth Road | Works for the construction, use, maintenance, and restoration of temporary access/plant crossing and any required visibility splays at point marked 25-AA and 26-AA (between points 25-SB and 26-SA) as shown on sheets 25 and 26 of the access and rights of way plans. |
| In the district of East Lindsey | Louth Road | Works for the construction, use, maintenance, and restoration of temporary access/plant crossing and any required visibility splays at points marked 27-AA and 27-AB (between points 27-SA and 27-SB) as shown on sheet 27 of the access and rights of way plans. |
| In the district of East Lindsey | Mill Hill Way | Works for the construction, use, maintenance, and restoration of temporary plant crossing and any required visibility splays at points marked 27-AC and 27-AD (between points 27-SC and 27-SD) as shown on sheet 27 of the access and rights of way plans. |
| In the district of East Lindsey | Red Leas Lane | Works for the construction, use, maintenance, and restoration of temporary plant crossing and any required visibility splays at points marked 28-AA, 28-AB, 28-AC, 28-AD and 28-AE (between points 28-SA and 28-SB) as shown on sheet 28 |

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| | | of the access and rights of way plans. |
| In the district of East Lindsey | Marsh Lane | Works for the construction, use, maintenance, and restoration of temporary access/plant crossing and any required visibility splays at points marked 28-AF and 28-AG (between points 28-SC and 28-SD) as shown on sheet 28 of the access and rights of way plans. |
| In the district of East Lindsey | Pick Hill Lane | Works for the construction, use, maintenance, and restoration of temporary access/plant crossing and any required visibility splays at points marked 28-AH and 28-AI (between points 29-SA and 29-SB) as shown on sheet 28 of the access and rights of way plans. |
| In the district of East Lindsey | Pick Hill Lane | Works for the construction, use, maintenance, and restoration of temporary plant crossing and any required visibility splays at points marked 29-AA and 29-AB (between points 29-SC and 29-SD) as shown on sheet 29 of the access and rights of way plans. |
| In the district of East Lindsey | Manby Middlegate | Works for the Construction, use, maintenance and restoration of temporary access and any required visibility splays at points marked 30-AA, 30-AB, 30-AC and 30-AD (between points 30-SA and 30-SB) as shown on sheet 30 of the access and rights of way plans. |
| In the district of East Lindsey | Lordship Road | Works for the construction, use, maintenance, and restoration of temporary access/plant crossing and any required visibility splays at points marked 31-AA and 31-AB (between points 31-SA and 31-SB) as shown on sheet 31 of the access and rights of way plans. |
| In the district of East Lindsey | Mill Road | Works for the construction, use, maintenance, and restoration of temporary access/plant crossing and any required visibility splays at points marked 34-AA and 34-AB (between points 34-SA and 34-SB) as shown on sheet 34 of the access and rights of way plans. |
| In the district of East Lindsey | Mablethorpe Road | Works for the construction, use, maintenance, and restoration of temporary access/plant crossing and any required visibility splays at points marked 34-AC and 35-AB (between points 35-SC and 35-SD) shown on sheet 35 of the access and rights of way plans. |

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|---|---|---|
| In the district of East Lindsey | Mablethorpe Road | Works for the construction, use, maintenance and restoration of temporary access and any required visibility splays at point 34-AD (between points 35-SE and 35-SF) as shown on sheet 35 of the access and rights of way plans. |
| In the district of East Lindsey | Mablethorpe Road | Works (as may be required) for the use of an existing access as a temporary access, including maintenance and restoration works and installation of any required visibility splays at point 35-AC (between points 35-SG and 35-SH) as shown on sheet 35 of the access and rights of way plans. |
| In the district of East Lindsey | Mablethorpe Road | Works (as may be required) for the use of an existing access as a temporary access, including maintenance and restoration works and installation of any required visibility splays at point 35-AD (between points 35-SI and 35-SJ) as shown on sheet 35 of the access and rights of way plans. |
| In the district of East Lindsey | Meers Bank | Works (as may be required) for the use of an existing access as a temporary access, including maintenance and restoration works and installation of any required visibility splays at point 36-AA (between points 36-SA and 36-SB) as shown on sheet 36 of the access and rights of way plans. |

# SCHEDULE 4

Article 14

## New means of access

## PART 1

### New permanent means of access from the public highway

| *(1) Area* | *(2) Street* | *(3) Description of relevant part of access* |
|---|---|---|
| In the borough of North East Lincolnshire | Rosper Road | Works for the installation and maintenance of a new access to Work No. 1 at either Point 1-AA or Point 1-AB as shown on sheet 1 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Washingdales Lane | Works for the installation and maintenance of a new access to Work No. 14, point 10-AB as shown on sheet 10 of the access and rights of way plans. |

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|---|---|---|
| In the borough of North East Lincolnshire | Thoroughfare | Works for the installation and maintenance of a new access to Work No. 21, point 16-AB as shown on sheet 16 of the access and rights of way plans. |
| In the district of East Lindsey | Louth Road | Works for the installation and maintenance of a new access to Work No. 31, point 25-AA as shown on sheet 26 of the access and rights of way plans. |

## PART 2

New temporary means of access from the public highway

| *(1) Area* | *(2) Street* | *(3) Description of relevant part of access* |
|---|---|---|
| In the borough of North Lincolnshire | Humber Road | Works for the installation, use, maintenance and restoration of temporary access at point marked 1-AE as shown on sheet 1 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Manby Road – A1173 Road | Works for the installation, use, maintenance and restoration of temporary access at point marked 1-AH as shown on sheet 1 of the access and rights of way plans |
| In the borough of North East Lincolnshire | Mill Lane | Works for the installation, use, maintenance and restoration of temporary access at points marked 3-AA and 3-AB as shown on sheet 3 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Habrough Road, Immingham (B1210) | Works for the installation, use, maintenance and restoration of temporary access at points crossing marked 3-AB and 3-AC as shown on sheet 3 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Roxton Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 5-AA and 5-AB as shown on sheet 5 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Keelby Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 6-AB and 7-AA as shown on sheet 7 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Riby Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 8-AA and 8-AB as shown on sheet 8 of the access and rights of way plans. |
| In the county of Lincolnshire | Wells Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 8- |

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| | | AC and 8-AD as shown on sheet 8 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Lay-By on Barton Street (A18) | Works for the installation, use, maintenance and restoration of temporary access at point marked 9-AA as shown on sheet 9 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | A46 Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 11-AA and 11-AD as shown on sheet 11 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Old Main Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 11-AB and 11-AC as shown on sheet 11 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Barton Street (A18) | Works for the installation, use, maintenance and restoration of temporary access at point marked 12-AA as shown on sheet 12 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Barton Street (A18) | Works for the installation, use, maintenance and restoration of temporary access at point marked 13-AA as shown on sheet 13 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Beelsby Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 13-AB and 13-AC as shown on sheet 13 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Brigsley Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 15-AA and 15-AB as shown on sheet 15 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Thoroughfare | Works for the installation, use, maintenance and restoration of temporary access at points marked 16-AA and 16-AB as shown on sheet 16 of the access and rights of way plans. |
| In the county of Lincolnshire | Grainsby Lane | Works for the installation, use, maintenance and restoration of temporary access at points marked 17-AA and 18-AA as shown on sheet 18 of the access and rights of way plans. |
| In the county of Lincolnshire | White Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 19-AA and 19-AB as shown on sheet 19 of the access and rights of way plans. |
| In the county of Lincolnshire | Main Road (A16) | Works for the installation, use, maintenance and restoration of temporary access at points marked 20-AC and 20-AD as shown on sheet 20 |

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| | | of the access and rights of way plans. |
| In the county of Lincolnshire | Station Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 21-AA and 21-AB as shown on sheet 21 of the access and rights of way plans. |
| In the district of East Lindsey | Pear Tree Lane | Works for the installation, use, maintenance and restoration of temporary access at points marked 21-AC and 21-AD as shown on sheet 21 of the access and rights of way plans. |
| In the district of East Lindsey | Ings Lane | Works for the installation, use, maintenance and restoration of temporary access at points marked 23-AA and 23-AB as shown on sheet 23 of the access and rights of way plans. |
| In the district of East Lindsey | Fotherby Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 23-AC and 23-AD as shown on sheet 23 of the access and rights of way plans. |
| In the district of East Lindsey | Brackenborough Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 24-AC and 24-AD as shown on sheet 24 of the access and rights of way plans. |
| In the district of East Lindsey | Louth Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 25-AA and 26-AA as shown on sheet 26 of the access and rights of way plans. |
| In the district of East Lindsey | Louth Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 27-AA and 27-AB as shown on sheet 27 of the access and rights of way plans. |
| In the district of East Lindsey | Mill Hill Way | Works for the installation, use, maintenance and restoration of temporary access at points marked 27-AC and 27-AD as shown on sheet 27 of the access and rights of way plans. |
| In the district of East Lindsey | Red Leas Lane | Works for the installation, use, maintenance and restoration of temporary access at points marked 28-AA, 28-AB, 28-AC, 28-AD and 28-AE as shown on sheet 28 of the access and rights of way plans. |
| In the district of East Lindsey | Marsh Lane | Works for the installation, use, maintenance and restoration of temporary access at points marked 28-AF and 28-AG as shown on sheet 28 of the access and rights of way plans. |
| In the district of East Lindsey | Pick Hill Lane | Works for the installation, use, maintenance and restoration of temporary access at points marked 28-AH and 28-AI as shown on sheet 28 |

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|---|---|---|
| | | of the access and rights of way plans. |
| In the district of East Lindsey | Pick Hill Lane | Works for the installation, use, maintenance and restoration of temporary access at points marked 29-AA and 29-AB as shown on sheet 29 of the access and rights of way plans. |
| In the district of East Lindsey | Manby Middlegate | Works for the installation, use, maintenance and restoration of temporary access at points marked 30-AA, 30-AB, 30-AC and 30-AD as shown on sheet 30 of the access and rights of way plans. |
| In the district of East Lindsey | Lordship Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 31-AA and 31-AB as shown on sheet 31 of the access and rights of way plans. |
| In the district of East Lindsey | Mill Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 34-AA and 34-AB as shown on sheet 34 of the access and rights of way plans. |
| In the district of East Lindsey | Mablethorpe Road | Works for the installation, use, maintenance and restoration of temporary access at points marked 34-AC, 34-AD, 35-AA and 35-AB A as shown on sheet 35 of the access and rights of way plans. |

# SCHEDULE 5

Article 12

## Public rights of way to be temporarily restricted

| *(1) Area* | *(2) Public right of way* | *(3) Description of temporary stopping up etc.* |
|---|---|---|
| In the borough of North Lincolnshire | North Lincolnshire/ SKIL 91A | Temporary closure with diversion provided between points marked 1-PA and 1-PB as shown on sheet 1 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Habrough/11 | Temporary closure with diversion provided between points marked 3-PA and 3-PB as shown on sheet 3 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Habrough/11 | Temporary closure with diversion provided between points marked 3-PC and 3-PD as shown on sheet 3 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Habrough/4 | Temporary closure with diversion provided between points marked 6-PA and 6-PB as shown on sheet 6 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Aylesby/116 | Temporary closure with diversion provided between points marked 9-PA and 9-PB as shown on sheet 9 of the access and rights of way plans. |

| | | |
|---|---|---|
| In the borough of North East Lincolnshire | Aylesby/130 | Temporary closure with diversion provided between points marked 10-PA and 10-PB as shown on sheet 10 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Laceby/119 | Temporary closure with diversion provided between points marked 11-PA and 11-PB as shown on sheet 11 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Irby Upon Humber/161a | Temporary closure with diversion provided between points marked 11-PC and 11-PD as shown on sheet 11 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Irby Upon Humber/124 | Temporary closure with diversion provided between points marked 12-PA and 12-PB as shown on sheet 12 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Barnoldby Le Beck/94 | Temporary closure with diversion provided between points marked 13-PA and 13-PB as shown on sheet 13 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Ashby cum Fenby/81 | Temporary closure with diversion provided between points marked 15-PA and 15-PB as shown on sheet 15 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Ashby cum Fenby/82 | Temporary closure with diversion provided between points marked 15-PA and 15-PB as shown on sheet 15 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Ashby cum Fenby/85 | Temporary closure with diversion provided between points marked 15-PA and 15-PB as shown on sheet 15 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Ashby cum Fenby/85 | Temporary closure with diversion provided between points marked 15-PC and 15-PD as shown on sheet 15 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Ashby cum Fenby/85 | Temporary closure with diversion provided between points marked 16-PA and 16-PB as shown on sheet 16 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Ashby cum Fenby/86 | Temporary closure with diversion provided between points marked 16-PA and 16-PB as shown on sheet 16 of the access and rights of way plans. |
| In the borough of North East Lincolnshire | Ashby cum Fenby/87 | Temporary closure with diversion provided between points marked 17-PA and 17-PB as shown on sheet 17 of the access and rights of way plans. |
| In the county of Lincolnshire | NTho 113/1 | Temporary closure with diversion provided between points marked 19-PA and 19-PB as shown on sheet 19 of the access and rights of way plans. |
| In the county of Lincolnshire | Utte 78/1 | Temporary track/pathway closure with diversion provided to all traffic/pedestrian between points marked 22-PA and 22-PB as shown on |

| | | |
|---|---|---|
| | | sheet 22 of the access and rights of way plans. |
| In the county of Lincolnshire | Utte 83/1 | Temporary track/pathway closure with diversion provided to all traffic/pedestrian between points marked 22-PA and 22-PB as shown on sheet 22 of the access and rights of way plans. |
| In the county of Lincolnshire | Utte 83/1 | Temporary closure with diversion provided between points marked 22-PA and 22-PC as shown on sheet 22 of the access and rights of way plans. |
| In the county of Lincolnshire | Utte 83/2 | Temporary closure with diversion provided between points marked 22-PA and 22-PC as shown on sheet 22 of the access and rights of way plans. |
| In the county of Lincolnshire | LGri 77/1 | Temporary closure with diversion provided between points marked 24-PA and 24-PB as shown on sheet 24 of the access and rights of way plans. |
| In the county of Lincolnshire | NCoc 68/1 | Temporary closure with diversion provided between points marked 26-PA and 26-PB as shown on sheet 26 of the access and rights of way plans. |
| In the county of Lincolnshire | GayM 193/1 | Temporary closure with diversion provided between points marked 31-PA and 31-PB as shown on sheet 31 of the access and rights of way plans. |
| In the county of Lincolnshire | ThSH 250/2 | Temporary closure with diversion provided between points marked 34-PA and 34-PB as shown on sheet 34 of the access and rights of way plans. |
| In the county of Lincolnshire | ThSH 249/1 | Temporary closure with diversion provided between points marked 34-PC and 34-PD as shown on sheet 34 of the access and rights of way plans. |

# SCHEDULE 6

Article 32

## Land of which only temporary possession may be taken

| *(1) Area* | *(2) Number of plot shown on land plans* | *(3) Purpose for which temporary possession may be taken* | *(4) Relevant part of authorised development* |
|---|---|---|---|
| In the borough of North Lincolnshire | 1/57 | Temporary use as a working area | Work No.01A |
| In the borough of North East Lincolnshire | 4/1, 4/2, 4/3, 4/4, 4/5, 4/6, 4/7, 4/8, 4/9, 4/10, 4/11, 4/12, 4/13, 4/14, 4/15 | Temporary use as a construction compound and working area. | Work Nos.7, 7A, 7B |
| In the borough of | 6/1, 6/2 | Temporary use as a construction access. | Work No. 9A |

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|---|---|---|---|
| North East Lincolnshire | | | |
| In the county of Lincolnshire | 9/1, 9/3, 9/6 | Temporary use as a construction access. | Work No. 12A |
| In the borough of North East Lincolnshire | 9/13 | Temporary use as a construction access. | Work No. 12B |
| In the borough of North East Lincolnshire | 12/6, 12/8 | Temporary use as a construction compound and working area. | Work Nos. 16B, 16C |
| In the borough of North East Lincolnshire | 13/6 | Temporary use as a construction access. | Work No. 17B |
| In the borough of North East Lincolnshire | 14/3, 14/4, 14/5 | Temporary use as a construction access. | Work No. 18A |
| In the borough of North East Lincolnshire | 16/9 | Temporary use as a construction access. | Work No. 21C |
| In the county of Lincolnshire | 20/6, 20/7, 20/9 | Temporary use as a construction access. | Work No. 25A |
| In the county of Lincolnshire | 20/10, 20/11, 20/13, 20/14 | Temporary use as a construction access. | Work No. 25B |
| In the county of Lincolnshire | 24/4, 24/5 | Temporary use as a construction access. | Work No. 29A |
| In the county of Lincolnshire | 24/6, 24/7 | Temporary use as a construction access. | Work No. 29B |
| In the county of Lincolnshire | 28/7, 28/9, 28/10,28/11 | Temporary use as a construction access. | Work No. 34B |
| In the county of Lincolnshire | 29/3, 29/4, 29/5, 29/7 | Temporary use as a construction access. | Work No. 34C |
| In the county of Lincolnshire | 30/3, 30/4, 30/5 | Temporary use as a construction access. | Work No. 36A |
| In the county of Lincolnshire | 30/13,30/14, 30/15 | Temporary use as a construction access. | Work No. 36D |
| In the county of Lincolnshire | 35/2, 35/3, 35/4, 35/6 | Temporary use as a construction access. | Work No. 41A |
| In the county of Lincolnshire | 35/42, 36/1 | Temporary use as a construction compound and working area. | Work No.47 |
| In the county | 36/9, 36/10 | Temporary use as a working area. | Work Nos. 48C |

# SCHEDULE 7

Article 24

## Land in which only new rights etc., may be acquired

| *(1) Number of plot shown on land plans* | *(2) Purpose for which rights may be acquired* |
|---|---|
| 1/43, 35/20, 35/24, 35/30, 35/34, 35/36, 36/3, 36/4, 36/5, 36/6, 36/7, 36/11 | Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—<br>(a) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the authorised development, the inspection, testing, maintenance, renewal, upgrading, replacement and removal of the pipeline and connection into any adjacent pipeline and associated works, to take plant and equipment on to adjoining land;<br>(b) make such investigations in or on the Land which is ancillary for the purposes of exercise of the rights;<br>(c) construct, use, maintain and improve a permanent means of access including visibility splays, and retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing the Land, adjoining land and highway;<br>(d) place and use plant, machinery, structures and temporary structures within the Land, and to erect temporary signage and provide measures for the benefit of public and personnel safety;<br>(e) fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the Land;<br>(f) 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;<br>(g) install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, remediation works for environmental or ecological mitigation or enhancement works, including temporary works for noise alleviation measures and the installation of temporary barriers for the protection of fauna;<br>(h) erect and remove temporary fencing, gates, walls, barriers or other means of enclosure; and<br>(i) lay out temporary paths and bridleways for public use as temporary diversions for public rights of way which are interfered with during any period in which construction, maintenance, repair or renewal decommissioning is being carried out.<br><br>A restrictive covenant over the Land for the benefit of the remainder of the Order land to:<br>(j) prevent anything being done which may interfere with free flow and passage of carbon dioxide along the pipeline or electronic communications through the cables and fibre optic cables |

ancillary to the pipeline, or support for the authorised development;

(k) 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);

(l) 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 development nor make it materially more difficult or expensive to access the relevant part of the authorised development); and

(m) 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 development.

1/52, 1/55, 1/56, 1/62, 1/63, 1/65, 1/66, 10/8, 10/9, 10/13, 10/14, 10/15, 10/16, 16/7, 16/8, 25/8, 25/9, 26/1, 35/24, 35/27, 35/29, 35/32, 35/39, 35/40, 35/41, 36/2

The right to enter and remain upon the land for the purposes of the construction, operation, maintenance and decommissioning of the authorised development and to—

(a) install, construct, maintain, use, improve, cleanse, repair, replace and remove cables, conduits, service media and associated apparatus that are used for the purposes of transmitting or distributing electricity and communications within that part of the land over which the new rights are acquired

(b) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing cables, conduits, service media and associated apparatus as part of the authorised development;

(c) make such investigations in or on the Land which is ancillary for the purposes of exercise of the rights;

(d) place and use plant, machinery, structures and temporary structures within the Land, and to erect temporary signage and provide measures for the benefit of public and personnel safety;

(e) fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the Land;

(f) 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;

(g) install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, remediation works for environmental or ecological mitigation or enhancement works, including temporary works for noise alleviation measures and the installation of temporary barriers for the protection of fauna;

(h) erect and remove temporary fencing, gates, walls, barriers or other means of enclosure; and

(i) lay out temporary paths and bridleways for public use as temporary diversions for public rights of way which are interfered with during any period in which construction, maintenance, repair

or renewal decommissioning is being carried out.

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

(j) prevent anything being done which may interfere with free flow and passage of carbon dioxide along the pipeline or electronic communications through the cables and fibre optic cables ancillary to the pipeline, or support for the authorised development;

(k) 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);

(l) 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 development nor make it materially more difficult or expensive to access the relevant part of the authorised development); and

(m) 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 development.

36/12, 36/13, 36/14, 36/15, 36/16

The right to enter and remain upon the land for the purposes of the operation, maintenance and decommissioning of the authorised development and to—

(a) use, maintain, repair, renew, upgrade, inspect, survey, cleanse, re-lay, divert, make safe, make incapable of operation, replace and remove the existing pipeline together with ancillary equipment including cathodic protection;

(b) enter and be upon that part of the land over which the new rights are acquired and remain with or without all necessary plant, vehicles, machinery, materials, drilling fluids, apparatus and equipment for the purposes of using, maintaining, repairing, renewing, upgrading, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, replacing and removing the pipeline and ancillary equipment to include cathodic protection;

(c) retain and use the existing pipeline and ancillary equipment within that part of the land over which the new rights are acquired for the purpose of the transmission of carbon dioxide and for associated purposes;

(d) place and use apparatus, materials (including matting, trackways, hard standing and other material in connection with construction of haul and access roads and storage areas), plant, machinery, trench shuttering, temporary structures and welfare accommodation for the maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the pipeline and ancillary equipment to include cathodic protection within that part of the land over which the new rights are acquired; and to construct, lay down, use and remove temporary haul and access roads, trackways, matting and other suitable materials, including for any necessary temporary bridging of statutory undertakers'

apparatus, other apparatus, conduits, watercourses, ditches and drains; and to effect access to the highway;

(e) install, keep, maintain, replace, renew and remove pipeline marker posts, test posts and aerial markers within that part of the land over which the new rights are acquired, to identify the location of the pipeline (subject to the undertaker seeking to locate the marker posts so as to minimise interference with the owner's future use and operations within the land);

(f) fell, lop, prune or cut trees, shrubs or hedges or remove roots of trees, hedges or shrubs within that part of the land over which the new rights are acquired for the purposes of using, maintaining, repairing, renewing, upgrading, inspecting, surveying, cleansing, re-laying, diverting, making safe, making incapable of operation, replacing and removing the pipeline and ancillary equipment;

(g) use, inspect, modify, maintain, adjust, alter, support, renew, repair, improve, extend, test or cleanse and to connect in to existing drainage, watercourses, sewers or culverts and to manage water flows in existing drains, watercourses and culverts, including by way of damming and overpumping within that part of the land over which the new rights are acquired;

(h) alter, re-lay, maintain, adjust or remove existing pipes, cables or conduits or service media and associated apparatus (including apparatus of statutory undertakers) within that part of the land over which the new rights are acquired;

(i) install, construct, maintain, use, improve, cleanse, repair, replace and remove new pipes, cables, conduits, service media and associated apparatus that are used for the purposes of transmitting or distributing electricity, communications, carbon dioxide, gas, oil, water supply, sewerage and drainage (including apparatus of statutory undertakers) within that part of the land over which the new rights are acquired;

(j) erect, maintain and remove temporary fencing for site safety and to create, retain and remove temporary secure works compounds within that part of the land over which the new rights are acquired;

(k) remove fences, hedges, gates or other barriers during any period during which laying down, construction, installation, adjusting, altering, testing, maintaining, repairing, renewing, upgrading, cleansing, relaying, diverting, making safe, making incapable of operation, replacing and removing the pipeline and ancillary equipment to include cathodic protection (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement, replanting or re-instatement of fences, hedges or other barriers following the exercise of the new rights);

(l) install, maintain, use, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary and permanent drainage;

(m) carry out environmental surveys, mitigation works, maintenance and enhancement works within that part of the land over which the new rights are acquired;

(n) enter for the purposes of intrusive surveys including for site investigation and environmental surveys, making of boreholes, trial pits and archaeological trenches, auger hole sampling and the taking of soil and other samples, and to reinstate the land to its

condition prior to commencement of such works;

(o) benefit from continuous vertical and lateral support for the pipeline and associated apparatus; and

(p) erect temporary signage and provide measures for benefit of public and personnel safety.

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

(q) prevent any activity being undertaken on the Land which would interfere with the vertical or lateral support of the pipeline;

(r) prevent anything being done which may interfere with free flow and passage of carbon dioxide along the pipeline or electronic communications through the cables and fibre optic cables ancillary to the pipeline, or support for the authorised development;

(s) 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);

(t) 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 development nor make it materially more difficult or expensive to maintain the authorised development);

(u) prevent anything to be done by way of mole draining or excavation of any kind in the Land nor any activities which would alter, increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the undertaker save as are reasonably required for agricultural activities (being ploughing to no deeper than 0.7m for the purposes of arable farming);

(v) 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 development nor make it materially more difficult or expensive to access the relevant part of the authorised development);

(w) prevent, without the written consent of the undertaker, the 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 development; and

(x) prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of the drainage works, ecological mitigation areas or areas of habitat creation including any ploughing or grazing without the prior written consent of the undertaker

# SCHEDULE 8

Article 24

## Modification of compensation and compulsory purchase enactments for creation of new rights

**Compensation enactments**

**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 imposition of a restrictive covenant as they apply as respects compensation for the compulsory purchase of land and interests in land.

**2.** Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the following modification—

For section (5A) (relevant valuation date) substitute—

"(5A) If—

(a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the Compulsory Purchase Act 1965 (as modified by paragraph 4(6) of Schedule 8 to the Viking CCS Carbon Dioxide Pipeline Order 2025);

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the Compulsory Purchase Act 1965 (as substituted by paragraph 4(9) of Schedule 8 to the Viking CCS Carbon Dioxide Pipeline Order 2025) 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 sub-section (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.".

**3.**—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraph (2).

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

(a) for "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

**Application of Part 1 of the 1965 Act**

**4.**—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 30 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 22 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 24 (compulsory acquisition of rights and restrictive covenants)—

(a) with the modifications specified in sub-paragraphs (2) to (9); and

(b) with such other modifications as may be necessary.

(2) The modifications referred to in sub-paragraph (1) are as follows.

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(**a**) 1973 c. 26.

(3) References in the 1965 Act to land are, in the appropriate contexts, to be 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 or is to be enforceable.

(4) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

"**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 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.".

(5) 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),

are modified so 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.

(6) Section 11 (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition), 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; and sections 11A(**a**) (powers of entry: further notices of entry), 11B(**b**) (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.

(7) Section 20 (tenants at will, etc.) of the 1965 Act 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.

(8) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 30(4) is also modified so 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.

(9) For Schedule 2A to the 1965 Act substitute—

(**a**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
(**b**) Section 11B was inserted by section 187(3) of the above Act.

# "SCHEDULE 2A

Section 8

## Counter-notice requiring purchase of land not in notice to treat

### Introduction

**1.** This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 28 (application of the 1981 Act) of the Viking CCS Carbon Dioxide Pipeline Order 2025 in respect of the land to which the notice to treat relates.

(2) But see article 29 (acquisition of subsoil or airspace only) of the Viking CCS Carbon Dioxide Pipeline Order 2025 which excludes the acquisition of subsoil only from this Schedule.

(3) In this Schedule, "house" includes any park or garden belonging to a house.

### Counter-notice requiring purchase of land

**2.** A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the acquiring authority to purchase the owner's interest in the house, building or factory.

**3.** A counter-notice under paragraph 2 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

**4.** On receiving a counter-notice, the acquiring authority 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.

**5.** The authority 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").

**6.** If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

**7.** If the authority do 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.

**8.** If the authority serve 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 the Upper Tribunal

**9.** On a referral under paragraph 6, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant 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.

**10.** In making the determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right or the imposition of the covenant;

(b) the use to be made of the right or covenant proposed to be acquired or imposed; and

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

**11.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 9, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

**12.** If the Upper Tribunal determines that the acquiring authority 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.

**13.**—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of six 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 acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawing of the notice.

**14.** Any dispute as to the compensation is to be determined by the Upper Tribunal.".

# SCHEDULE 9

Article 42

## Protective provisions

## PART 1

### Protection for electricity, gas, water and sewerage undertakers

**1.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and the utility undertaker in question.

**2.** In this Part—

"alternative apparatus" means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means—

(a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by that licence holder;

(b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by that gas transporter within the meaning of Part 1 of the Gas Act 1986(**b**) for the purposes of gas supply;

(**a**) 1989 c. 29.
(**b**) 1986 c. 44.

(c) in the case of a utility undertaker within paragraph (c) of the definition of that term, mains, pipes or other apparatus belonging to or maintained by that water undertaker for the purposes of water supply; and

(d) in the case of a utility undertaker within paragraph (d) of the definition of that term—

(i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991(**a**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act(**b**),

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) 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;

"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;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

"utility undertaker" means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(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 onshore works, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

**On street apparatus and offshore works**

**3.** This Part 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 (street works in England and Wales) of the 1991 Act.

**Acquisition of land**

**4.** Regardless of any provision of 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 the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part, 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.

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(**a**) 1991 c. 56.
(**b**) Section 104 was amended by section 42(3) of the Flood and Water Management Act 2010 (c. 29).

(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 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 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 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 utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (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 48 (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 Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker 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 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.

**Facilities and rights for alternative apparatus**

**6.**—(1) Where, in accordance with the provisions of this Part, 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 48 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along the authorised development, the arbitrator must—

(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 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 constructed in or along the authorised project 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**

**7.**—(1) Not less than 28 days before starting the execution of any 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 5(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan 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 under sub-paragraph is 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, the provisions of this Part apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(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 instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(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 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.

**Expenses and costs**

**8.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses agreed with the undertaker in advance and reasonably 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 5(2).

(2) The value of any apparatus removed under the provisions of this Part must be deducted from any sum payable under sub-paragraph (1), that value being calculated 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 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 48 (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 the utility undertaker in question by virtue of sub-paragraph (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 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.

(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) must, 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.

**9.**—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any such works referred to in paragraph 5(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, servants, contractors or agents; or

(b) any indirect or consequential loss of the operator or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption.

(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 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.

**Miscellaneous**

**10.** Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

# PART 2

## Protection for operators of electronic communications code networks

**11.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and the operator in question.

**12.** In this Part—

"the 2003 Act" means the Communications Act 2003(**a**);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in section 106(**b**) (application of the electronic communications code) of the 2003 Act;

"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) an electronic communications network which the undertaker is providing or proposing to provide;

"electronic communications code 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 (infrastructure system) of that code; and

"operator" means the operator of an electronic communications code network.

**13.** The exercise of the powers conferred by article 34 (statutory undertakers) is subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic communications code.

**14.**—(1) Subject to sub-paragraphs (2) to (4), if as a result of the authorised development or its construction, or of any subsidence resulting from the authorised development—

(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 development), 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 agreed by the undertaker in advance and reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it 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 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.

(3) 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.

(4) Any difference arising between the undertaker and the operator under this Part must be referred to and settled by arbitration under article 48 (arbitration).

(5) This Part 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 development.

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(**a**) 2003 c. 21.
(**b**) Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30).

(6) Nothing in this Part 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 National Grid Electricity Transmission plc as electricity undertaker

**Application**

**15.**—(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.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 7 (benefit of the Order):

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid 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 Grid (but without prejudice to paragraph 25(3)(b)) of this Part of this Schedule.

**Interpretation**

**16.** In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

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

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

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid;

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

"acceptable security" means a bank bond or letter of credit from an acceptable credit provider in favour of National Grid to cover the undertaker's liability to National Grid for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid);

"alternative apparatus" means appropriate alternative apparatus to the 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 Electricity Act 1989(**a**), 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 works" has the same meaning as is given to the term "authorised development" in article 2(1) of this Order and includes any ancillary works as defined in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" and "commencement" in 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;

"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 Grid (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 Grid's approval a ground mitigation scheme;

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

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

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

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid: 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 Electricity Act 1989;

"NESO" means as defined in the STC;

"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 or activities undertaken in association with the authorised works which:

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(**a**) 1989 c. 29.

(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 adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 21(2) or otherwise; and/or

(c) includes any of the activities that are referred to in National Grid's document "Development near overhead lines" EN43-8 and the Health and Safety Executive's (HSE) Guidance Note GS6 "Avoiding Danger from Overhead Power Lines";

"STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NESO as modified from time to time;

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

"Transmission Owner" means as defined in the STC;

"undertaker" means the undertaker as defined in article 2(1) of this Order.

**On Street Apparatus**

**17.** Except for paragraphs 18 (apparatus of statutory undertakers in temporarily restricted streets), 23 (retained apparatus: protection of electricity undertakers), 24 (expenses) and 25 (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 Grid, the other provisions of this Schedule 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 of the 1991 Act.

**Apparatus of statutory undertakers in temporarily restricted streets**

**18.** Notwithstanding the temporary stopping up or diversion of any highway under article 13 (temporary restriction of use of streets), National Grid may at all times take all necessary access across any such highway and execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the restriction or diversion was in that highway.

**Protective works to buildings**

**19.** The undertaker, in the case of the powers conferred by article 21 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

**Acquisition of land**

**20.**—(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 or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid 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 Grid 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 Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid 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 Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, 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 Grid and the undertaker, the undertaker and National Grid 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 Grid and/or other enactments relied upon by National Grid 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 Grid under paragraph 23 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

**Removal of apparatus**

**21.**—(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 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 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 22(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 Grid may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for 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 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**

**22.**—(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.

(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 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 may be referred to arbitration in accordance with paragraph 29 (arbitration) of this Part of this Schedule and the arbitrator must 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: protection of electricity undertaker**

**23.**—(1) Not less than 56 days 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 assets.

(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—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues; and

(h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing; —

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (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 interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (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.

(8) 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 (or any relevant part thereof) for which protective works are required and National Grid shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 15 to 17 and 19 to 21 apply as if the removal of the apparatus had been required by the undertaker under paragraph 21(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to 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.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

**Expenses**

**24.**—(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 reasonably anticipated within the following three months or reasonably and properly

incurred 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 works 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 21(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;

(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 29 (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**

**25.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid 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 Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid 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 Grid 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 neglect or default of National Grid, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid 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 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 25; and/or

(c) any indirect or consequential loss of National Grid or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

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

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

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid's apparatus until the following conditions are satisfied:

(a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and

(b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with paragraph 25(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

**Enactments and agreements**

**26.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid 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 Grid 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**

**27.**—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 21(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 23, 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 Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid'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**

**28.** If in consequence of the agreement reached in accordance with paragraph 20(1) or the powers granted under this Order 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.

**Arbitration**

**29.** Save for differences or disputes arising under paragraphs 21(2), 21(4), 22(1) and 23 any difference or dispute arising between the undertaker and National Grid under this Part of this

Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 48 (arbitration).

**Notices**

**30.** Notwithstanding article 45 (service of notices), any plans submitted to National Grid by the undertaker pursuant to this Part must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

# PART 4

## For the protection of National Gas Transmission plc as gas undertaker

**Application**

**31.**—(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 (benefit of the Order)—

(a) any agreement of the type mentioned in sub-paragraph (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 41(3)(b)).

**Interpretation**

**32.** In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

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

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

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas

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

"acceptable security" means either:

(a) a parent company guarantee from a parent company in favour of National Gas to cover the undertaker's liability to National Gas to a total liability cap of £50,000,000.00 (fifty

million pounds) (in a form reasonably satisfactory to National Gas and where required by National Gas, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Gas to cover the undertaker's liability to National Gas for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas);

"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 development" in article 2(1) 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;

"commence" and "commencement" in 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;

"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;

"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: 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 Gas 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 Transporters Licence, as both documents are amended from time to time;

"Network Code Claims" means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

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

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Gas acting reasonably;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which:

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 37(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 37(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 T/SP/SSW/22";

"undertaker" means the undertaker as defined in article 2(1) of this Order.

**On Street Apparatus**

**33.** Except for paragraphs 34 (apparatus of National Gas in stopped up streets), 39 (retained apparatus: protection), 40 (expenses) and 41 (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 stopped up streets**

**34.**—(1) Where any street is stopped up under article 8 (street works), 9 (power to alter layout, etc. of streets), 10 (construction and maintenance of altered streets) or 11 (temporary stopping up of public rights of way), if National Gas has any apparatus in the street or accessed via that street National Gas has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Gas, or procure the granting to National Gas of, legal easements reasonably satisfactory to National Gas in respect of such apparatus and access to it prior to the stopping up 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 37 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 39.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary stopping up of public rights of way), National Gas is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway 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 highway.

**Protective works to buildings**

**35.** The undertaker, in the case of the powers conferred by article 21 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas.

**Acquisition of land**

**36.**—(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 or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas 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 39 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

**Removal of apparatus**

**37.**—(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 satisfaction of National Gas 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 Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order 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 38(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 may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for 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**

**38.**—(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 45 (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**

**39.**—(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.

(3) The undertaker must consider the existing pipeline's cathodic protection system and provide an earthing assessment where required by National Gas.

(4) 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.

(5) Any approval of National Gas required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (7); and,

(b) must not be unreasonably withheld.

(6) In relation to any work 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 or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) 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 (6), 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 (6) or (8) 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.

(8) 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's 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).

(9) If National Gas in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 31 to 33 and 36 to 38 apply as if the removal of the apparatus had been required by the undertaker under paragraph 37(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (7), (8) and (9) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(12) At all times when carrying out any works authorised under the Order National Gas 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".

(13) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development 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 40.

**Expenses**

**40.**—(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 invoice or claim from National Gas all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred 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 authorised works including without limitation—

(a) any costs reasonably 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 37(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 45 (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**

**41.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of 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 and including Network Code Claims other than arising from any default of National Gas.

(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 neglect or default of National Gas, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by 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 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-paragraph 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 41; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without 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 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.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas's apparatus until the following conditions are satisfied:

(a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same to the undertaker in writing; and

(b) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with paragraph 41(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Gas from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

**Enactments and agreements**

**42.** 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**

**43.**—(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 37(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 39, 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**

**44.** If in consequence of the agreement reached in accordance with paragraph 36(1) or the powers granted under this Order 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.

**Arbitration**

**45.** Save for differences or disputes arising under paragraph 37(2), 37(4), 38(1) and 39 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 48 (arbitration).

**Notices**

**46.** Notwithstanding article 45 (service of notices), any plans submitted to National Gas by the undertaker pursuant to this Part must be submitted to 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 5

## For the protection of Cadent Gas Limited

**Application**

**47.** For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

**Interpretation**

**48.** In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

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

**"**acceptable insurance**"** means a third party liability insurance effected and maintained by the undertaker to a level of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance must be maintained for the construction and use period of the authorised development which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an "acceptable credit provider", such policy must include (but without limitation):

(a) a cross liabilities clause;

(b) a waiver of subrogation in favour of Cadent; and

(c) contractors' pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either:

(a) evidence provided to Cadent's reasonable satisfaction that the undertaker has a tangible net worth of not less than £50,000,000.00 (fifty million pounds (or an equivalent financial measure)); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of Cadent Gas Limited to cover the undertaker's liability to Cadent for an amount of not less than

£50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Cadent);

"alternative apparatus" means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any gas mains, pipelines, pipes, pressure governors, ventilators, cathodic reasonable protection (including transformed rectifiers and any associated groundbeds or cables), cables, marker posts, block valves, hydrogen above ground installations or other apparatus belonging to or maintained by Cadent for the purposes of Cadent's undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent's undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

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

"Cadent" means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"Cadent's undertaking" means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

"commence" and "commencement" means carrying out a material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or for the purposes of the authorised development (including but not limited to) any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, and erection of construction plant and equipment, other than erection of fencing to site boundaries or marking out of site boundaries, installation of amphibian and reptile fencing, and "commencement", "commenced" and cognate expressions are to be construed accordingly;

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

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

"functions" includes powers and duties;

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

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

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

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

"maintain" and "maintenance" have effect as if Cadent's existing apparatus was authorised development and as if the term maintain includes protect and use;

"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;

"protective works" means the underpinning, strengthening and any other works the purpose of which is to prevent damage to or interference with Cadent's apparatus that may be caused by the carrying out, maintenance or use of the authorised development;

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

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

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 53(2) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 53(2) or otherwise; or

(c) include any of the activities that are referred to in CD/SP/SSW/22 Cadent's policies for safe working in proximity to gas apparatus Specification for safe working in the vicinity of Cadent Assets;

"undertaker" means the undertaker as defined in article 2 of this Order.

**On Street apparatus**

**49.**—(1) This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

(a) paragraphs 50, 55, and 57; and

(b) where sub-paragraph (2) applies, paragraphs 53 and 54.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) Notwithstanding article 11 or any other powers in the Order generally, section 85 of the 1991 Act in relation to cost sharing and the regulations made thereunder will not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

(4) The Protective Provisions in this Part of this Schedule apply and take precedence over article 34 (statutory undertakers) and 35 (recovery of costs of new connections) of the Order which do not apply to Cadent.

**Apparatus of Cadent in stopped up streets**

**50.**—(1) Where any street is stopped up under articles 12 (temporary restriction of public rights of way), 13 (temporary restriction of use of streets), or Schedule 5 (public rights of way to be temporarily restricted), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway, but nothing in this paragraph shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 53.

(2) Subject to sub-paragraph (3) below, and notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 12 (temporary restriction of public rights of way), 13 (temporary restriction of use of streets), or Schedule 5 (public rights of way to

be temporarily restricted), Cadent will be 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 it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that street.

(3) In taking access pursuant to sub-paragraph (2) above, Cadent must:

(a) Comply with any plans produced by the undertaker pursuant to its obligations under the Construction (Design and Management) Regulations 2015; and

(b) Comply with all relevant health and safety legislation, guidance, protocols and procedures.

**Protective works to buildings**

**51.**—(1) The undertaker must exercise the powers conferred by article 21 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed) and if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in the view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall–

(a) pay compensation to Cadent for any reasonable loss sustained by it; and

(b) indemnify Cadent against all claims, demands, proceedings, reasonable costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent, by reason of any such damage or interruption provided that at all times Cadent will be under an obligation to take all reasonable steps to mitigate its loss.

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

**Acquisition of land**

**52.**—(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 appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure and/or secure the consent to 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 development.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation 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 Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(4) Any agreement or consent granted by Cadent under paragraph 55 or any other paragraph of this Part of this Schedule, will be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ to the undertaker must accept a surrender of any existing easement and/or other interest of Cadent in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 53 do not apply, the undertaker must—

(a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and

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

**Removal of apparatus**

**53.**—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 53, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 54(1)) the necessary facilities and rights—

(a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);

(b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and

(c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

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

constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) 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 position as may be agreed between Cadent and the undertaker or settled by arbitration.

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

**Facilities and rights for alternative apparatus**

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent (in Cadent's reasonable opinion) than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's reasonable opinion), then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 61 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**Retained apparatus: protection of Cadent**

**55.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

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

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

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

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

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and

(b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

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

(a) cause interference with or risk of damage to its apparatus; or

(b) prevent access to its apparatus at any time.

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

(7) Specified works must only be executed in accordance with—

(a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and

(b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

(8) Where Cadent reasonably 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 Cadent's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(9) If Cadent, 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 47 to 49 and 52 to 54 apply as if the removal of the apparatus had been required by the undertaker under paragraph 53(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—

(a) the undertaker must implement an appropriate ground mitigation scheme; and

(b) Cadent retains the right to carry out any further necessary protective works (in Cadent's reasonable opinion) for the safeguarding of its apparatus and can recover any such costs associated with the further protective works in line with paragraph 56.

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

(a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and

(b) sub-paragraph (14) at all times.

(13) 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.

(14) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent's policies for safe working in proximity to gas apparatus "Specification

for safe working in the vicinity of Cadent Assets CAD//SP/SSW/22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

**Expenses**

**56.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all charges, costs and expenses reasonably anticipated or reasonably and properly incurred by Cadent 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 development including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all reasonable costs (including professional fees) incurred by Cadent as a consequence of Cadent–

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 53(3) if it elects to do so; and/or

(ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(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;

(g) any watching brief pursuant to sub-paragraph 55(6).

**Indemnity**

**57.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development 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 the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party and provided that at all times Cadent will be under an obligation to take reasonable steps to mitigate its loss, the undertaker will—

(a) bear and pay on demand accompanied by an appropriately detailed invoice or claim from Cadent the cost reasonably and properly incurred by Cadent in making good such damage or restoring the supply; and

(b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs incurred by, paid by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent Gas, its officers, servants, contractors or agents;

(b) any authorised development carried out by Cadent 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 (benefit of the Order) of the Order and subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-paragraph 3(b) will be subject to the full terms of this Part of this Schedule.

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

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

(7) The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised development on any land owned by Cadent or in respect of which Cadent has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of Cadent's apparatus until the following condition are satisfied:

(a) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it will maintain such acceptable security for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and Cadent has confirmed the same to the undertaker in writing; and

(b) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Cadent that it shall maintain such acceptable insurance for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and Cadent has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with paragraph 57(7) of this Part of this Schedule, nothing in this Part of this Schedule prevents Cadent from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

**Enactments and agreements**

**58.** Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between

the undertaker and Cadent 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**

**59.**—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under paragraph 53(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 56, the undertaker must 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 development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

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

**Access**

**60.** If in consequence of any agreement reached in accordance with paragraph 52(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction (in Cadent's reasonable opinion).

**Arbitration**

**61.** Save for differences or disputes arising under sub-paragraphs 53(2) and 53(4) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 48 (arbitration).

**Notices**

**62.** Notwithstanding article 45 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 55(1) must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

# PART 6

## For protection of Railway Interests

**63.** The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 77 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

**64.** In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act l993;

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licencee of Network Rail for the purposes of such railway or works, apparatus or equipment;

"regulatory consents" means any consent or approval required under—

(a) the Railways Act 1993

(b) the network licence; and/or

(c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 15 (maintenance of authorised development) in respect of such works.

**65.**—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

**66.**—(1) The undertaker must not exercise the powers conferred by—

(a) article 3 (development consent etc. granted by the Order);

(b) article 5 (power to maintain the authorised development);

(c) article 18 (discharge of water);

(d) article 20 (authority to survey and investigate the land);

(e) article 22 (compulsory acquisition of land);

(f) article 24 (compulsory acquisition of rights and restrictive covenants);

(g) article 29 (acquisition of subsoil or airspace only);

(h) article 25 (statutory authority to override easements and other rights);

(i) article 32 (temporary use of land for carrying out the authorised development);

(j) article 33 (temporary use of land for maintaining the authorised development);

(k) article 34 (statutory undertakers);

(l) article 27 (private rights);

(m) article 39 (felling or lopping of trees and removal of hedgerows);

(n) article 40 (trees subject to Tree Preservation Orders);

(o) the powers conferred by section 11(3) (power of entry) of the 1965 Act;

(p) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;

(q) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

(r) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 34 (statutory undertakers), article 25 (statutory authority to override easements and other rights) or article 27 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

**67.**—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring

the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

**68.**—(1) Any specified work and any protective works to be constructed by virtue of paragraph 67(4) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 67;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**69.** The undertaker must-

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

**70.** Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their

construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**71.**—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 67(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 72(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**72.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 67(3) or in constructing any protective works under the provisions of paragraph 67(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**73.**—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 67(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 67(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 67(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorized development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred –

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and

(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 68.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 77(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 72(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 48 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

**74.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**75.** The undertaker must not provide any illumination or illuminated sign of signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**76.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**77.**—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 46 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

(a) give the undertaker reasonable written notice of any such claims or demands;

(b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and

(c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**78.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 77) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

**79.** In the assessment of any sums payable to Network Rail under this Part of 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 Network Rail 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 Part of this Schedule or increasing the sums so payable.

**80.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**81.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

**82.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 7 (benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**83.** The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 44 (certification of plans, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

**84.** In relation to any dispute arising under this Part of this Schedule (except for those disputes referred to in paragraph 73(11) the provisions of article 48 (arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator 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 order) to the President of the Institution of Civil Engineers.

# PART 7

## For the protection of the Environment Agency

**85.**—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this part of this Schedule—

"Agency" means the Environment Agency;

"construction" includes execution, placing, altering, replacing, relaying and removal and excavation and "construct" and "constructed" is construed accordingly;

"drainage work" means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"fishery" means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

"main river" has the same meaning given in section 113 of the Water Resources Act 1991;

"plans" includes sections, drawings, specifications, calculations and method statements;

"remote defence" means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

"sea defence" means any bank, wall, embankment (any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artifical, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences of the Agency's area against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949 or by any local authority or any navigation, harbour or conservancy authority;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within—

(a) 16 metres of the base of a sea defence and which is likely to–

(i) endanger the stability of, cause damage or reduce the effectiveness of that sea defence; or

(ii) interfere with the Agency's access to or along that sea defence;

(b) 8 metres of the base of a remote defence and which is likely to–

(i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence; or

(ii) interfere with the Agency's access to or along that remote defence;

(c) 8 metres of a drainage work or is otherwise likely to–

(i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(ii) affect the flow, purity or quality of water in any watercourse or other surface waters;

(iii) cause obstruction to the free passage of fish or damage to any fishery;

(iv) affect the conservation, distribution or use of water resources; or

(v) affect the conservation value of the main river and habitats in its immediate vicinity;

(d) or which involves:

(e) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and

(f) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work;

"watercourse" includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

**Submission and approval of plans**

**86.**—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 96.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and

(c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, if requested to do so the Agency must provide reasons for the grounds of that refusal.

**Construction of protective works**

**87.** Without limiting paragraph 86 the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

**Timing of works and service of notices**

**88.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 87, must be constructed—

(a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and

(b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

**Works not in accordance with this Schedule**

**89.**—(1) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(2) Subject to sub-paragraph (3) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (1) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (1) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 96.

**Maintenance of works**

**90.**—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by

the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5) if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 96.

(6) This paragraph does not apply to-

(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and

(b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

**Remediating impaired drainage work**

**91.** If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

**Agency access**

**92.** If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of or as soon as reasonably practicable after the undertaker becoming aware of such obstruction.

**Free passage of fish**

**93.**—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

**Indemnity**

**94.** The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may incur—

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and

(c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

**95.**—(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

(a) the authorised development; or

(b) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or

(c) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) For the avoidance of doubt, in sub-paragraph (1)—

"costs" includes—

(i) expenses and charges;

(ii) staff costs and overheads;

(iii) legal costs;

"losses" includes physical damage;

"claims" and "demands" include as applicable—

(iv) costs (within the meaning of sub-paragraph ((2)(i)) incurred in connection with any claim or demand;

(v) any interest element of sums claimed or demanded;

"liabilities" includes—

(vi) contractual liabilities;

(vii) tortious liabilities (including liabilities for negligence or nuisance);

(viii) liabilities to pay statutory compensation or for breach of statutory duty;

(ix) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(4) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(5) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(6) Nothing in this paragraph shall impose any liability on the undertaker in respect of—

(a) any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents;

(b) any indirect or consequential loss of the Agency or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption).

**Disputes**

**96.** Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 48 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Energy Security and Net Zero or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

# PART 8

## For the protection of Northern Powergrid (Yorkshire) Plc

**97.** For the protection of Northern Powergrid (Yorkshire) Plc the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid (Yorkshire) Plc.

**98.** In this Part of this Schedule—

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

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

"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;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include any measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on the apparatus or Northern Powergrid's undertaking within the Order Limits and

"Northern Powergrid" means Northern Powergrid (Yorkshire) Plc (Company number 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF.

**99.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Power grid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

**100.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary restriction of use of streets), Northern Powergrid 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.

**101.** Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any apparatus or override any easement or other interest of Northern Powergrid or acquire any other interest of Northern Powergrid or create any new rights over the same otherwise than by agreement of Northern Powergrid such agreement not to be unreasonably withheld or delayed (having regard to Northern Powergrid's existing and known future requirements for such land or interests).

**102.** Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not interfere with any communications cables or equipment used by Northern Powergrid in relation to its apparatus or acquire or interfere with rights or interest supporting the use, maintenance or renewal of such equipment other than by agreement of Northern Powergrid (such agreement not to be unreasonably withheld or delayed) .

**103.—**(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 Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement which shall include rights to retain and subsequently maintain the apparatus being replaced or diverted and any access rights to it for the lifetime of that alternative apparatus all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed—

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

(b) in the event that the undertaker is not able to procure the necessary land interest or rights referred to in sub-paragraph (3)(a) 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 (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Northern Powergrid to use its compulsory purchase powers to this end unless it elects to do so.

(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 Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with the Order.

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

**104.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with Order.

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

**105.—**(1) Not less than 90 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under the 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 103(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed and any such information as Northern Powergrid reasonably requires relating to those works.

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

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (2) 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 97 to 105 apply as if the removal of the apparatus had been required by the undertaker under paragraph (2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 35 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 Northern Powergrid 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.

**106.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within 50 days of receipt of an itemised invoice or claim the reasonable expenses 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 106(2); and

(b) in assessing and preparing a design for its 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 106(1) having first decommissioned such apparatus.

(2) Where any payment falls due pursuant to paragraph 106(1), Northern Powergrid shall—

(i) provide an itemised invoice or reasonable expenses claim to the undertaker; and

(ii) provide 'reminder letters' to the undertaker for payment to be made within the 50 days on the following days after the invoice or reasonable expenses claim to the undertaker:

(aa) 15 days ('reminder letter 1')

(bb) 29 days ('reminder letter 2')

(cc) 43 days ('reminder letter 3')

(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,

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 the Order 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 would be payable to Northern Powergrid by virtue of sub-paragraph (1) will reflect a reasonable price based on appropriate and proportionate apparatus being obtained.

(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 106(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.

**107.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction use maintenance or failure of any of the works referred to in paragraph 106(2) by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker or Northern Powergrid under 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 those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party, and provided that at all times Northern Powergrid will be under an obligation to take reasonable steps to mitigate its loss, the undertaker must—

(a) bear and pay on demand accompanied by an appropriately detailed invoice or claim from Northern Powergrid the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and

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

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

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

(b) any authorised development and/or other works authorised by this Part of this Schedule carried out by Northern Powergrid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus") any works yet to be executed by the undertaker and not falling within this paragraph will be subject to the full terms of this Part of this Schedule including this paragraph in respect of such new apparatus; and/or

(c) any indirect or consequential loss of Northern Powergrid or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption which is not reasonably foreseeable.

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

(5) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 106 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 107 for claims reasonably incurred by Northern Powergrid.

(6) The fact that any act or thing may have been done by Northern Powergrid on behalf of the undertaker or in accordance with a plan approved by Northern Powergrid or in accordance with any requirement of Northern Powergrid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (2) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skillful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and the Northern Powergrid.

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

**109.** Any difference or dispute arising between the undertaker and Northern Powergrid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Northern Powergrid Transmission, be determined by arbitration in accordance with article 48 (arbitration).

**110.**—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 103 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 105, the undertaker shall use its best 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 apparatus taking into account the undertakers desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use best endeavours to cooperate with each other for these purposes.

(2) For the avoidance of doubt whenever Northern Powergrid'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 and any action, decision, cost and/or expense which may be claimed under this Part of this Schedule shall at all times be subject to Northern Powergrid acting reasonably

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

**112.** 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.

**113.** Where practicable, the undertaker and Northern Powergrid will make reasonable efforts to liaise and co-operate in respect of information that is relevant to the safe and efficient construction operation and maintenance of the authorised development. Such liaison shall be carried out where any works are:

(a) within 15m of any above ground apparatus and / or

(b) are to a depth of between 0 – 4m below ground level.

# PART 9

## For the protection of National Highways Limited

### Application etc.

**114.**—(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015 which shall continue to apply in respect of the exercise of all National Highways' statutory functions.

### Interpretation

**115.**—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2) the latter prevail.

(2) In this Part of this Schedule—

"acceptable credit provider" means a United Kingdom based bank or financial institution that transacts under the law of England and Wales with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard and Poor's Ratings Group or Fitch Ratings, or (ii) "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable security" means a bank bond or letter of credit from an acceptable credit provider in favour of National Highways to cover the undertaker's liability to National Highways for an amount of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to National Highways);

"as built information" means one electronic copy of the following information as applicable—

(a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;

(b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);

(c) product data sheets and technical specifications for all materials used;

(d) as constructed information for any utilities discovered or moved during the works;

(e) method statements for the works carried out;

(f) organisation and methods manuals for all products used;

(g) as constructed programme;

(h) test results and records as required by the detailed design information and during construction phase of the project;

(i) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;

(j) the health and safety file; and

(k) such other information as is reasonably required by National Highways to be used to update all relevant databases and to ensure compliance with National Highways' Data Management Manual as is in operation at the relevant time, insofar as the undertaker has all necessary rights to provide the same;

"condition survey" means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

"contractor" means any contractor or subcontractor appointed by the undertaker to carry out the specified;

"detailed design information" means such of the following drawings specifications and calculations as are relevant to the specified works—

(a) site clearance details;

(b) boundary, environmental and mitigation fencing;

(c) road restraints systems and supporting road restraint risk appraisal process assessment;

(d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;

(e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;

(f) highway structures and any required structural approval in principle;

(g) landscaping;

(h) proposed departures from DMRB standards;

(i) walking, cycling and horse-riding assessment and review report;

(j) stage 1 and stage 2 road safety audits and exceptions agreed;

(k) utilities diversions;

(l) topographical survey;

(m) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;

(n) health and safety information including any asbestos survey required by GG105 or any successor document; and

(o) other such information that may be reasonably required by National Highways to be used to inform the detailed design of the specified works;

"defects period" means a period of twelve months commencing from the date of completion of a specified work;

"DMRB" means the Design Manual for Roads and Bridges or any replacement or modification of it;

"the health and safety file" means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

"nominated persons" means the undertaker's representatives or the contractor's representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

"programme of works" means a document setting out the sequence and timetabling of the specified works;

"road safety audit" means an audit carried out in accordance with the road safety audit standard;

"road safety audit standard" means DMRB Standard HD GG119 or any replacement or modification of it;

"road space booking" means road space bookings in accordance with National Highways' Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

"specified works" means so much of any work, including highway works, authorised by this Order including any maintenance of that work, as is undertaken on, in, under or over the strategic road network for which National Highways is the highway authority;

"Specification for Highways Works" means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;

"strategic road network" means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway for which National Highways is the highway authority; and

"utilities" means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991.

**General**

**116.**—(1) References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

(2) No works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road network at a distance within 4 metres of the lowest point of any services and/or drainage under the highway.

(3) All works associated with the construction and installation of the pipeline pursuant to Work No.03 and Work No.08 shall, in so far as those works cross the strategic road network, be carried out by trenchless methods unless otherwise agreed by National Highways.

**Prior approvals**

**117.**—(1) The specified works must not commence until—

(a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;

(b) the programme of works has been approved by National Highways;

(c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—

(i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);

(ii) details of the proposed road space bookings;

(iii) the identity and suitability of the contractor and nominated persons;

(iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker; and

(v) information demonstrating that the walking, cycling and horse-riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding;

(d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;

(e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(iv) above; and

(f) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.

(2) Except where an approval has otherwise been provided under this Part, the undertaker must not exercise—

(a) article 5 (power to maintain the authorised development);

(b) article 9 (street works);

(c) article 10 (power to alter layout, etc. of streets)

(d) article 12 (temporary restriction of public rights of way);

(e) article 13 (temporary restriction of use of streets);

(f) article 14 (access to works);

(g) article 17 (traffic regulation);

(h) article 18 (discharge of water);

(i) article 20 (authority to survey and investigate land);

(j) article 21 (protective works to buildings);

(k) article 22 (compulsory acquisition of land);

(l) article 24 (compulsory acquisition of rights);

(m) article 31 (rights under or over streets);

(n) article 32 (temporary use of land for carrying out the authorised development);

(o) article 33 (temporary use of land for maintaining the authorised development); or

(p) article 39 (felling or lopping of trees and removal of hedgerows) of this Order,

over any part of the strategic road network.

(3) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraphs (1) or (2).

(4) National Highways must within 56 days of the undertaker requesting National Highways' approval pursuant to sub-paragraphs (1) and (2)—

(a) intimate their approval;

(b) intimate their refusal together with reasons for refusal; or

(c) request more time to intimate approval or refusal pursuant to sub-paragraphs (a) or (b).

(5) In the event National Highways requests more time pursuant to sub-paragraph (4)(c), the undertaker may—

(a) approve that request; or

(b) require that the person identified to the undertaker pursuant to sub-paragraph (3) meets with the undertaker's project director to discuss the request for approval.

(6) Any approval of National Highways required under this paragraph 117—

(a) must be given in writing; and

(b) may be subject to any conditions as National Highways considers reasonably necessary.

(7) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways as soon as reasonably practicable and in any event within 7 days and details of their suitability to deliver the specified works will be provided on request.

(8) Any change to the detailed design of the specified works must be approved by National Highways in accordance with sub-paragraph (4).

**Construction of the specified works**

**118.**—(1) The undertaker must give National Highways 28 days' notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

(3) The specified works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—

(a) the relevant detailed design information and programme of works approved pursuant to paragraph 117(1) above or as subsequently varied by agreement between the undertaker and National Highways;

(b) in so far as it may be applicable, the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as may reasonably be required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual, and the Traffic Signs Regulations and General Directions 2016, save to the extent that exceptions from those standards apply which have been approved by National Highways; and

(c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways.

(4) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works for the purposes of inspection and supervision of the specified works.

(5) If any part of the specified works is constructed—

(a) other than in accordance with the requirements of this Part of this Schedule; or

(b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways, National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways acting reasonably.

(6) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may carry out steps required to remedy the damage and may recover any expenditure reasonably incurred by National Highways in so doing, such sum to be payable within 30 days of demand.

(7) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing. Notwithstanding the foregoing, National Highways will inform the undertaker of any such works or action as soon as reasonably practicable.

(8) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities (where required to prevent unreasonable interference or damage) and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways acting reasonably.

(9) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 117(1)(b) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

(10) Powers granted to National Highways to undertake any works under this paragraph include works to make safe an area but do not include powers to undertake any works to, the pipeline or any works which could conflict with the duties and obligations of the undertaker under the Pipeline Safety Regulations 1996, any direction issued by the Health and Safety Executive under those Regulations or any other health and safety legislation relating to the operation and maintenance of the pipeline.

**Payments**

**119.**—(1) The undertaker must pay to National Highways a sum equal to the whole of any costs and expenses which National Highways reasonably incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works, including—

(a) the checking and approval of the information required under this Part;

(b) the supervision of the specified works;

(c) all legal and administrative costs and disbursements incurred by National Highways in connection with the specified works and sub-paragraphs (a) and (b); and

(d) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising "the NH costs".

(2) National Highways must within 14 days of receipt of the information pursuant to sub-paragraph 117(1) provide the undertaker with a schedule showing its estimate of the NH costs.

(3) The undertaker must within 30 days of receipt of the notice pursuant to sub-paragraph (2) pay to National Highways the estimate of the NH costs.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs notified pursuant to sub-paragraph (2) it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate (the "excess").

(5) The undertaker must within 30 days of receipt of the notification pursuant to sub-paragraph (4) pay to National Highways an amount equal to the excess.

(6) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above as a fully itemised invoice within 30 days of the undertaker notifying to National Highways that a specified work has been completed.

(7) Within 30 days of the issue of the final account—

(a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it; and

(b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(8) The undertaker must pay to National Highways within 30 days of receipt and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the specified works.

**Completion of a specified work**

**120.**—(1) The undertaker must within 28 days of completion of a specified work arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed including a renewed geotechnical assessment required by DMRB CD622 and must submit the re-survey to National Highways for its approval.

(2) If the re-surveys carried out pursuant to sub-paragraph (1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing, which must not be unreasonably withheld or delayed, and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to sub-paragraph (1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing.

(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

(6) The undertaker must within 28 days of completion of any specified works submit to National Highways the as built information in relation to those works.

(7) A defects period shall commence following completion of a specified work during which time the undertaker must, at its own expense, remedy any defects in the SRN as are reasonably required by National Highways. All identified defects must be remedied in accordance with the following timescales—

(a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);

(b) in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and

(c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

**Security**

**121.** No specified work shall commence until the undertaker has first provided the acceptable security in favour of National Highways, and provided evidence (to the reasonable satisfaction of National Highways) that it shall maintain such acceptable security for the construction period of the specified works from the proposed date of commencement of the specified works until no earlier than the end of the defects period.

**Insurance**

**122.** Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £10,000,000 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of the specified works.

**Indemnity**

**123.**—(1) The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 30 days of demand.

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

(a) any loss arising out of or in consequence of any negligent act or default of National Highways or its officers servants agents or contractors or any person or body for which it is responsible; or

(b) any indirect or consequential loss of National Highways or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption).

**Maintenance of the specified works**

**124.**—(1) The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) The undertaker must comply with any reasonable requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days in advance of the planned commencement date of the maintenance works.

**Land**

**125.** The undertaker must not under the powers of this Order—

(a) acquire or use land forming part of;

(b) acquire new or existing rights over; or

(c) seek to impose or extinguish any restrictive covenants over,

any of the strategic road network, or extinguish any existing rights of National Highways in respect of any third-party property, except with the consent of National Highways such not to be unreasonably withheld or delayed by written request to legalservicesteam@nationalhighways.co.uk.

**Expert Determination**

**126.**—(1) Subject to the provisions of this paragraph, article 48 (arbitration) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48 (arbitration).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

**Co-operation**

**127.**—(1) Where in consequence of the proposed construction of any part of the authorised development, National Highways makes requirements for the protection of the SRN under paragraph 119, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety of the authorised development and taking into account the need to ensure the safety of National Highways' undertaking and National Highways must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Highways' 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.

# PART 10

## For the protection of Anglian Water

**Application**

**128.** For the protection of Anglian Water the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

**Interpretation**

**129.** In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

"Anglian Water" means Anglian Water Services Limited;

"apparatus" means:

(a) any 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;

"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;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

**On street apparatus**

**130.** 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.

**Apparatus in stopped up streets**

**131.** Regardless of the temporary stopping up or diversion of any highway under the powers conferred by articles 12 (temporary restriction of public rights of way) and 13 (temporary restriction of use of streets), Anglian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway 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 highway.

**Protective works to buildings**

**132.** The undertaker, in the case of the powers conferred by article 21 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

**Acquisition of land**

**133.** 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**

**134.**—(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 135.

(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 Anglian Water 28 days' 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 an undertaker reasonably needs to remove any of its 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 or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48, 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 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, which shall remain the sole responsibility of Anglian Water or its contractors.

(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**

**135.**—(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 or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to 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 (England and Wales) 2016 or other legislation.

**Retained apparatus**

**136.**—(1) Not less than 28 days before starting the execution of any 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 (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 134(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) 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 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) 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 128 to 130 and 166 to 136 apply as if the removal of the apparatus had been required by the undertaker under paragraph 134(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 instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) 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 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.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those 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 submitted under sub-paragraph (1) (but which distance, for the avoidance of doubt, shall not exceed 7 metres) where the diameter of the pipe exceeds 400 millimetres.

**Expenses and costs**

**137.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water 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 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 48 (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) An amount which apart from this sub-paragraph would be payable to Anglian Water 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 Anglian Water 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.

**Indemnity**

**138.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 129 or 131(2), 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 the undertaker,

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 (4), 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) Anglian Water must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, penalties and costs to which the provisions of this Part of this Schedule apply. If requested to do so by the undertaker, Anglian Water must provide an explanation of how any claim has been minimised. The undertaker shall not be liable under this paragraph for claims unreasonably incurred by Anglian Water.

(4) Nothing in 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 Anglian Water, its officer, servants, contractors or agents; or

(b) any indirect or consequential loss of Anglian Water or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption.

(5) Anglian Water 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 (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**Cooperation**

**139.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 134(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 136, 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 development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes 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.

**140.** 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.

**141.** 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.

# PART 11

## For the protection of Phillips 66 Limited

### Application

**142.** For the protection of P66 (as referred to in this Part of this Schedule) the following provisions have effect, unless otherwise agreed in writing between the undertaker and P66.

### Interpretation

**143.** In this Part of this Schedule—

"affected assets" means apparatus owned or operated by P66 on or above ground which in the reasonable opinion of P66 would have the potential to be physically affected by the relevant works;

"apparatus" means any part of the pipelines and includes—

(a) any structure existing at the time when a particular action is to be taken under this Part of this Schedule in which apparatus is or is to be lodged or which will give 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;

"damage" includes all damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

"engineer" means an engineer appointed by P66 for the purposes of this Order;

"HOR" means the Humber Oil Refinery which at the date of this Order is owned and operated by P66;

"P66" means Phillips 66 Limited (company number 00529086) and any subsequent owner of the pipelines or HOR;

"P66 address" means the postal address details to be provided pursuant to paragraph 161;

"P66 email" means the email address details to be provided pursuant to paragraph 161;

"pipelines" means the pipelines owned and operated by P66 located within the multi-pipeline rack on the north side of A1173 Manby Road and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) of the Pipe-lines Act 1962;

"protected land" means such parts of the Order land as is within 30 metres of the pipelines;

"relevant work" means a work which may have an effect on the operation, maintenance, abandonment of or access to any of the pipelines; and

"works details" means the following—

(a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;

(b) details of the undertaker and their principal contractors management of change procedures;

(c) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;

(d) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to any of the pipelines;

(e) details of the means by which the pipelines can be properly inspected and if necessary repaired during the construction and operation of the authorised development;

(f) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system and the proposed remedial works;

(g) any further particulars provided in accordance with paragraph 144(3).

**Authorisation of works details affecting pipelines or protected crossings**

**144.**—(1) Before commencing any part of a relevant work the undertaker must submit the works details to P66 in accordance with paragraph 145.

(2) The works details submitted under sub-paragraph (1) will be treated as having been received by P66 on the date—

(a) that the undertaker obtains written acknowledgement of receipt from P66; or

(b) two clear working days following the date that the work details were submitted under sub-paragraph (1),

whichever is earliest.

(3) The undertaker must as soon as reasonably practicable provide such further particulars as P66 may, within 30 days from the receipt of the works details under sub-paragraph (2), reasonably require.

**145.** No part of a 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 paragraph 144 have been authorised by P66; or

(b) the works details supplied in respect of that relevant work under paragraph 144 have been authorised by an expert under paragraph 147(2).

**146.**—(1) Any authorisation by P66 required under paragraph 145(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as P66 may require to be made for—

(a) the continuing safety and operation or viability of the affected asset; and

(b) the requirement for P66 to have–

(i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset 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 affected asset.

(2) Where P66 can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the pipelines it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of P66 that the authorised development will not significantly adversely affect the safety of the pipelines.

(3) The authorised development must be carried out in accordance with the works details authorised under paragraph 145 and any conditions imposed on the authorisation under sub-paragraph (1).

(4) Where there has been a reference to an expert in accordance with paragraph 147 and the expert gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 147(2).

**147.**—(1) In the event that-

(a) the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 146(1); or

(b) the undertaker considers that P66 has given its authorisation under paragraph 146(1) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under paragraph 160.

(2) Where the matter is referred to an expert under paragraph 6(1) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 146(1).

(3) Where the undertaker considers that P66 has unreasonably withheld its authorisation under paragraph 146(2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association for determination under paragraph 160.

**Notice of works**

**148.** The undertaker must provide to P66 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.

**Further provisions about works**

**149.**—(1) Before carrying out a relevant work the undertaker must—

(a) provide P66 with baseline data for any existing cathodic protection of the affected asset; 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.

(2) A minimum clearance of 1500 millimetres must be maintained between any part of the authorised development and any affected asset unless otherwise agreed with P66.

**Monitoring for damage to pipelines**

**150.**—(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 P66 to enable repairs to be carried out to the reasonable satisfaction of P66.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of P66—

(a) afford P66 all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to P66 its 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 of P66 to have effectively repaired the affected asset before any backfilling takes place.

(4) If in the course of carrying out repairs under sub-paragraph (3)(a) or (3)(b) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which 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 to be necessary, then, if it involves cost in the execution of the repairs 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 would be payable to P66 under sub-paragraph (3)(a), or incurred by the undertaker under sub-paragraph (3)(b), by virtue of paragraph (3) will be reduced by the amount of that excess.

(5) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where P66 agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(6) 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.

(7) In relation to the approved assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system, the undertaker must undertake any necessary remedial work.

(8) In the event that the undertaker does not carry out necessary remedial work in a timely manner then P66 is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

**151.**—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and P66 must be notified immediately.

(2) Where there is leakage or escape of gas, the undertaker must immediately—

(a) remove all personnel from the immediate vicinity of the leak;

(b) inform P66;

(c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and

(d) assist emergency services as may be requested.

**Compliance with requirements etc applying to the protected land**

**152.**—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting owners of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the relevant land including without limitation Appendix K - Code of Practice for Safe Working in the vicinity or crossing of Phillips 66 Ltd's Pipelines and associated installations.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

(a) introduced after the date on which notice of the works was given under paragraph 144; or

(b) determined by the expert following a determination under paragraph 160 to unreasonably—

(i) create significant engineering, technical or programming difficulties; or

(ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

**Restriction on exercising powers**

**153.** The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on P66, including any disruption to access and supplies of utilities and other services that are required by P66 in order to carry out its operations.

**Insurance**

**154.**—(1) Before carrying out any part of the authorised development on the protected land, the undertaker must put in place a policy of insurance with a reputable insurer against its liabilities under paragraph 156 subject to a minimum level of £200,000,000.00 (two hundred million

pounds) per occurrence or series of occurrences arising out of one event, and evidence of that insurance must be provided on request to P66.

(2) The undertaker must maintain insurance in relation to the authorised development affecting P66 during the construction, operation, maintenance, repair and decommissioning of the authorised development.

**Costs**

**155.** The undertaker must repay to P66 all reasonable fees, costs, charges and expenses reasonably incurred by them in relation to these protective provisions in respect of—

(a) authorisation of works details submitted by the undertaker under paragraph 144 and the imposition of conditions under paragraph 145;

(b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 148; and

(c) the repair and testing of a pipeline or protected crossing under paragraph 150;

(d) including the reasonable costs incurred by P66 in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to P66 to carry out its functions under these protective provisions.

**Indemnity**

**156.**—(1) The undertaker must indemnify and keep P66 indemnified against all reasonable costs, charges, damages and expenses—

(a) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of the authorised development.

(2) The fact that any act or thing may have been done by P66 on behalf of the undertaker or in accordance with a plan approved by P66 or in accordance with any requirement of P66 or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless P66 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 neglect or default of P66, its officers, servants, contractors or agents; and/or

(b) any indirect or consequential loss of P66 or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption.

(4) P66 must give the undertaker reasonable notice of any claim or demand under sub-paragraph (1) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(5) P66 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) P66 must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within P66'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 P66's control and if reasonably requested to do so by the undertaker P66 must provide an explanation of how the claim has been minimised, where relevant.

(7) P66 must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule.

**Further protection in relation to the exercise of powers under the Order**

**157.** The undertaker must give written notice to P66 if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 7 (benefit of the Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**158.** The undertaker must, when requested to do so by P66, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 44 (certification of plans, etc.) in the form of a computer disc with read only memory or such other format as may be agreed between the relevant parties.

**159.** Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to P66.

**Expert Determination**

**160.**—(1) Except as provided in sub-paragraph (7), article 48 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the experts appointment;

(b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;

(c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and

(d) give reasons for the decision.

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;

(e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;

(f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;

(g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;

(h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and

(i) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48.

**Notices**

**161.**—(1) P66 must as soon as reasonably practicable following a written request from the undertaker provide details of the P66 address and P66 email.

(2) A notice or other document required or authorised to be served on P66 under this Part of the Schedule must be served—

(a) by post to the P66 address; and

(b) by electronic transmission to the P66 email,

or to such other postal or electronic mail address which P66 may from time to time notify to the undertaker.

(3) In the event that P66 does not provide the P66 address and P66 email within 14 days of the undertaker's request pursuant to sub-paragraph (1) then sub-paragraph (2) does not apply and the undertaker must—

(a) serve any notice or document on P66 at its registered office; and

(b) send a copy of such notice or document to the HOR marked for the attention of the refinery manager.

# PART 12

## For the protection of Immingham Oil Terminal operators

**Application**

**162.** For the protection of the IOT Operators as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and IOT Operators.

**Interpretation**

**163.** In this Part of this Schedule—

"affected assets" means apparatus owned or operated by the IOT Operators on or above ground which in the reasonable opinion of the IOT Operators would have the potential to be physically affected by a relevant work;

"alternative apparatus" means alternative apparatus adequate to enable the IOT Operators to fulfil its functions in a manner not less efficient than previously;

"alternative rights" means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of alternative apparatus including any restrictions on the landowner and occupiers for the protection of the alternative apparatus and to allow the IOT Operators to perform its functions;

"apparatus" means any part of the pipelines and includes—

(a) any structure existing at the time when a particular action is to be taken under this Part of this Schedule in which apparatus is or is to be lodged or which will give 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;

(d) such legal interest, and benefit of property rights and covenants as are vested in respect of these items;

"APT" means Associated Petroleum Terminals (Immingham) Limited (company number 00564394), whose registered office is at Queens Road, Immingham, Grimsby, North East Lincolnshire, DN40 2PN, and in all cases any successor in title;

"authorised development" has the same meaning as that given in article 2 (interpretation) and for the purposes of this Part of this Schedule;

"commence" has the same meaning as that given in article 2 of the Order (and "commencing" must be construed accordingly);

"damage" includes all and any damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

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

"engineer" means an engineer appointed by the IOT Operators for the purposes of this Part of this Schedule;

"functions" includes powers and duties and commercial undertaking;

"HOTT" means Humber Oil Terminals Trustee Limited (company number 00874993), whose registered office is at Queens Road, Immingham, Grimsby, North East Lincolnshire, DN40 2PN, and in all cases any successor in title;

"IOT" means the pipe-line and storage system associated with the Immingham Oil Terminal;

"IOT Operators" means APT and HOTT, acting in their capacity as operators and owners of the IOT, and any subsequent owner(s) and operator(s) of the pipelines or IOT;

"IOT Operators address" means the postal address details to be provided pursuant to paragraph 179;

"IOT Operators email" means the email address details to be provided pursuant to paragraph 179;

"party" means the undertaker and the IOT Operators and "party" is to be construed accordingly;

"pipelines" means the whole or any part of the pipelines belonging to or maintained or operated by the IOT Operators located within the multi-pipeline rack on the north side of A1173 Manby Road and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) of the Pipe-Lines Act 1962;

"plans" includes all designs, drawings, sections, specifications, method statement, soil reports, programmes, calculations, risks assessment and other documents that are reasonably necessary to allow the IOT Operators to assess the relevant works to be executed properly and sufficiently and in particular must describe—

(a) the exact position of the works;

(b) the level at which the works are proposed to be constructed or renewed;

(c) the manner of the works' construction or renewal including details of excavation, position of plant etc;

(d) the position of the affected apparatus and/or premises and any other apparatus belonging to another undertaker;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regime;

(g) details of the proposed method of working and timing of execution of works; and

(h) details of vehicle access routes for construction and operational traffic;

"premises" means land within the Order limits that the IOT Operators owns, occupies or otherwise has rights to use including but not limited to storage facilities, administrative buildings and jetties;

"relevant work" means any works that will or may be situated over, or within 15 metres measured in any direction of any of the apparatus and/premises, or will or which may have an effect on the operation, maintenance, abandonment of or access to any of the apparatus and/or premises or involves a physical connection or attachment to any apparatus; and

"works details" means the following—

(a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;

(b) details of the undertaker and their principal contractors' management of change procedures;

(c) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;

(d) details of the electrical design of the relevant work in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to any of the pipelines;

(e) details of the means by which the pipelines can be properly inspected and if necessary repaired during the construction and operation of the authorised development; and

(f) details of the assessment and monitoring work to be undertaken both prior to the construction of the relevant work and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system and the proposed remedial works.

**Acquisition of apparatus**

**164.**—(1) Regardless of any other provision in the Order or anything shown on the land plans or if the Order covers any premises or interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed—

(a) the undertaker must grant the IOT Operators upon reasonable notice either (i) during the carrying out of any relevant works and/or (ii) following completion of the relevant works and during the operation of the authorised development access to any apparatus and/or premises for the purposes of inspection, maintenance and repair of such apparatus and upon reasonable notice. For the purposes of this sub-paragraph (a), 'apparatus' includes

any connection into pipelines or associated infrastructure operated by the IOT Operators and/or any successor pipeline operator;

(b) the undertaker must not, otherwise than by agreement with the IOT Operators, acquire any apparatus or the right of the IOT Operators in respect of the apparatus;

(c) where the undertaker acquires the freehold of any land in which the IOT Operators holds an interest, the undertaker must afford to or secure for the IOT Operators such rights in land in substitution for any right which would be extinguished by that acquisition (the replacement rights). These replacement rights must be granted upon substantially the same terms and conditions as the right(s) to be extinguished, unless otherwise agreed between the undertaker and the IOT Operators, and must be granted or out in place contemporaneously with the extinguishment of the rights which they replace;

(d) the undertaker must not, otherwise in accordance with this Part of this Schedule—

(i) obstruct or render less convenient the access to any apparatus or premises;

(ii) interfere with or affect the ability of the IOT Operators to carry out its functions as an oil pipeline operator;

(iii) require that apparatus is relocated or diverted; or

(iv) remove or require to be remove any apparatus;

(e) any right of the IOT Operators to maintain, repair, renew, adjust, alter or inspect apparatus may not be extinguished until any necessary Alternative Apparatus has been constructed, it is in operation and the Alternative Rights have been granted, all to the reasonable satisfaction of the IOT Operators;

(f) any rights of the IOT Operators to access the apparatus and/or premises must not be extinguished until necessary alternative access has been provided to the reasonable satisfaction of the IOT Operators.

(2) Prior to the carrying out of any works that will or may be situated over, or within 15 metres measured in any direction of any apparatus and/or premises or may or will conflict with or breach the terms of any easement or other legal or land interest of the IOT Operators or affect the provisions of any enactment or agreement regulating the relations between the IOT Operators and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the parties must as the IOT Operators reasonably require enter into such deeds of consent upon such terms and conditions as may be agreed between the parties acting reasonably and which must be no less favourable on the whole to the IOT Operators than this Schedule, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variation by all other third parties with an interest in the land at that time who are affected by such works.

**Authorisation of works details affecting pipelines or protected crossings**

**165.** Before commencing any part of a relevant work the undertaker must submit the works details to the IOT Operators and any other information that the IOT Operators may reasonably require to allow it to assess the works.

**166.** No part of a 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 paragraph 165 have been approved by the IOT Operators; or

(b) the works details supplied in respect of that relevant work under paragraph 165 have been authorised by an expert under paragraph 168.

**167.**—(1) Any approval by the IOT Operators under paragraph 165(a) must not be unreasonably withheld or delayed, and the IOT Operators must communicate its approval or refusal of the works details within 56 days of the date of submission of the works details under paragraph 165(1) above and any approval may be given subject to such reasonable requirements as the IOT Operators may require to be made for—

(a) the continuing safety and operational viability of any apparatus and/or premises; and

(b) the requirement for the IOT Operators to have—

(i) uninterrupted and unimpeded emergency access with or without vehicles to any apparatus and/or premises at all times; and

(ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operational viability of any apparatus and/or premises.

(2) The relevant work must be carried out in such manner and in such position or situation as may be agreed between the IOT Operators and the undertaker including any reasonable requirements imposed on the approval by the IOT Operators

(3) The undertaker must grant the IOT Operators at all times, upon reasonable notice (except in the case of emergencies when no prior notice is required) access (with or without vehicles) to any apparatus and/or premises during the carrying out of any relevant works for the purposes of inspection, maintenance and repair of such apparatus and/or premises.

**168.**—(1) In the event that—

(a) the undertaker considers that the IOT Operators have unreasonably withheld their authorisation under paragraph 166(1); or

(b) the undertaker considers that the IOT Operators have given their authorisation under paragraph 166(1) subject to unreasonable conditions,

the undertaker may refer the matter for determination under paragraph 178.

(2) Where the matter is referred to an expert under paragraph 168(1) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 168(1).

(3) Where the undertaker considers that the IOT Operators has unreasonably withheld its authorisation under paragraph 168(1) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association for determination under paragraph 178.

**Notice of works**

**169.** The undertaker must provide to the IOT Operators 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. The IOT Operators will be entitled to watch and inspect the execution of the relevant works at any time.

**Monitoring for damage to pipelines**

**170.**—(1) When carrying out the relevant work the undertaker must monitor at all times the relevant apparatus and/or premises to establish whether any loss or damage has occurred.

(2) Where any loss or damage occurs to any apparatus and/or premises as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must immediately notify the IOT Operators to enable repairs to be carried out to the reasonable satisfaction of the IOT Operators and at no cost to the IOT operators.

(3) If loss or damage has occurred to any apparatus or premises as a result of the relevant work (arising from or caused by the carrying out of the relevant work) the undertaker will, at the request and election of the IOT Operators—

(a) afford the IOT Operators all reasonable facilities to enable it to fully and properly repair and make good any damage to any apparatus and to test the any apparatus and to pay to the IOT Operators—

(i) all and any of their 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; and

(ii) all and any of the costs reasonably incurred by the IOT Operators in stopping, suspending and restoring the supply through its pipeline and make reasonable compensation to the IOT Operators for any other expenses, losses, damages, penalty or costs incurred by the IOT Operators by reason of or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works; or

(b) fully and properly repair any relevant apparatus 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 the IOT Operators to have effectively repaired the relevant apparatus asset before any backfilling takes place.

(4) If in the course of carrying out repairs under sub-paragraph (3)(a) or (3)(b) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which 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 to be necessary, then, if it involves cost in the execution of the repairs 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 would be payable to the IOT Operators under sub-paragraph (3)(a), or incurred by the undertaker under sub-paragraph (3)(b), by virtue of paragraph (3) will be reduced by the amount of that excess.

(5) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where the IOT Operators agree otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(6) 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) apply to that damage.

(7) In relation to the approved assessment and monitoring work to be undertaken both prior to the construction of the relevant work and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system, the undertaker must undertake any necessary remedial work.

(8) In the event that the undertaker does not carry out necessary remedial work in a timely manner then the IOT Operators are entitled, but not obliged, to undertake the necessary remedial work and recover all of the costs of doing so from the undertaker.

**171.**—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and the IOT Operators must be notified immediately.

(2) Where there is leakage or escape of flammable liquids, the undertaker must immediately—

(a) remove all personnel from the immediate vicinity of the leak;

(b) inform the IOT Operators;

(c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and

(d) assist emergency services as may be requested.

**172.** Irrespective of anything to the contrary elsewhere in this protective provision—

(a) the undertaker and the IOT Operators must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers as a result of the other's negligence or breach of this Part of this Schedule; and

(b) neither the undertaker nor the IOT Operators are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this protective provision or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.

**Costs**

**173.** The undertaker must repay to the IOT Operators all fees, costs, charges and expenses reasonably and properly incurred by them in relation to these protective provisions in respect of—

(a) approval of works details submitted by the undertaker under paragraph 165 and the imposition of reasonable requirements under paragraph 167;

(b) the engagement of an engineer and their observation of the relevant work affecting the pipelines and the provision of safety advice under paragraph 169; and

(c) the repair and testing of a pipeline or protected crossing, and the costs of stopping, suspending and restoring supply, under paragraph 170,

including the reasonable costs incurred by the IOT Operators in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to the IOT Operators to carry out their functions under these protective provisions.

**Indemnity and other provisions**

**174.**—(1) The undertaker must indemnify and keep the IOT Operators indemnified against all reasonable loss, costs, charges, damages, liability and expenses reasonably suffered or incurred by the IOT Operators by reason of—

(a) the construction, operation, maintenance, repair and decommissioning of any relevant work carried out under this Part of this Schedule or the failure of it;

(b) the carrying out of the authorised development;

(c) the use or occupation of land over or in the vicinity of any apparatus or in the vicinity of any premises in connection with the carrying out of the authorised development;

(d) any matters arising directly out of or in connection with the Order; and/or

(e) any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of any relevant work.

(2) The fact that any act or thing may have been done by the IOT Operators on behalf of the undertaker or in accordance with a plan approved by the IOT Operators or in accordance with any requirement of the IOT Operators or under their supervision will not (unless sub-paragraph (3) below applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the IOT Operators fail 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 neglect or default of the IOT Operators, their officers, servants, contractors or agents; and/or

(b) any indirect or consequential loss of the IOT Operators or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption which is not reasonably foreseeable.

(4) The undertaker and the IOT Operators must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers in connection with this Schedule.

(5) The undertaker warrants that—

(a) the information it or any of its employees, agents or contractors provide to the IOT Operators about the relevant works or the authorised development and on which the IOT Operators relies in the design of and carrying out of any of the relevant works is accurate; and

(b) the undertaker or any of its employees, agents or contractors have exercised all the reasonable skill, care, and diligence to be expected of a qualified and experienced member of their respective profession.

(6) The IOT Operators 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 they would as if settling third party claims on their own behalf from their own funds.

(7) The IOT Operators must give the undertaker reasonable notice of any claim or demand under sub-paragraph (1) above.

(8) The undertaker must not commence any relevant works unless and until the IOT Operators has confirmed to the undertaker in writing that it is satisfied (acting reasonably but subject to all necessary regulatory constraints) that the undertaker has procured acceptable public liability insurance with a reputable insurer against its liabilities in accordance with the terms and level of cover notified under sub-paragraph (9) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under paragraph 178 and evidence of that insurance must be provided on request to the IOT Operators.

(9) Not less than 30 days before commencing any relevant works or before proposing to change the terms of the insurance policy, the undertaker must notify the IOT Operators of details of the terms of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

(10) The undertaker must maintain insurance in relation to the authorised development affecting the IOT Operators during the construction, operation, maintenance, repair and decommissioning of the authorised development.

(11) If the IOT Operators has a dispute about the proposed insurance (including the terms or level of cover) to be provided under sub-paragraph (8)—

(a) The IOT Operators may refer the matter to an expert for determination under paragraph 178; and

(b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 178 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

**Further protection in relation to the exercise of powers under the Order**

**175.** The undertaker must give written notice to the IOT Operators if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 7 (benefit of the Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**176.** The undertaker must, when requested to do so by the IOT Operators, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 44 (certification of plans, etc.) in the form of a computer disc with read only memory or such other format as may be agreed between the relevant parties.

**177.** Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to the IOT Operators.

**Expert Determination**

**178.**—(1) Except as provided for in sub-paragraph (7), article 48 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;

(c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;

(e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;

(f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;

(g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;

(h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and

(i) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48 (arbitration).

**Notices**

**179.**—(1) The IOT Operators must as soon as reasonably practicable following a written request from the undertaker provide details of the IOT Operators address and IOT Operators email.

(2) A notice or other document required or authorised to be served on the IOT Operators under this Part of this Schedule must be served—

(a) by post to the IOT Operators address; and

(b) by electronic transmission to the IOT Operators email,

or to such other postal or electronic mail address which the IOT Operators may from time to time notify to the undertaker.

(3) In the event that the IOT Operators do not provide the IOT Operators address and IOT Operators email within 14 days of the undertaker's request pursuant to sub-paragraph (1) then sub-paragraph (2) does not apply and the undertaker must—

(a) serve any notice or document on the IOT Operators at their registered offices; and

(b) send a copy of such notice or document to Immingham Oil Terminal marked for the attention of the terminal manager.

# PART 13

## For the protection of Air Products (BR) Limited

### Application

**180.** For the protection of Air Products as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Air Products.

### Interpretation

**181.** In this Part of this Schedule—

"affected assets" means apparatus owned or operated by Air Products on under or above ground which in the reasonable opinion of Air Products would have the potential to be affected by a relevant work;

"alternative apparatus" means alternative apparatus adequate to enable Air Products to fulfil its contractual obligations in a manner not less efficient than previously;

"apparatus" means any part of the pipelines and includes—

(a) any structure existing at the time when a particular action is to be taken under this Part of this Schedule in which apparatus is or is to be lodged or which will give 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;

"Air Products" means Air Products Public Limited Company (company number 00103881), Air Products (BR) Limited (company number 02532156) and any subsequent owner of the pipelines;

"Air Products address" means the postal address details to be provided pursuant to paragraph 195;

"Air Products email" means the email address details to be provided pursuant to paragraph 195;

"damage" includes all damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

"engineer" means an engineer appointed by Air Products for the purposes of this Part of this Schedule;

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

"pipelines" means the pipelines owned and operated by Air Products located within the multi-pipeline rack on the north side of A1173 Manby Road and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) of the Pipe-Lines Act 1962;

"relevant work" means a work which may have an effect on the operation, maintenance, abandonment of or access to any of the apparatus, the removal of which has not been required by the undertaker under paragraph 183(2) or otherwise; and

"works details" means the following—

(a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;

(b) details of the undertaker and their principal contractors' management of change procedures;

(c) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;

(d) details of the electrical design of the relevant work in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to any of the pipelines;

(e) details of the means by which the pipelines can be properly inspected and if necessary repaired during the construction and operation of the authorised development;

(f) details of the assessment and monitoring work to be undertaken both prior to the construction of the relevant work and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system and the proposed remedial works; and

(g) any further particulars provided in accordance with paragraph 185(3).

**Acquisition of land**

**182.** 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**

**183.**—(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 Air Products' apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of Air Products to maintain that apparatus in that land and gain access to it must not be extinguished, until alternative apparatus has been constructed, and is in operation and access to it has been provided, to the reasonable satisfaction of Air Products in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Air Products 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 Air Products 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 Air Products to its reasonable satisfaction the necessary facilities and rights for the construction of alternative apparatus in other land secured by 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 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, Air Products 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 of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Air Products and the undertaker or in default of agreement settled by expert in accordance with paragraph 194.

(5) Air Products must, after the alternative apparatus to be provided or constructed has been agreed or settled through expert determination in accordance with paragraph 194 and after the grant to Air Products 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.

**Facilities and rights for alternative apparatus**

**184.**—(1) Where, in accordance with the provisions of this Part, the undertaker affords to or secures for Air Products facilities and rights in land for the construction and maintenance 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 Air Products or in default of agreement settled by expert determination in accordance with paragraph 194.

(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 expert less favourable on the whole to Air Products 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 expert must make such provision for the payment of compensation by the undertaker to Air Products as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

**Authorisation of works details affecting pipelines or protected crossings**

**185.**—(1) Before commencing any part of a relevant work, the undertaker must submit the works details to Air Products in accordance with paragraph 195.

(2) The works details submitted under sub-paragraph (1) will be treated as having been received by Air Products on the date—

(a) that the undertaker obtains written acknowledgement of receipt from Air Products; or

(b) two clear working days following the date that the work details were submitted under sub-paragraph (1),

whichever is earliest.

(3) The undertaker must as soon as reasonably practicable provide such further particulars as Air Products may, within 30 days from receipt of the works details under sub-paragraph (2), reasonably require.

**186.** No part of a 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 paragraph 185 have been authorised by Air Products; or

(b) the works details supplied in respect of that relevant work under paragraph 185 have been authorised by an expert under paragraph 187(5).

**187.**—(1) Any authorisation by Air Products under paragraph 186(a) must not be unreasonably withheld or delayed, and Air Products must communicate its approval or refusal of the works details within 56 days of the date of submission of the works details under paragraph 185(1), and any authorisation may be given subject to such reasonable conditions as Air Products may require

to be made for the purpose of securing its affected apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any affected apparatus.

(2) Where Air Products can demonstrate that the relevant work will adversely affect the safety or operation of the pipelines it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of Air Products that the relevant work will not adversely affect the safety or operation of the pipelines.

(3) The relevant work must be carried out in accordance with the works details authorised under paragraph 186 and any conditions imposed on the authorisation by Air Products under sub-paragraph (1).

(4) Where there has been a reference to an expert in accordance with sub-paragraph (5) and the expert gives authorisation, the relevant work must be carried out in accordance with the authorisation and conditions contained in the award of the expert under sub-paragraph (6).

(5) In the event that—

(a) the undertaker considers that Air Products has unreasonably withheld its authorisation under paragraph 186(1); or

(b) the undertaker considers that Air Products has given its authorisation under paragraph 186(1) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under paragraph 194.

(6) Where the matter is referred to an expert under sub-paragraph (5) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation.

**Notice of works**

**188.** The undertaker must provide to Air Products 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.

**Carrying out work and monitoring for damage to pipelines**

**189.** When carrying out the relevant work the undertaker must undertake the work in accordance with any works details approved in accordance with paragraph 186(1) and in accordance with such requirements as may be made in accordance with paragraph 187(1).

**190.**—(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 any 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 Air Products to enable repairs to be carried out to the reasonable satisfaction of Air Products.

(3) If damage has occurred to an affected asset as a result of the relevant work the undertaker will, at the request and election of Air Products—

(a) afford Air Products all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to Air Products 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 reasonable satisfaction of Air Products to have effectively repaired the affected asset before any backfilling takes place.

(4) If in the course of carrying out repairs under paragraph 190(3)(a) or 190(3)(b) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or apparatus (whether existing apparatus or apparatus substituted for existing apparatus)

is placed at a depth greater than the depth at which 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 to be necessary, then, if it involves cost in the execution of the repairs 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 would be payable to Air Products under paragraph 190(3)(a), or incurred by the undertaker under paragraph 190(3)(b), by virtue of paragraph (3) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) 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) Where testing has taken place under paragraph 190(3)(b), the undertaker must (except where Air Products agree otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(6) 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) apply to that damage.

(7) In relation to the approved assessment and monitoring work to be undertaken both prior to the construction of the relevant work and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system, the undertaker must undertake any necessary remedial work.

(8) In the event that the undertaker does not carry out necessary remedial work in a timely manner then Air Products is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

**191.**—(1) If any damage occurs to an affected asset causing a leakage or escape from a pipeline, all work in the vicinity must cease and Air Products must be notified immediately.

(2) Where there is leakage or escape of gas, the undertaker must immediately—

(a) remove all personnel from the immediate vicinity of the leak;

(b) inform Air Products;

(c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and

(d) assist emergency services as may be requested.

**Costs**

**192.** The undertaker must repay to Air Products all fees, costs, charges and expenses properly incurred by them on an indemnity basis in relation to these protective provisions in respect of—

(a) obtaining necessary facilities and rights in the land in which the alternative apparatus is to be constructed under paragraph 183(3);

(b) authorisation of works details submitted by the undertaker under paragraph 185 and the imposition of conditions under paragraph 186;

(c) the engagement of an engineer and their observation of the relevant work affecting the pipelines and the provision of safety advice under paragraph 188; and

(d) the repair and testing of a pipeline or protected crossing under paragraph 190,

including the costs incurred by Air Products in engaging and retaining such external experts, consultants and contractors as may be necessary to Air Products to comply with the obligations and requirements set out in these protective provisions.

**Indemnity**

**193.**—(1) The undertaker must indemnify and keep Air Products indemnified against all expenses, loss, demands, proceedings, damages, claims, penalty and reasonably foreseeable indirect or consequential loss (including but not limited to loss of use, revenue, profit, contract,

production, increased cost of working or business interruption) and costs incurred by or recovered from Air Products—

(a) by reason of the construction, operation, maintenance, repair and decommissioning of any relevant work or the failure of it; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of any relevant work.

(2) The fact that any act or thing may have been done by Air Products on behalf of the undertaker or in accordance with a plan approved by Air Products or in accordance with any requirement of Air Products or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Air Products 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 neglect or default of Air Products, its officers, servants, contractors or agents; and/or

(b) any indirect or consequential loss of Air Products or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption which is not reasonably foreseeable.

(4) Air Products must give the undertaker reasonable notice of any claim or demand under sub-paragraph (1) and no settlement or compromise of such a claim or demand is to be made without first consulting the undertaker and considering their representations.

(5) Air Products must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, use reasonable endeavours to mitigate its loss.

(6) Air Products must use its reasonable endeavours to mitigate any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within Air Products' reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of Air Products' control.

**Expert Determination**

**194.**—(1) Except as provided for in sub-paragraph (7), article 48 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;

(c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (5)(b); and

(d) give reasons for the decision.

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;

(e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;

(f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;

(g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;

(h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and

(i) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48 (arbitration).

**Notices**

**195.**—(1) Air Products must as soon as reasonably practicable following a written request from the undertaker provide details of the Air Products address and Air Products email.

(2) A notice or other document required or authorised to be served on Air Products under this Part of this Schedule must be served—

(a) by post to the Air Products address; and

(b) by electronic transmission to the Air Products email,

or to such other postal or electronic mail address which Air Products may from time to time notify to the undertaker.

(3) In the event that Air Products do not provide the Air Products address and Air Products email within 14 days of the undertaker's request pursuant to sub-paragraph (1) then sub-paragraph (2) does not apply and the undertaker must serve any notice or document on Air Products at its registered office.

# PART 14

## FOR THE PROTECTION OF UNIPER UK LIMITED

**196.** For the protection of Uniper as referred to in this Part of this Schedule, the following provisions will, unless otherwise agreed in writing between the undertaker and Uniper, have effect.

**197.** In this part of this Schedule—

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

"acceptable insurance" means a third party liability insurance effected and maintained by the undertaker or its contractor with a limit of indemnity of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event or such lower amount as approved by Uniper, whether arising pursuant to the undertaker or any person on its behalf. Such insurance must be maintained for the construction and operational period of the authorised development which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an "acceptable credit provider" (including any replacement insurance pursuant to sub-paragraph 205(6)), such policy must include—

(a) a waiver of subrogation and an indemnity to principal clause in favour of Uniper; and

(b) contractors' pollution liability for third party property damage and third party bodily damage arising from pollution, contamination or environmental harm with cover of £10,000,000 (ten million pounds) per event or £20,000,000 (twenty million pounds) in aggregate;

"acceptable security" means either—

(a) a parent company guarantee from a parent company in favour of Uniper to cover the undertaker's liability to Uniper to a cap of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £25,000,000 (twenty five million pounds) (in a form reasonably satisfactory to Uniper and where required by Uniper, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee) including any replacement parent company pursuant to sub-paragraph 205(6); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of Uniper to cover the undertaker's liability to Uniper for an amount of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £25,000,000 (twenty-five million pounds) (in a form reasonably satisfactory to Uniper) which includes any replacement bank bond or letter of credit pursuant to sub-paragraph 205(6);

"alternative apparatus" means alternative apparatus to the satisfaction of Uniper to enable Uniper to fulfil its functions in a manner no less efficient than previously;

"apparatus" means—

(a) any fixed and moveable items, which forms, or may form, part of Uniper's system, including cavities, chambers, pipelines, valves, ventilators, pumps, compressors, pumping or compression systems, control systems and any associated cables (including high voltage, low voltage and datacoms) and any equipment in which electrical conductors are used, supported, or otherwise form, or may form, part of the system, cathodic protection systems, roads, compounds and equipment owned by Uniper;

(b) any other equipment or apparatus belonging to or maintained by Uniper or apparatus and such other equipment or apparatus constructed that becomes operational for the purposes of Uniper's functions including any structure in which equipment or apparatus is, or will be, lodged or which gives, or will give, access to apparatus; or

(c) any replacement equipment or apparatus as required or determined by Uniper;

"as-built" records" means each as-built record or document prepared by the undertaker or delivered to the undertaker by its subcontractors or any other person carrying out the specified works;

"authorised development" has the same meaning as in article 2 of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Part of this Schedule;

"commence " has the same meaning as in article 2 of this Order and commencement will be construed to have the same meaning save that for the purposes of this Part of the Schedule the

terms commence and commencement include site preparation works, remediation works, environmental (including archaeological) surveys and investigation, site, utility or soil survey, erection of temporary fencing to site boundaries or marking out of site boundaries, installation of temporary amphibian and reptile fencing, the diversion or laying of services or environmental mitigation measures and any such temporary accesses that may be required in association with these;

"confidential information" means information exchanged during the negotiation or performance of this Part of this Schedule, which is identified in writing by the furnishing party as being confidential at the time of disclosure to the other party;

"emergency works" has the meaning given to it in section 52 of the 1991 Act;

"good industry practice" means exercising the degree of skill, diligence, prudence, foresight and care reasonably expected of a skilled and experienced solar developer, which includes obtaining all necessary permits and compliance with any safety rules;

"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, across, along or upon such land;

"insolvency related event" means, in respect of any person, any step, process, application, filing in court, order, proceeding, notice or appointment is taken or made by or in respect of such person in relation to the Insolvency Act 1986 special resolution regime or for a moratorium, composition, compromise or arrangement with creditors, administration, liquidation (other than for the purposes of amalgamation or reconstruction), dissolution, receivership (administrative or otherwise), distress (or the taking control of goods procedure set out in the Tribunals, Courts and Enforcement Act 2007) or execution in any jurisdiction or such person becomes insolvent or is unable or is deemed unable to pay its debts, suspends making payments on its debts, as they fall due in accordance with the law of any application jurisdiction;

"maintain" and "maintenance" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Uniper including retain, lay, construct, use, maintain, repair, protect, access, alter, inspect, renew, replace, enlarge, decommission or remove the apparatus or alternative apparatus;

"parent company" means—

(a) a parent company of the undertaker acceptable to and which must have been approved by Uniper acting reasonably; or

(b) where a parent company is subject to an insolvency related event, a replacement parent company approved by Uniper acting reasonably;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and mitigation measures (including but not limited to integrity reports), earthing philosophies, proposed land and road crossings and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"representative" means Uniper's directors, officers, employees, agents, consultants and advisers;

"specified works" means any of the authorised development or activities undertaken in association with the authorised development which—

(a) will or may be situated over, under, across, along, upon or within 15 metres measured in any direction of any apparatus, excluding any high pressure pipelines to which sub-paragraph (b) below shall apply;

(b) will or may be situated over, under, across, along, upon or within 50 metres measured in any direction of any high pressure pipeline; or

(c) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 203 or otherwise;

"Uniper" means Uniper UK Limited incorporated in England with company number 2796628 and Uniper UK Gas Limited incorporated in England with company number 02436332 and whose registered office is at Compton House 2300 The Crescent, Birmingham Business Park, Birmingham, England, B37 7YE.

**198.** Except for paragraphs 199 (apparatus of Uniper in temporarily closed, altered or diverted streets), 202 (retained apparatus), 203 (removal or replacement of apparatus), 204 (expenses) and 205 (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 Uniper, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Uniper are regulated by the provisions of Part 3 of the 1991 Act.

**Apparatus of Uniper in temporarily closed, altered or diverted streets**

**199.** Regardless of the temporary closure, alteration or diversion of any street under the powers of article 13 (temporary restriction of use of streets), Uniper is at liberty at all times to take all necessary access across any such temporarily closed, altered or diverted street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary closure, alteration or diversion in respect of any apparatus which at the time of the temporary closure, alteration or diversion was in that street.

**Protective works to buildings**

**200.** The undertaker, in the case of the powers conferred by article 21 (protective work to buildings), must exercise those powers in accordance with paragraph 202 of this Part of this Schedule, so as not to obstruct or render less convenient the access to any apparatus or alternative apparatus.

**Acquisition of land**

**201.** 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 with Uniper.

**Retained apparatus**

**202.**—(1) Not less than 56 days before the commencement of the execution of any specified works the undertaker must submit to Uniper at the address stated in paragraph 210, a plan in respect of those works.

(2) The plan to be submitted to Uniper under sub-paragraph (1) must include all comprehensive risk assessments (including any quantitative risk assessments) and any method statement describing—

(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;

(f) any changes to the land drainage systems, temporary crossing designs, traffic management plans, health and safety management plans, emergency response plans, planned changes or rerouting of any assets and their corresponding design codes, earth schedules and earthing risk assessments;

(g) any recommendations or mitigation measures to avoid interference with, or loss or damage to the apparatus (including damage caused by passing over the apparatus by

heavy construction machinery) and related remedies should such mitigation measures fail;

(h) any intended maintenance regimes; and

(i) a programme of the works, including any proposed start dates and the anticipated duration of the works.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Uniper has given written approval of the plan so submitted and the undertaker and Uniper have used reasonable endeavours to carry out a joint site walk in the period 4 weeks before commencement of the works. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by Uniper, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

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

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (8); and

(b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraphs (1) or (2) apply, the undertaker must provide any additional information or documentation as reasonably requested by Uniper and Uniper may require 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 or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4) and (5), as approved or as amended from time to time by agreement between the undertaker and Uniper and in accordance with all conditions imposed under sub-paragraph (4)(a) by Uniper for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Uniper (or its representative) is entitled to attend any meetings related to the specified works and watch, monitor and inspect the execution of those works.

(7) If, during the carrying out of the authorised development, any aspect of it poses a risk of interference with or loss or damage to the apparatus, the undertaker must immediately notify Uniper, in writing, and submit a revised plan in respect of the affected works to Uniper for approval, and the provisions of this paragraph 202 (retained apparatus) will apply to, and in respect of, the revised plan. If Uniper (or its representative) identifies a potential risk of interference with or loss or damage to the apparatus while watching, monitoring or inspecting the execution of the specified works, then Uniper (or its representative) may request suspension of such works. The undertaker must then submit a revised plan in respect of the affected works to Uniper for approval, and the provisions of this paragraph 202 (retained apparatus) will apply to, and in respect of, the revised plan. Uniper's (or its representative's) failure or delay in exercising this right, or the undertaker's failure to suspend the specified works upon request by Uniper (or its representative), will not relieve the undertaker of its responsibility for any interference with, loss of, or damage to the apparatus.

(8) Where Uniper 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 Uniper's satisfaction (acting reasonably).

(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 is not required to comply with sub-paragraph (1) where it needs to carry out emergency works, provided that—

(a) in respect of danger to persons it must give to Uniper notice as soon as is reasonably practicable by calling Uniper's emergency telephone line on 0800 389 4795 or such other telephone number notified by Uniper to the undertaker in writing; and

(b) in respect of danger to property it must notify Uniper in accordance with sub-paragraph (a) above, before any emergency works are commenced by or on behalf of the undertaker, and, in each case, as soon as is reasonably practicable give to Uniper a plan of those works and must—

(i) comply with sub-paragraphs (5), (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and

(ii) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with, and use reasonable endeavours to procure compliance by any party acting on its behalf with, all applicable law and good industry practice. The undertaker must procure that any party carrying out any works on the land on its behalf has knowledge of the apparatus, its location (including as illustrated by a site map) and procure that the obligations contained in this Part of this Schedule are adhered to by such parties working on the land on its behalf.

(12) The undertaker must prepare, and keep up-to-date, a complete set of red-lined "as-built" records of the execution of the specified works, showing the exact as-built locations, sizes and details of such works as executed. The undertaker must submit to Uniper, no later than twenty (20) business days after the completion of the specified works, all "as-built" records. Uniper may specify the number of copies of any "as built" records acting reasonably.

**Removal or replacement of apparatus**

**203.**—(1) The undertaker is not permitted to remove, move or replace any apparatus in land without the prior written consent of Uniper (such consent not to be unreasonably withheld or delayed).

(2) If, in the exercise of the powers conferred by the Order, the undertaker has exercised its compulsory purchase powers to acquire any interest in or possesses temporarily any Order land in which any apparatus is placed and has the power to move, replace or remove that apparatus, it must not do so under this Part of this Schedule and any right of Uniper 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 Uniper in accordance with sub-paragraphs (3) to (6) inclusive.

(3) If, for the purpose of executing any specified works in, on, under or over any land held, appropriated or used under this Order pursuant to exercising its compulsory purchase powers the undertaker requires the replacement or removal of any apparatus placed in that land it must give to Uniper no less than 56 days' advance written notice of that requirement, together with a plan of the work proposed, and where applicable, the proposed replacement apparatus or the position of any alternative apparatus to be provided or constructed and in that case provided that where—

(a) the undertaker requires the replacement of any apparatus placed in that land, it must be replaced with identical apparatus, provided that if identical apparatus is not available, it must be either—

(i) replaced with apparatus on a similar or equivalent basis (i.e. like-for-like basis); or

(ii) where it cannot be replaced on a similar or equivalent basis, then it must be replaced with enhanced apparatus. For the avoidance of doubt, no apparatus may be replaced with anything less advanced than the apparatus being replaced;

(b) the undertaker requires the removal of any apparatus placed in that land (or if in consequence of the exercise of any of the powers conferred by this Order Uniper reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (4), secure any necessary consents for the alternative apparatus and afford to Uniper to its satisfaction the necessary facilities and rights for the construction of alternative apparatus in other land of or land secured by the undertaker and subsequently for the maintenance of that apparatus, and prior to any removal or any replacement of the

apparatus pursuant to this paragraph 203, the parties must agree the value attributable to such apparatus or alternative apparatus, prior to any replacement or removal. If such value cannot be agreed between the parties, such value will be determined in accordance with paragraph 209 (arbitration).

(4) If alternative apparatus or any part of such apparatus is to be constructed elsewhere other than in 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 (3), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker must take all steps required in the circumstances to assist Uniper 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 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 the undertaker and Uniper.

(6) Uniper must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written agreement having been entered into between the parties and the grant to Uniper 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 of this Schedule.

**Expenses**

**204.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Uniper within 30 days of receipt of an invoice, all charges, costs and expenses reasonably anticipated or incurred by Uniper in, or in connection with, the inspection, removal, relaying or replacing, alteration, repair, remediation or restoration of or protection of any apparatus or alternative apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any powers conferred on the undertaker, pursuant to the Order (including in the execution of any authorised development as is referred to in this Part of this Schedule) including—

(a) in connection with the cost of the carrying out of any assessment of Uniper's apparatus under Pipelines Safety Regulations 1996 and Gas Safety (Management) Regulations 1996 reasonably necessary as a consequence of the authorised development;

(b) implementing any mitigation measures required as a result of any assessment referred to in sub-paragraph (a) reasonably necessary as a consequence of the authorised development;

(c) the approval of plans;

(d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(e) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) For the purposes of calculating the sums payable pursuant to sub-paragraph (1) above, in the case of the replacement or removal of apparatus, the following applies—

(a) where apparatus is removed under the provisions of this Part of this Schedule and which will not be re-used as part of the apparatus or alternative apparatus, there will be excluded from any sum payable under sub-paragraph (1) the value of the apparatus being removed; and

(b) subject to sub-paragraph 203(3)(a), when replacing existing apparatus, there will be deducted from any sum payable under sub-paragraph (1) the value of that apparatus being removed under the provisions of this Part of this Schedule and which is not re-used as part of the apparatus or alternative apparatus, except that the value of any apparatus or alternative apparatus used to replace the apparatus being removed will be included in the sum payable under sub-paragraph (1), such value being agreed between the parties (or as

determined in accordance with paragraph 209 (arbitration) prior to any removal or replacement of the apparatus, provided that, in each case, all charges, costs and expenses reasonably incurred, or reasonably anticipated to be incurred, by Uniper in, or in connection with the works required for the removal or replacement of such apparatus will be included in the sum payable under sub-paragraph (1).

(3) If, in accordance with sub-paragraph 204(2) of this Part of this Schedule, any existing apparatus is replaced with enhanced apparatus where the undertaker's consent has not been obtained by Uniper (or where disputed in accordance with paragraph 209 (arbitration), decided not to be necessary), then, if the construction expenses for this replacement surpass the construction expenses that would have been paid for similar or equivalent apparatus then any excess costs will be borne by Uniper, except where it is not possible to obtain similar or equivalent apparatus, full costs will be payable by the undertaker.

(4) Any amount which is payable to Uniper 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 Uniper 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**

**205.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised development or in consequence of the construction, use, maintenance or failure of any of the authorised development 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 them) 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 loss or damage is caused to any apparatus, alternative apparatus or property of Uniper, or there is any interruption in any services provided, or in the supply of any goods, or in the use of the apparatus or alternative apparatus (as applicable) by Uniper, the undertaker must—

(a) bear and pay the costs reasonably and properly incurred by Uniper in making good such loss or damage or in restoring the supply or its use;

(b) make compensation to Uniper for any other expenses, loss, damages, penalty or costs incurred by Uniper, by reason or in consequence of any such loss, damage or interruption; and

(c) indemnify Uniper for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Uniper, by reason or in consequence of any such damage or interruption or Uniper becoming liable to any third party (an "Indemnity Claim").

(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 Uniper or its representatives; or

(b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption which is not reasonably foreseeable.

(3) Uniper must give the undertaker reasonable notice of an Indemnity Claim and no settlement or compromise is to be made that is prejudicial to the undertaker without the consent of the undertaker (not to be unreasonably withheld) which, if it withholds such consent, it will assume the sole conduct of the Indemnity Claim, provided that if the undertaker does not assume the sole conduct of the Indemnity Claim within 30 days of the Indemnified Claim being notified to it, Uniper, or a person designated by Uniper, may conduct the Indemnity Claim in such manner as it may deem appropriate and the undertaker will indemnify Uniper for any costs and expenses incurred in connection with defending any such Indemnity Claim.

(4) The undertaker must assist Uniper, as requested, in connection with an Indemnity Claim (including circumstances where Uniper reasonably believes may give rise to an action, claim or demand by a third party).

(5) The undertaker undertakes not to commence construction (and not to permit the commencement of such construction) of the authorised development on any land owned by Uniper or in respect of which Uniper has an easement, wayleave or lease for its apparatus or any other interest or to carry out any works within 15 metres of Uniper's apparatus (except in respect of any high pressure pipelines) or within 50 metres of Uniper's high pressure pipelines until the following conditions are satisfied—

(a) unless and until Uniper is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it will maintain such acceptable security for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and Uniper has confirmed the same to the undertaker in writing; and

(b) unless and until Uniper is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Uniper that it will maintain such acceptable insurance for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and Uniper has confirmed the same in writing to the undertaker.

(6) The undertaker agrees that if, at any time, the acceptable security or acceptable insurance expires or terminates, ceases to fulfil the criteria of acceptable security or acceptable insurance, ceases to be in full force and effect or becomes invalid or unenforceable for the purpose of this Part of this Schedule or an insolvency-related event occurs in respect of the undertaker, then the relevant security or insurance will no longer constitute acceptable security or acceptable insurance and will promptly be replaced by the undertaker with alternative acceptable security or acceptable insurance as approved by the undertaker, to the extent any acceptable insurance and acceptable security is still required under this Part of this Schedule.

(7) In the event that the undertaker fails to comply with sub-paragraph (4) nothing in this Part of this Schedule will prevent Uniper from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

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

**Co-operation**

**206.**—(1) Where in consequence of the proposed construction of any of the authorised development, Uniper makes requirements for the protection or alteration of apparatus under paragraphs 202(5) or 202(7), the undertaker must 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 development and taking into account the need to ensure the safe, efficient and economic operation of Uniper's apparatus and Uniper must use its best endeavours to cooperate with the undertaker for that purpose.

(2) Where Uniper's consent, agreement or approval is required in relation to plans, documents or other information submitted by Uniper or the taking of action by Uniper, it must not be unreasonably withheld or delayed.

**Access**

**207.** If in consequence of the agreement reached in accordance with paragraph 201(1) of this Part or otherwise as granted by this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Uniper (or representative) in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Uniper (or its representative) to maintain or use the apparatus no less effectively than was possible before such obstruction. For the avoidance of doubt, Uniper (or its representative) will be entitled to access its apparatus in the land at all times.

**Confidentiality**

**208.**—(1) Each party must treat any confidential information as private and confidential. The party in receipt of any confidential information from the other party may not use it for a purpose other than for the performance of its obligations under this Part of this Schedule and must not disclose confidential information received from the other party to any person, provided that a party may disclose confidential information to any of its directors, other officers, employees, contractors, customers, affiliates, insurers, funders, advisers or consultants to the extent that disclosure is reasonably necessary for the purposes of this Part of this Schedule.

(2) Sub-paragraph (1) does not apply to confidential information—

(a) which is at the date of commencement, or at any time after that date becomes, publicly known other than by breach of sub-paragraph (1);

(b) which was known by the receiving party before disclosure by the other party to the receiving party, provided that such confidential information was lawfully obtained; or

(c) to the extent disclosure of the confidential information is required by law, the instructions of a competent governmental authority or such competent authority acting on behalf of such governmental authority, or the rules of a relevant and recognised stock exchange.

**Arbitration**

**209.** Any difference or dispute arising between the undertaker and Uniper under this Part of this Schedule must be determined by arbitration in accordance with article 48 (arbitration) unless otherwise agreed between those parties acting reasonably.

**Notices**

**210.** Any notice, statement, request, plan or any other written communication (including the plan to be provided at paragraph 202) to be given or made in respect of this Part of this Schedule by the undertaker must be given or made in writing to the address stated below or such other address as Uniper may have notified to the undertaker from time to time.

Name - Uniper Pipelines Team

Address - Pipelines Office, Uniper Killingholme Power Station, Chase Hill Road, Killingholme, North Lincolnshire, DN40 3LU

Contact - Lead Pipeline Engineer

# SCHEDULE 10

Article 48

## Arbitration rules

### Primary objective

**1.**—(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 48 (arbitration) of this Order.

(2) The parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the parties. Any dispute which is not resolved amicably by the senior management of the parties within 20 business days of the dispute arising, or such longer period as agreed in writing by the parties, will be subject to arbitration in accordance with the terms of this Schedule.

(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, bank and public 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 his/her acceptance of an appointment by agreement of the parties; or

(b) the date the arbitrator is appointed by the Secretary of State.

### 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 difference 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 difference, 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 elements 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 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 difference, 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 will make an award on the substantive difference 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.

(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 will notify the parties whether a hearing is to be held and the length of that hearing.

(4) Within 10 days of the arbitrator advising the parties that he will hold a hearing, the date and venue for the hearing will 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 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(5) A decision will 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 20 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 10 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 five days before the hearing.

(7) Within 10 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 will 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 substantive difference 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, including the non-mandatory sections, save where modified by this Schedule.

(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 will 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.

**Costs**

**6.**—(1) The costs of the arbitration will 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 each party should bear its own costs.

(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-paragraphs (2) and (3), any arbitration hearing and documentation will be open to and accessible by the public.

(2) The arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) 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.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order authorises Chrysaor Production (U.K.) Limited (referred to in this Order as the undertaker) to construct, operate and maintain a pipeline for the transport of carbon dioxide from Immingham to Theddlethorpe. This Order imposes requirements in connection with the development and permits the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and book of reference referred to in this Order and certified in accordance with article 44 (certification of plans, etc.) of this Order may be inspected free of charge at the offices of Chrysaor Production (U.K.) Limited at 151 Buckingham Palace Road, London, England, SW1W 9SZ.

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