

SCHEDULE 10

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(1), 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(2) for the purposes of gas supply;
- (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(3); 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 sewerage disposal works, at future date) of that Act(4),

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—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(1) 1989 c.29.

(2) 1986 c.44.

(3) 1991 c.56.

(4) Section 104 was amended by section 42(3) of the Flood and Water Management Act 2010 (c.29).

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- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (g) a water undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- (i) for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

On street apparatus

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.

(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 47 (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 47 (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 47 (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 (1) 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

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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 47 (arbitration) to be necessary then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to 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, 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 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.

(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⁽⁵⁾;

“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⁽⁶⁾ (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

⁽⁵⁾ 2003 c. 21.

⁽⁶⁾ Section 106 was amended by section 4 of the Digital Economy Act 2017.

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“operator” means the operator of an electronic communications code network.

13. The exercise of the powers conferred by article 36 (statutory undertakers) are 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 47 (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 project.

(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 Order)—

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- (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 & 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 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 either—

- (c) a parent company guarantee from a parent company in favour of National Grid to cover the undertaker’s liability to National Grid to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, 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
- (d) 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(7), 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

(7) 1989 c. 29.

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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;

“NGESO” means as defined in the STC;

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

“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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- (e) 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 21(2) or otherwise; and/or
 - (f) 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
 - (g) 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";
 - (h) "STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;
 - (i) "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;
 - (j) "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 undertaker), 24 (expenses) and 25 (indemnity) of this Part 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 Part 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. Despite the temporary stopping up or diversion of any highway under article 15 (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, on 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 23 (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 unless agreed by National Grid.

(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

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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 (Retained apparatus: protection of electricity undertaker) 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- paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National 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 reasonable 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—

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- (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 at least 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 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 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, sub-paragraphs (1) to (3) and (5) to (7) 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

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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.

(6) Where in accordance with sub-paragraph (1) the undertaker pays National Grid in respect of an itemised invoice or claim for charges, costs and expenses reasonably anticipated within the following three months, should there be any unspent funds after the expiry of such three month period, National Grid shall repay such unspent funds within 60 days of the total charges, costs and expenses actually reasonably and properly incurred being known by National Grid.

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, and provided that at all times National Grid 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 appropriately detailed 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 subsection 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 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 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.

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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 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 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, 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 National Grid acting reasonably.

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 paragraph 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 47 (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 Transmission 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 Transmission.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas Transmission, 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 Transmission 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 Transmission 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 Transmission (but without prejudice to paragraph 41(3)(b) of this Part of this Schedule).

Interpretation

32.—(1) 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 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 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 either:

- (c) parent company guarantee from a parent company in favour of National Gas Transmission to cover the undertaker’s liability to National Gas Transmission to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas Transmission and where required by National Gas Transmission, 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
- (d) a bank bond or letter of credit from an acceptable credit provider in favour of National Gas Transmission to cover the undertaker’s liability to National Gas Transmission 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 Transmission);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Gas Transmission to enable National Gas Transmission 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 Transmission 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

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National Gas Transmission 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 Gas Transmission (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 Transmission’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 Transmission: construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Gas Transmission” means National Gas Transmission plc (company number 02006000) whose registered office is at National Grid House Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Network Code” means the network code prepared by National Gas Transmission 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 Transmission’s Transporters Licence, as both documents are amended from time to time;

“Network Code Claims” means any claim made against National Gas Transmission by any person or loss suffered by National Gas Transmission under the Network Code arising out of or in connection with any failure by National Gas Transmission 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 Transmission 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;

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“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 Transmission acting reasonably;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which

- (e) 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
- (f) 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
- (g) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas Transmission’s policies for safe working in proximity to gas apparatus, “Specification for safe working in the vicinity of National Grid, High Pressure Gas pipelines and associated installations- requirements for third parties”); and

“undertaker” means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

33. Except for paragraphs 34 (Apparatus of statutory undertakers in temporarily restricted streets), 39 (retained apparatus: protection of gas undertaker), 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 Transmission, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas Transmission are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of statutory undertakers in temporarily restricted streets

34. Despite the temporary stopping up or diversion of any highway under article 15 (temporary restriction of use of streets), National Gas Transmission may at all times take all necessary access across any such highway and execute and do all such works and things in, on 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

35. The undertaker, in the case of the powers conferred by article 23 (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 Transmission.

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 Transmission unless agreed by National Gas Transmission.

(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 Transmission and the undertaker) that is subject to the requirements of this Part of

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this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas Transmission or affect the provisions of any enactment or agreement regulating the relations between National Gas Transmission 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 Transmission reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas Transmission and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas Transmission unless otherwise agreed by National Gas Transmission, 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 Transmission and the undertaker, the undertaker and National Gas Transmission 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 Transmission and/or other enactments relied upon by National Gas Transmission 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 Transmission 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 Transmission to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas Transmission in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas Transmission 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 Transmission 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 Transmission to its reasonable 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 Transmission 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 Transmission to use its compulsory purchase powers to this end unless it elects to do so.

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

(5) National Gas Transmission 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 Transmission 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 Transmission 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 Transmission and must be no less favourable on the whole to National Gas Transmission than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas Transmission.

(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 Transmission 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 44 (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 Transmission as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of gas undertaker

39.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas Transmission a plan and, if reasonably required by National Gas Transmission, a ground monitoring scheme in respect of those works.

(2) In relation to specified works, the plan to be submitted to National Gas Transmission 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 works to which sub-paragraphs (1) and (2) apply until National Gas Transmission has given written approval of the plan so submitted.

(4) Any approval of National Gas Transmission required under sub-paragraph (3)—

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

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(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Gas Transmission 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.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Gas Transmission and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Gas Transmission for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas Transmission will be entitled to watch and inspect the execution of those works.

(7) Where National Gas Transmission 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 Transmission's satisfaction, , prior to the commencement of any specified works for which protective works are required and National Gas Transmission must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas Transmission in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 31 to 33 and 35 to 37 apply as if the removal of the apparatus had been required by the undertaker under paragraph 37(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Gas Transmission notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and 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 National Gas Transmission's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and 69 associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that National Gas Transmission 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 Transmission and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas Transmission within 30 days of receipt of an itemised invoice or claim from National Gas Transmission all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Gas Transmission 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 Gas Transmission 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 Transmission as a consequence of National Gas Transmission;
 - (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 Transmission;
- (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 44 (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 Transmission 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.

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(5) Any amount which apart from this sub-paragraph would be payable to National Gas Transmission 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 Transmission any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Where in accordance with sub-paragraph (1) the undertaker pays National Gas Transmission in respect of an itemised invoice or claim for charges, costs and expenses reasonably anticipated within the following three months, should there be any unspent funds after the expiry of such three month period National Gas Transmission shall repay such unspent funds within 60 days of the total charges, costs and expenses actually reasonably and properly incurred being known, and include an itemised accounting of the charges, costs and expenses reasonably and properly incurred for the three months following the issue of the itemised invoice or claim.

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 Transmission, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas Transmission, or National Gas Transmission becomes liable to pay any amount to any third party, and provided that at all times National Gas Transmission 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 appropriately detailed claim from National Gas Transmission the cost reasonably and properly incurred by National Gas Transmission in making good such damage or restoring the supply; and
- (b) indemnify National Gas Transmission for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas Transmission, by reason or in consequence of any such damage or interruption or National Gas Transmission becoming liable to any third party and including Network Code Claims other than arising from any default of National Gas Transmission.

(2) The fact that any act or thing may have been done by National Gas Transmission on behalf of the undertaker or in accordance with a plan approved by National Gas Transmission or in accordance with any requirement of National Gas Transmission 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 Transmission 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 Transmission, 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 Transmission 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

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apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 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 Transmission 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 Transmission 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 Transmission 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 Transmission’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 Transmission’s control and if reasonably requested to do so by the undertaker National Gas Transmission 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 Transmission or in respect of which National Gas Transmission has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas Transmission’s apparatus until the following conditions are satisfied:

- (a) unless and until National Gas Transmission 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 Transmission has confirmed the same to the undertaker in writing; and
- (b) unless and until National Gas Transmission is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas Transmission 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 Transmission has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Gas Transmission 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 Transmission 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 Transmission in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

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Co-operation

43.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Gas Transmission requires the removal of apparatus under paragraph 7(2) or National Gas Transmission makes requirements for the protection or alteration of apparatus under paragraph 39, 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 works and taking into account the need to ensure the safe and efficient operation of National Gas Transmission’s undertaking and National Gas Transmission must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas Transmission’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 National Gas Transmission acting reasonably.

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 Transmission 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 Transmission under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas Transmission, be determined by arbitration in accordance with article 47 (arbitration).

Notices

46. Notwithstanding article 45 (service of notices), any plans submitted to National Gas Transmission by the undertaker pursuant to this Part must be submitted to <https://lsbud.co.uk/> or such other address as National Gas Transmission 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—

“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;

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“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables 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 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 carry 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, the 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, or environmental mitigation measures, 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, shall 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;

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“parent company” means a parent company of the undertaker acceptable to Cadent and which shall have been approved by Cadent acting reasonably;

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

“specified works” means any of the authorised 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; or
- (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.

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) The Protective Provisions in this Part of this Schedule apply and take precedence over article 36 (statutory undertakers) and 37 (recovery of costs of new connections) of the Order which shall not apply to Cadent.

Apparatus of Cadent in stopped up streets

50.—(1) Where any street is stopped up under article 13 (temporary restriction of public rights of way), 15 (temporary restriction of use of streets) or Schedule 5 (streets to be temporarily closed or 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 13 (temporary restriction of public rights of way), 15 (temporary restriction of use of streets) or Schedule 5 (streets to be temporarily closed or restricted), Cadent will be at liberty at all times and at Cadent’s own risk to take reasonable 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 23 (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 from Cadent 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 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 Cadent 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 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 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 or maintenance thereof.

(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 or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted,

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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 prevail.

(4) Any agreement or consent granted by Cadent under paragraph 55 or any other paragraph of this Part of this Schedule, is not to 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 Cadent must use reasonable endeavours to surrender its easement or other interest in land in respect of such decommissioned apparatus to the reversionary landowner. If Cadent is not released by the reversionary landowner from all liabilities in respect of such de-commissioned apparatus the undertaker shall take on such 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, unless Cadent agrees otherwise—

- (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 52, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed 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 reasonable 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 reasonable 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 must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to 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.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), 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 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 60 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)—

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- (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) 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.
- (6) 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.
- (7) 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.
- (8) 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).
- (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) 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.
- (11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.
- (12) In this paragraph, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

56.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all documented 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 and properly 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; 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).

(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 article 47 (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 Cadent by virtue of sub-paragraph (1) will 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 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) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in

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substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Where Cadent demands payment of reasonably anticipated charges, costs and expenses pursuant to sub-paragraph (1), Cadent must provide the undertaker with an itemised invoice or claim detailing such charges, costs, and expenses reasonably anticipated to fall due within the following three months of such a demand. The undertaker shall pay the reasonably anticipated costs set out in the itemised invoice to Cadent on demand in accordance with sub-paragraph (1). To the extent that this sum paid in advance has not been expended by Cadent before three months after payment by the undertaker of that sum, the undertaker may demand the unspent balance remaining to be repaid by Cadent and Cadent shall repay that unspent balance within 30 days (unless otherwise agreed in writing between the parties).

Enactments and agreements

57. 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

58.—(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 55, the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised 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 Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

59. 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). For the avoidance of doubt, where the undertaker cannot grant such alternative rights and means of access to such apparatus by virtue of not being in possession of the requisite land rights, the undertaker shall use reasonable endeavours to assist in the securing of the requisite rights and means of access.

Arbitration

60. 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 47 (arbitration).

Notices

61. 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 copied by e-mail to toby.feirn@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 the protection of Network Rail

62. The following 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 76, of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

63. 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 his powers under section 8(1)(licences) of the Railways Act 1993;

“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;

“protective works” means the underpinning, strengthening and any other works the purpose; of which is to prevent damage that may be caused by the carrying out, maintenance or use of the authorised development;

“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 licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under:

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- (c) the Railways Act 1993;
- (d) the network licence; and/or
- (e) 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 works 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 5 (power to maintain the authorised development) in respect of such works.

64.—(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 works pursuant to this Order.

65.—(1) The undertaker must not exercise the powers conferred by—

- (a) article 22 (authority to survey and investigate the land);
- (b) article 24 (compulsory acquisition of land);
- (c) article 26 (compulsory acquisition of rights and restrictive covenants);
- (d) article 27 (statutory authority to override easements and other rights);
- (e) article 31 (acquisition of subsoil or airspace only);
- (f) article 34 (temporary use of land for carrying out the authorised development);
- (g) article 35 (temporary use of land for maintaining the authorised development);
- (h) article 36 (statutory undertakers);
- (i) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (j) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail, such consent not to be unreasonably withheld.

(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 or article 36 (statutory undertakers) in relation to any right of access of Network Rail to railway property, but such right of access may be extinguished or 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 directly result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway, in Network Rail's reasonable opinion.

(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 including any conditions necessary to ensure operational or railway safety 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.

66.—(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 under article 47 (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 his disapproval of those plans and the grounds of his disapproval, the undertaker may serve upon the engineer written notice requiring the engineer to intimate his 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 his approval or disapproval, he 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, subject to Network Rail seeking consent from the undertaker (such matters to be in the undertaker's absolute discretion) and if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the absolute 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 his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his reasonable 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 reasonable expense of the undertaker in either case without reasonable 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 his reasonable satisfaction.

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(5) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to Network Rail notice as soon as is reasonably practicable, and in addition to that notice shall provide a plan, section and description of those works as soon as reasonably practicable subsequently.

67.—(1) Any protective works to be constructed by virtue of paragraph 66(4) must, when commenced, be constructed—

- (a) without necessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 66;
- (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 the construction of a specified work, the undertaker must, regardless of any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and reasonable compensation for any loss which it may sustain by reason of any such damage, interference or obstruction but always excluding any consequential loss or indirect loss.

(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 employees, 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 employees, contractors or agents.

68. 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 he may reasonably require with regard to a specified work or the method of constructing it.

69. Network Rail must at all times afford reasonable facilities to the undertaker and its employees, contractors or agents for access to any works carried out by Network Rail under this Part 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.

70.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that 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 written notice 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 and provides its consent, (such matters to be in the undertaker's absolute discretion) Network Rail must assume construction of that part of the specified work and the undertaker must, regardless of any such approval of a specified work under paragraph 66(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and reasonable compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work provided that at all times Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 71(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.

71. 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 66(3) or in constructing any protective works under the provisions of paragraph 66(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 him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, guards 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.

72. 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 that it 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.

73. The undertaker must not provide any illumination or illuminated sign or 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.

74. 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.

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75.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses (but always excluding any consequential or indirect loss) 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 undertaker’s 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 employment 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 employment 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; and
- (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 construction 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, provided Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss.

(2) 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 his 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 this Part.

(3) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(4) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(5) 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.

(6) 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).

(7) 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 restriction of the use of Network Rail’s railway network as a direct result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (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.

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76. 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 (including the amount of the relevant costs reasonably incurred and mentioned in paragraph 76) 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).

77. In the assessment of any sums payable to Network Rail under this Part 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.

78. 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.

79. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

80. 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 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.

81. 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) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a USB stick or download link.

PART 7

For the protection of the Canal and River Trust

Interpretation

82.—(1) For the protection of the Canal & River Trust the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

(2) In this Part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal & River Trust (April 2022) or any updates or amendments thereto;

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“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance of that work and “construct” and “constructed” have corresponding meanings;

“Canal & River Trust’s network” means the Canal & River Trust’s network of waterways;

“detriment” means any damage to the waterway or any other property of the Canal & River Trust caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

- (c) any material obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
 - (i) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
 - (ii) the deposit of materials or the siltation of the waterway so as to damage the waterway;
 - (iii) the pollution of the waterway;
 - (iv) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
 - (v) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the Canal & River Trust’s network); and
 - (vi) any material interference with the exercise by any person of rights over Canal & River Trust’s network;

“the engineer” means an engineer appointed by the Canal & River Trust for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” is to be construed accordingly;

“protective work” means a work constructed under paragraph 86(3)(a);

“specified work” means so much of any authorised development as defined in article 2(1) of this Order that is situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway;

“the waterway” means each and every part of the Shropshire Union Canal within the order limits, and any works, lands or premises belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with that canal in connection with its statutory functions.

Powers requiring the Canal & River Trust’s consent

83.—(1) The undertaker must not in the exercise of the powers conferred by this Order to materially obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal & River Trust.

(2) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 20 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust, and such consent may be given subject to terms and conditions as the Canal & River Trust may reasonably impose, but must not be unreasonably withheld or delayed.

(3) The undertaker must not exercise the powers conferred by article 22 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the Shropshire Union Canal unless such exercise is with the consent of the Canal & River Trust.

(4) Articles 6(a) 6(b) and 6(d)(i) (limits of deviation) shall not apply in relation to the waterway unless in conducting such exercise the crown of any installed pipeline is at least 3.5 metres below the hard bed level of the waterway or otherwise with the consent of the Canal & River Trust.

(5) The consent of the Canal & River Trust pursuant to sub-paragraphs (1) to (4) must not be unreasonably withheld or delayed.

(6) This paragraph does not apply where the undertaker reasonably believes emergency works are required to prevent imminent injury or damage to persons or property. In such circumstances the Canal & River Trust must be notified as soon as reasonably practicable.

Fencing

84.—(1) Where so required by the engineer the undertaker must to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

(2) Any fencing constructed under this provision shall not require any other consent from the Canal & River Trust for interferences or obstructions to access to their network under other provisions.

Survey of waterway

85.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker must bear the reasonable and proper cost of the carrying out by a qualified engineer (the “surveyor”), to be approved by the Canal & River Trust and the undertaker, of a survey including a dip-survey to measure the depth of the waterway (“the survey”) of so much of the waterway and of any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey the undertaker must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as they may reasonably require and which the undertaker holds with regard to such existing works of the undertaker and to the specified works or the method of their construction.

(3) The reasonable costs of the survey must include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part will apply with all necessary

(4) modifications to any such dewatering or reduction in the water level as though the same were specified works.

(5) Copies of the survey must be provided to both the Canal & River Trust and the undertaker at no cost to the Canal & River Trust.

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Approval of plans, protective works etc.

86.—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal & River Trust proper and sufficient plans of that work, on the Canal & River Trust forms or as otherwise agreed, having regard to the Canal & River Trust's Code of Practice and such further particulars as the Canal and River Trust may within 10 working days of the initial submission of the plans reasonably require. Construction of a specified work must not commence until plans of that work 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 or delayed, and if within 30 working days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal & River Trust the engineer has not intimated their disapproval of those plans and the grounds of their disapproval the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify, on land held or controlled by the Canal & River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment.

(4) Any protective works required under this paragraph must be constructed by the undertaker or by the Canal & River Trust at the undertaker's request as soon as practicable and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction with such consent not to be unreasonably withheld or delayed.

(5) The undertaker must pay to the Canal & River Trust a capitalised sum representing the reasonably increased or reasonable additional cost of maintaining and, when necessary, renewing any specified works or permanent protective works provided under sub-paragraph (3) above, for which the Canal & River Trust is liable to maintain, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order. If the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

(6) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal & River Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 days, the Canal & River Trust may undertake protective works to make safe the area and avoid detriment, excluding any works to the pipeline itself, and the undertaker must reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

(7) The undertaker and the Canal & River Trust must engage in good faith to agree the works and timeframe in the notice served under this paragraph prior to its service upon the undertaker.

Design of works

87.—(1) Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule and subject to safety requirements and compliance with this Order the undertaker must

engage in good faith and consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal & River Trust in respect of works that materially affect the Canal & River Trust's network on—

- (a) the design and appearance of the specified works; and
- (b) the environmental effects of those works, having regard to such views as may be expressed by the Canal & River Trust in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways; and
- (c) amendments or alterations to the CEMP (as may be approved pursuant to paragraph 5 of Part 1 of Schedule 2) in respect of a specified work or a protective work or otherwise in connection therewith; and
- (d) any draft CTMP and/or any draft LEMP relating to a stage which contains a specified work;

Notice of works

88. The undertaker must give to the engineer 30 days' notice of its intention to commence the construction of any of the specified works or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal & River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal & River Trust's network.

Construction of specified works

89.—(1) Any specified works or protective works must, when commenced, be constructed—

- (a) as soon as reasonably practicable in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraphs 86 (approval of plans) and 87 (design of works) of this Part;
- (b) under the supervision (if given) of the engineer;
- (c) in such manner as to cause as little detriment to the waterway as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust; and
- (e) in such a manner as to reasonably ensure that no materials other than water are discharged or deposited into the waterway (subject always to paragraph 83(2) above); and
- (f) in compliance with the Code of Practice where relevant;

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968⁽⁸⁾ (to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the

⁽⁸⁾ 1968 c. 73, section 105 was amended by the British Waterways Board (Transfer to Functions) Order 2012 (S.I. 2012/1659) and the Transport and Works Applications (Inland Waterways Procedure) Regulations 1993 (S.I. 1993/1119).

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commencement of those works unless otherwise agreed between the undertaker and the Canal & River Trust.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal & River Trust and the undertaker must take account of any survey issued pursuant to paragraph 85 (survey of waterway) and any other information agreed between them pursuant to this Part.

Prevention of pollution

90. The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which is reasonably foreseeable to result in the pollution of the waterway or the deposit of materials therein and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to work – provision of information

91.—(1) The undertaker on being given reasonable notice must—

- (a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) The Canal & River Trust on being given reasonable notice must—

- (a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their construction; and
- (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

Alterations to the waterway

92.—(1) If during the construction of a specified work or a protective work or during a period of twenty four (24) months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

(3) For the avoidance of doubt, while the Canal & River Trust may undertake works under this paragraph, including works required to make safe the area, the Canal & River Trust may not undertake any works to the pipeline, or works that may endanger the pipeline, itself under this paragraph.

Maintenance of works

93. If at any time after the completion of a specified work or a protective work, not being a work vested in the Canal & River Trust, the Canal & River Trust gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the specified work or protective work appears to be such that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Repayment of the Canal & River Trust's fees, etc.

94. The undertaker must repay to the Canal & River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

- (a) in constructing any protective works reasonably required under the provisions of paragraph 86(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works;
- (d) in bringing the specified works or any protective works to the notice of users of the Canal & River Trust's network; and
- (e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.

Making good of detriment; compensation and indemnity, etc.

95.—(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Canal & River Trust) must make good such detriment and must pay to the Canal & River Trust all reasonable expenses properly incurred by the Canal & River Trust, and compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the detriment, provided that at all times Canal & River Trust will be under an obligation to take reasonable steps to mitigate its loss, and always excluding any consequential loss or indirect losses.

(2) The undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal & River Trust—

- (a) by reason of the construction of a specified work or a protective work or the failure of such a work; 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 of a specified work or protective work;

and subject to sub-paragraph (4) the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (a) and (b), provided that at all times Canal & River

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Trust will be under an obligation to take reasonable steps to mitigate its loss, and always excluding any consequential loss or indirect loss.

(3) The fact that any act or thing may have been done by the Canal & River Trust 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 or in accordance with any directions or awards of an arbitrator is not to (if it was done without negligence on the part of the Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any detriment, damage, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal & River Trust, its officers, servants, contractors or agents.

(5) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

Arbitration

96. Any difference arising between the undertaker and the Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 47 (arbitration) of this Order.

Capitalised sums

97. Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the reasonable cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

PART 8

For the protection of SP Manweb

Application

98. The following provisions have effect for the protection of SP Manweb unless otherwise agreed in writing between the undertaker and SP Manweb.

Interpretation

99. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to enable SP Manweb to fulfil its statutory functions in a manner no less efficient than previously (to the reasonable satisfaction of SP Manweb);

“apparatus” means electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by SP Manweb together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SP Manweb 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 development” has the same meaning as is given to the term “authorised development” 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 development and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 of this Order and commencement must be construed to have the same meaning;

“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 and/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;

“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” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SP Manweb including construct, use, repair, alter, inspect, renew or remove the apparatus;

“non-intrusive works” means any of the authorised development or activities undertaken in association with the authorised development which will or may be situated underneath electrical lines, or otherwise within 15 meters (measured in any direction) of any apparatus the removal of which has not been required by the undertaker under paragraph 102(2) or otherwise, but which:

- (a) is situated further than 15 meters from any electrical plant or electricity tower foundations the removal of which has not been required by the undertaker under paragraph 102(2) or otherwise; and
- (b) is not reasonably likely to adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 102(2) or otherwise;

“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 that may be caused by the carrying out, maintenance or use of the authorised development;

“SP Manweb” means SP Manweb PLC (Company No. 02366937) whose registered office is at 3 Prenton Way, Prenton, CH43 3ET or any successor company;

“specified works” means any of the authorised development or activities undertaken in association with the authorised development which:

- (c) 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 102(2) or otherwise;
 - (i) is reasonably likely to adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 102(2) or otherwise; and/or
 - (ii) include any of the activities that are referred to in SP Manweb’s policies for development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

On Street Apparatus

100. Except for paragraphs 104, 105 and 106 of this Part 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

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SP Manweb, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SP Manweb are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

101.—(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 or take temporary possession of any land interest of SP Manweb or appropriate, acquire, extinguish, interfere with or override any easement or other interest or right and/or apparatus of SP Manweb otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between SP Manweb 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 SP Manweb and/or affects the provisions of any enactment or agreement regulating the relations between SP Manweb and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as SP Manweb reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between SP Manweb and the undertaker acting reasonably and which must be no less favourable on the whole to SP Manweb unless otherwise agreed by SP Manweb, 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 development.

(3) 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 SP Manweb and/or other enactments relied upon by SP Manweb as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

(4) No agreement or consent granted by SP Manweb under any other paragraph of this Part of this Schedule constitutes agreement under sub-paragraph (1).

Removal of apparatus

102.—(1) If, in the exercise of the agreement reached in accordance with paragraph 101 or in any other authorised manner, including in the exercise of powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of SP Manweb 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 SP Manweb in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any specified 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 SP Manweb at least 56 days' 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 SP Manweb 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 SP Manweb to its satisfaction (taking into account paragraph 105(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 use and 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, SP Manweb 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 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 SP Manweb and the undertaker.

(5) SP Manweb must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SP Manweb 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.

(6) 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 SP Manweb and/or other enactments relied upon by SP Manweb as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

Facilities and rights for alternative apparatus

103.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SP Manweb 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 SP Manweb acting reasonably and must be no less favourable on the whole to SP Manweb than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by SP Manweb.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SP Manweb under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SP Manweb 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 in the matter will be referred to arbitration in accordance with paragraph 110 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to SP Manweb as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph, article 49 (arbitration) applies.

Retained apparatus: Protection of SP Manweb as Electricity Undertaker

104.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to SP Manweb a plan of the works to be executed and seek from SP Manweb details of the underground extent of their electricity tower foundations.

(2) In relation to specified works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to SP Manweb under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the specified works;

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- (b) the level at which the specified works are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (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) In relation to any specified works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity support or between any two or more adjacent electricity supports which are within the Order limits or within 10 metres of the Order limits, the plan to be submitted under sub-paragraph (1) must include a method statement which, in addition to the matters set out in sub-paragraph (2), must—

- (a) describe details of any pipeline trench design including route, dimensions, clearance to support foundations;
- (b) demonstrate that support foundations will not be affected prior to, during and post construction;
- (c) describe load bearing capacities of trench supporting structures;
- (d) describe details of any pipeline installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) provide a written management plan for high voltage hazard during construction and ongoing maintenance of the pipeline corridor;
- (f) provide written details of the operations and maintenance regime for the pipeline, including frequency and method of access;
- (g) provide an assessment of earth rise potential if reasonably required by SP Manweb's engineers;
- (h) provide evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraph (2) or (3) applies until SP Manweb has given written approval of the plan so submitted provided that SP Manweb must not unreasonably delay notification of its approval or disapproval.

(5) Any approval of SP Manweb required under sub-paragraph (2)—

- (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 or delayed.

(6) If after the expiry of 56 days SP Manweb has not communicated approval or disapproval, SP Manweb is deemed to have approved the plans as supplied.

(7) In relation to any work requiring the submission of a plan under sub-paragraph (1), SP Manweb 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 or for the purpose of providing or securing proper and convenient means of access to any apparatus and SP Manweb must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to SP Manweb.

(8) Works requiring the submission of a plan under sub-paragraph (1) must only be executed in accordance with the plan as approved or as amended from time to time by agreement between the undertaker and SP Manweb and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (7), (9) or (10) by SP Manweb for the alteration or otherwise

for the protection of the apparatus, or for securing access to it, and SP Manweb will be entitled to watch and inspect the execution of those works.

(9) Where SP Manweb 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 SP Manweb's reasonable satisfaction prior to the commencement of any relevant part of the authorised development for which protective works are required and SP Manweb must give notice of its requirement for such works within 56 days from the date of submission of a plan pursuant to sub-paragraph (1) or (7) (except in an emergency).

(10) If SP Manweb in accordance with sub-paragraphs (7) or (9) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (5) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 102(2).

(11) 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 must apply to and in respect of the new plan.

(12) The undertaker must 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 SP Manweb notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (7), (8) and (9) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (13) at all times.

(13) At all times when carrying out any works authorised under the Order, the undertaker must comply with statutory requirements and guidelines for development near overhead lines EN43-8, HSE's guidance note 6 "Avoidance of Danger from Overhead Lines", and any other appropriate guidance in relation to any apparatus and aligning with SP Manweb guidelines.

(14) Not less than 56 days before the commencement of any non-intrusive works, the undertaker must notify and submit to SP Manweb a plan of the works to be executed, noting that approval of plans for non-intrusive works is not required.

Expenses

105.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SP Manweb within 30 days of receipt of an itemised invoice or claim from SP Manweb all reasonable charges, costs and expenses reasonably and properly incurred by SP Manweb in the execution of any authorised development, always excluding any consequential loss or indirect loss, and including without limitation in respect of—

- (a) any costs reasonably and properly incurred by or compensation properly paid by SP Manweb in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by SP Manweb as a consequence of SP Manweb;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 102(3); and/or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SP Manweb;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

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- (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 reasonable protective works (including any reasonable temporary protective works and their removal);
 - (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 110 (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 SP Manweb by virtue of sub-paragraph (1) will 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 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 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) An amount which apart from this sub-paragraph would be payable to SP Manweb 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 SP Manweb 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

106.—(1) Subject to sub-paragraphs (2) and (3), if by reason of the construction of any such works authorised by this Part of this Schedule or of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this 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 SP Manweb,

or if there is any interruption in any service provided, or in the supply of any goods by SP Manweb, or SP Manweb becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand accompanied by an invoice or claim and associated itemised accounting from from SP Manweb the cost reasonably and properly incurred by SP Manweb in making good such damage or restoring the supply; and
- (b) indemnify SP Manweb for any other expenses, loss, demands, proceedings, damages, claims, penalties or costs incurred by or recovered from SP Manweb, by reason of any such damage or interruption or SP Manweb becoming liable to any third party as aforesaid other than arising from any default of SP Manweb

always excluding any consequential loss or indirect loss and provided that at all times SP Manweb will be under an obligation to take reasonable steps to mitigate its loss.

(2) The fact that any act or thing may have been done by SP Manweb on behalf of the undertaker or in accordance with a plan approved by SP Manweb or in accordance with any requirement of SP Manweb as a consequence of the authorised development or under its supervision does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this paragraph where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved plan (or as otherwise agreed between the undertaker and SP Manweb pursuant to paragraph 105).

(3) Nothing in sub-paragraph (1) will 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 SP Manweb, its officers, employees, contractors or agents;
- (b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by SP Manweb as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 7 (benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development 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 in respect of such new apparatus; 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.

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

Enactments and agreements

107. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SP Manweb and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and SP Manweb 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

108.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or SP Manweb requires the removal of apparatus under paragraph 102(2) or SP Manweb makes requirements for the protection or alteration of apparatus under

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paragraph 104, 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 SP Manweb's undertaking and SP Manweb must use all reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SP Manweb'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 SP Manweb is required, it must not be unreasonably withheld or delayed.

Access

109. If in consequence of the agreement reached in accordance with paragraph 101(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 SP Manweb to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

110. Save for differences or disputes arising under paragraphs 102(2), 102(4), 103(1) and 104 any difference or dispute arising between the undertaker and SP Manweb under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SP Manweb, determined by arbitration in accordance with article 47 (arbitration).

Notices

111. Notwithstanding article 45 (service of notices), any plans submitted to SP Manweb by the undertaker pursuant to this Part must be sent to such address as SP Manweb may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 9

Protection of CF Fertilisers UK Limited

112. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and CF Fertilisers.

113. In this Part—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“CF Fertilisers” means CF Fertilisers UK Limited (company number 03455690), whose registered office is at Head Office Building, Ince, Chester, Cheshire, United Kingdom, CH2 4LB and any associated company of CF Fertilisers UK Limited which holds relevant property;

“relevant property” means—

- (a) any land, works, apparatus and equipment belonging to CF Fertilisers; and
- (b) any easement or other property interest held or used by CF Fertilisers or a tenant or licensee of CF Fertilisers for the purposes of such land, works, apparatus or equipment.

Rights of access

114. Regardless of any provision of this Order or anything shown on the land plans, the undertaker-

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- (a) must not extinguish any rights of access to the relevant property granted to CF Fertilisers otherwise than by agreement (both parties acting reasonably);
- (b) must provide a minimum of two working days notification prior to entry to the relevant property; and
- (c) must keep any existing roads used for access to the relevant property by CF Fertilisers clear from obstruction as far as reasonably practicable.

Expenses

115. Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of CF Fertilisers or its servants, contractors or agents or any liability on CF Fertilisers with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

116. The undertaker must pay to CF Fertilisers all reasonable and proper costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (but always excluding any consequential loss or indirect loss) which may be reasonably incurred by CF Fertilisers in respect of any damage caused to or additional maintenance required to relevant property as a direct result of the construction of the authorised development.

117.—(1) Notwithstanding anything to the contrary in this Part of this Schedule, the undertaker shall not be liable for any consequential loss or indirect loss suffered by CF Fertilisers as a result of the construction of the authorised development and CF Fertilisers shall not be liable for any consequential loss or indirect loss suffered by the undertaker as a result of the construction of the authorised development.

(2) CF Fertilisers must-

- (a) give the undertaker reasonable written notice of any such sums referred to in paragraph 116 as soon as reasonably possible after CF Fertilisers become aware of the same;
- (b) not make any offers to settle claims or demands without the prior consent of the undertaker;
- (c) take all reasonable steps to mitigate any liabilities; and
- (d) keep the undertaker informed and have regard to the undertaker's representations in relation to any such sums referred to in paragraph 116.

PART 10

For the protection of Wales and West Utilities

118. For the protection of Wales and West Utilities as referred to in this part of this Schedule the provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Wales and West Utilities.

119. In this Part—

“alternative apparatus” means alternative apparatus adequate to enable Wales and West Utilities to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means all mains, pipes or other apparatus belonging to or maintained by Wales and West Utilities for the purposes of carrying out its statutory undertaking and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include associated

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development and the construction, use, maintenance and decommissioning of the authorised development and the construction of any authorised development;

“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;

“protective works” means the underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused by the carrying out, maintenance or use of the authorised development;

“security infrastructure” includes cameras, perimeter fencing, fencing and gates and any other security measures required in order to ensure an appropriate level of security in respect of the authorised development or any apparatus;

“specified work” means so much of any of the works comprised in the authorised development or activities undertaken in association with the authorised development which:

- (a) are in, on or under any land purchased, leased, held, appropriated or used under this Order that are within 15 metres of, or will or may in any way affect, any apparatus the removal of which is not required under paragraph 123 of this Part of this Schedule; and/or
- (b) will or may be situated within 4 metres measured in any direction of any security infrastructure belonging to or maintained by Wales and West Utilities;

“WWU standards” means Wales and West Utilities Limited specification for safe working in the vicinity of pipelines and associated installations operating above 2 barg – requirements for third parties (SSW22) and Plant Protection General Conditions; and

“Wales and West Utilities” means Wales and West Utilities Limited (Company No. 05046791) whose registered office is at Wales & West House, Spooner Close Coedkernew, Newport, South Wales, NP10 8FZ and includes any successor in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986.

Apparatus in streets

120. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Wales and West Utilities are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

121. Regardless of the temporary prohibition or restriction of use of public rights of way or streets under the powers conferred by article 13 (temporary restriction of public right of way) and 15 (temporary restriction of use of streets), Wales and West Utilities is at liberty at all times to take all reasonably necessary access across any such public right of way or street and to execute and do all such works and things in upon or under any such public right of way or street as may be reasonably necessary to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that public right of way or street.

Acquisition of land

122. Regardless of any provision of this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not (a) appropriate or acquire or take temporary possession of apparatus or (b) appropriate, acquire or extinguish interfere with or override any easement, other interest or right and/or apparatus any apparatus belonging to or maintained

by Wales and West Utilities otherwise than by agreement, provided that such agreement is not unreasonably delayed or withheld.

Removal of apparatus

123.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 118, the undertaker acquires any interest in, on or under any land in which any apparatus is placed or over which access is enjoyed and requires Wales and West Utilities' apparatus is relocated or diverted, that apparatus must not be decommissioned or removed under this Part, and any right of Wales and West Utilities to maintain that apparatus in that land and to gain access to it must not be extinguished or interfered with until alternative apparatus has been constructed and is in operation and the facilities and rights referred to in sub-paragraph (2) to the reasonable satisfaction of Wales and West Utilities.

(2) If, for the purpose of executing any works in, on or under any land purchased, leased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Wales and West Utilities at least 28 days' written notice of that requirement, together with a plan, description, risk assessment method statement and section drawing of the work proposed which complies with WWU standards, 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 Wales and West Utilities reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Wales and West Utilities the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of and access to that apparatus and any appropriate working areas.

(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, Wales and West Utilities 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 Wales and West Utilities and the undertaker or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) Wales and West Utilities must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 (arbitration), and after the grant to Wales and West Utilities 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 or decommission any apparatus required by the undertaker to be removed or decommissioned under the provisions of this Part.

Facilities and rights for alternative apparatus

124.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to Wales and West Utilities facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed or decommissioned, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Wales and West Utilities or in default of agreement settled by arbitration in accordance with article 47 (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—

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- (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;
 - (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; and
 - (c) avoid any unreasonable adverse impact on Wales and West Utilities' operations or apparatus.
- (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 Wales and West Utilities 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 Wales and West Utilities as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

125.—(1) Not less than 42 days before starting the execution of any specified works in, on or under any land purchased, leased, 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 123(2), the undertaker must submit to Wales and West Utilities a plan, section drawing, description of the works to be executed and a risk assessment method statement which comply with WWU standards.

(2) Those works must be executed only in accordance with the plan, section drawing, description and risk assessment method statement submitted under sub-paragraph (1) and in accordance with WWU standards and such reasonable requirements as may be made in accordance with sub-paragraph (3) by Wales and West Utilities for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Wales and West Utilities is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Wales and West Utilities under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section drawing, description, and risk assessment method statement under sub-paragraph (1) is submitted to it.

(4) If Wales and West Utilities, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal or decommissioning of any apparatus or any reasonably necessary protective works and gives written notice to the undertaker of that requirement, the provisions of this Part apply as if the removal or decommissioning of the apparatus or the protective works had been required by the undertaker under paragraph 123(2).

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

(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 Wales and West Utilities notice as soon as is reasonably practicable and a plan, section drawing, description and risk assessment method statement 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.

(7) Where the specified works only include ground investigation or PAS128 Cat A surveys, all timeframes in this paragraph shall be reduced to 14 days.

Expenses and costs

126.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Wales and West Utilities within 30 days of a request by Wales and West Utilities the reasonable expenses agreed with the undertaker in advance and reasonably incurred by Wales and West Utilities in the inspection, removal, relaying or replacing, alteration or protection of any apparatus or security infrastructure of the construction of any new apparatus or security infrastructure which may be required in direct consequence of the execution of any such works as are referred to in paragraph 123(2) or any specified work, but always provided that the undertaker shall not be liable under any circumstances for any consequential loss or indirect loss suffered by Wales and West Utilities.

(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 47 (arbitration) to be necessary then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to 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 Wales and West Utilities 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 Wales and West Utilities 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.

127.—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any such works referred to in paragraph 6(2) or any specified work 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 Wales and West Utilities, or there is any interruption in any service provided, or in the supply of any goods, by Wales and West Utilities, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Wales and West Utilities in making good such damage or restoring the supply; and

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(b) make reasonable compensation to Wales and West Utilities for any other expenses, loss, damages, penalty or costs incurred by Wales and West Utilities, as a direct result of any such damage or interruption and always provided that the undertaker shall not be liable under any circumstances for any consequential loss or indirect loss suffered by Wales and West Utilities.

(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 Wales and West Utilities, its officers, servants, contractors or agents.

(3) Wales and West Utilities 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 unless payment is required and the level specified in accordance with a statutory compensation scheme 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 provided that the undertaker consults Wales and West Utilities and takes any representations it makes into account.

Enactments and agreements

128. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and Wales and West Utilities in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 11

Protection for Welsh Water

129. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Welsh Water.

130. 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) mains, pipes or other apparatus belonging to or maintained by that water undertaker for the purposes of water supply; and
- (b) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991; and
- (c) 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 sewerage disposal works, at future date) of that Act;

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—

- (d) a water undertaker within the meaning of the Water Industry Act 1991; and
- (e) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

On street apparatus

131. 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

132. 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

133.—(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.

(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 47 (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 49 (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

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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

134.—(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 49 (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

135.—(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 133(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 (1) 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 133(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

136.—(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 133(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 47 (arbitration) to be necessary then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to 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, be reduced by the amount which represents that benefit.

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137.—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any such works referred to in paragraph 133(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 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.

(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

138. 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 12

For the protection of United Utilities Water Limited (UU Water)

Application

139. For the protection of UU Water the following provisions, unless otherwise agreed in writing between the undertaker and UU Water, have effect.

Interpretation

140. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of UU Water to enable UU Water to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any treatment works, reservoirs, pumping stations, water mains, sewers, drains, sludge mains, disposal mains, pipes or any accessories (including those within the meaning of section 219 of the Water Industry Act 1991) vested in UU Water under the Water Industry Act 1991 and any preceding legislation or other apparatus belonging to or maintained by UU Water for the purposes of UU Water’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of UU Water for the purposes of UU Water’s undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of 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;

“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;

“Estimate” means a reasonable estimate of the total reasonable and proper costs that UU Water expects to incur in respect of staff and orders or instructions that need to be given to UU Water’s vendors in its supply chain or to third party organisations to obtain their consent in respect of the specified works.

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

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by UU Water (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 conditions and vibration 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 and water supplies are to be monitored (including turbidity), the timescales of any monitoring activities and the extent of ground subsidence, dewatering and / or vibration which, if exceeded, shall require the undertaker to submit for UU Water’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence, ground dewatering or vibration identified by the monitoring activities set out in the ground monitoring scheme that has exceeded or reasonably has the potential to exceed 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 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 to properly and sufficiently describe and assess the works to be executed;

“protective works” means any works that are reasonably necessary to protect UU Water’s services to its customers and its apparatus from damage that may be caused by the carrying out, maintenance or use of the authorised development;

“rights” includes 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 works or activities (including maintenance) undertaken in association with the authorised development (including maintenance and notwithstanding the definition of “commence” in Article 2 of this Order) including but not limited to any intrusive site preparation works, intrusive remediation works, intrusive surveys and investigations (including archaeological, utility or soil surveys), erection of temporary fencing requiring intrusive supports, intrusive marking out of site boundaries, diversion or laying of services or intrusive environmental mitigation measures and any such temporary access by HGVs or LGVs that may be required in association with these, and which—

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- (a) when involving a pipe up to and including 300mm in diameter, will or may be situated over, or within 3000mm measured in any direction of any apparatus, the removal of which has not been required by the undertaker under sub-paragraph 144(2) or otherwise;
- (b) when involving a pipe exceeding 300mm in diameter, will or may be situated over, or within 5000mm measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 144(2) or otherwise; or
- (c) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 144(2) or otherwise;

“UU Water” means United Utilities Water Limited (company number 02366678), registered office at Haweswater House, Lingley Mere Business Park, Lingley Green Avenue, Great Sankey, Warrington, WA5 3LP and includes its successors in title or any successor as a water and sewerage undertaker within the meaning of the Water Industry Act 1991; and

“UU Water’s undertaking” means the rights, duties and obligations of United Utilities Water Limited as a water and sewerage undertaker under the Water Industry Act 1991.

Apparatus of UU Water stopped up in street

141. Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 15 (temporary restriction of use of streets) UU Water 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.

Discharge of Water, foul and surface water

142.—(1) If the undertaker proposes to connect foul water to a public sewer operated by UU Water, the undertaker shall give to UU Water notice of the proposal, and within 42 days of the receipt by them of the notice, UU Water may refuse permission for the connection but only if it has reasonable grounds for doing so, or it may grant permission for the connection or alteration, subject to such reasonable conditions as it thinks fit acting reasonably. Any such permission may in particular specify the mode and point of connection.

(2) If the undertaker proposes to connect surface water to a public sewer operated by UU Water, the undertaker shall give to UU Water notice of the proposal, and within 42 days of the receipt by them of the notice, UU Water may refuse permission for the connection, but only if it has reasonable grounds for doing so, or it may grant permission for the connection or alteration, subject to such reasonable conditions as it thinks fit acting reasonably. Any such permission may in particular specify the mode, the point of connection, the rate of discharge and the size of any attenuation necessary. UU Water shall be entitled to refuse any connection where the sustainable drainage system hierarchy for managing surface water has not been reasonably investigated and / or sustainable drainage has not been incorporated within the proposed surface water drainage to the satisfaction of UU Water.

(3) Where there are separate public sewers for foul water and surface water, UU Water may prohibit the discharge of foul water into the public sewer reserved for surface water, and prohibit the discharge of surface water into the public sewer reserved for foul water.

(4) Where UU Water has not granted or refused permission under this paragraph within 42 days from the receipt of notice of a proposal the permission shall be deemed to be granted

(5) Nothing in this section entitles the undertaker to:

- (a) discharge in to a public sewer (directly or indirectly), highway drainage, groundwater, trade effluent or any liquid or other matter, the discharge of which in to a public sewer is prohibited by or under any enactment; or
- (b) have drains or sewers that communicate directly with a storm water overflow.

Protective works to buildings

143. The undertaker must exercise the powers conferred by article 22 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of UU Water (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 UU Water or any interruption in the supply of water and the provision of sewerage services by UU Water, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred and documented by UU Water in making good such damage or restoring the supply; and, shall pay compensation to UU Water for any loss sustained by reason of any such damage or interruption.

Removal of apparatus

144.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 143, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed and any right of UU Water 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 reasonable satisfaction of UU Water 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 UU Water advance written notice of not less than 70 days 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 UU Water reasonably needs to move or remove any of its apparatus) the undertaker must afford to UU Water to its reasonable satisfaction 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 UU Water 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 UU Water 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 UU Water 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, UU Water must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to 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 will not extend to the requirement for UU Water to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

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(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 UU Water and the undertaker, each acting reasonably.

(5) UU Water must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to UU Water of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring in to 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

145.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for UU Water 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 UU Water, each acting reasonably, and must be no less favourable on the whole to UU Water than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by UU Water.

(2) If the facilities and rights to be afforded by the undertaker and agreed with UU Water 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 UU Water than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 149 of this Part of this Schedule and the arbitrator must make such provision for the payment of reasonable compensation by the undertaker to UU Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of UU Water

146.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to UU Water a plan and, if reasonably required by UU Water, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to UU Water 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
- (d) excavation, positioning of plant etc.;
- (e) the position of all apparatus, identified if necessary by survey or investigation works carried out with the prior agreement and to the reasonable satisfaction of UU Water;
- (f) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (g) any intended maintenance regimes.

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

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

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and

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- (b) must not be unreasonably withheld or delayed and UU Water and any approval or refusal must be provided to the undertaker within 56 days of the date of submission of the plan under sub-paragraph (1).
- (5) UU Water may require protective works or such modifications to be made to the plan as may be reasonably necessary for the purpose of maintaining services to its customers, or 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) 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 UU Water; and
 - (b) all conditions imposed under sub-paragraph (4)(a), and UU Water will be entitled to watch and inspect the execution of those works.
- (7) Where UU Water reasonably requires any protective works or such modifications to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works or modifications, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to UU Water’s reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which such protective works or modifications are required prior to commencement.
- (8) If UU Water, 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 139 to 141 and 143 to 145 apply as if the removal of the apparatus had been required by the undertaker under paragraph 144(2).
- (9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.
- (10) As soon as is reasonably practicable after any ground subsidence event attributable to the authorised works (including such an event attributable to its maintenance)—
 - (a) the undertaker must implement an appropriate ground mitigation scheme; and
 - (b) UU Water retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such reasonable and documented costs in line with paragraph 147.
- (11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to UU Water notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.
- (12) In this paragraph, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to life or property or the environment, and to any interruption of a supply of water provided to any premises and to any interruption of the provision of sewerage services to any premises.

Expenses

147.—(1) At the same time as any written notice is provided by UU Water in accordance with paragraph 146(8), UU Water shall also submit an Estimate to the undertaker.

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(2) If the undertaker elects that it will proceed with the specified works it shall make an advance payment of the Estimate to UU Water no later than 28 days prior to the planned commencement of the specified works. The undertaker shall not commence the specified works until a minimum of 28 days of receipt by UU Water of the advance payment.

(3) If at any point UU Water's Estimate is forecast to be exceeded, UU Water shall submit an early warning notification and then a change request documenting all costs already incurred and forecast to be reasonably incurred and submit an updated Estimate to the undertaker no less than 28 days prior to the Estimate being reasonably expected to be exceeded. The undertaker shall make such additional payment required by the updated Estimate as soon as reasonably possible and in any event no later than 56 days after receipt of the updated Estimate.

(4) Where the undertaker fails to make such additional payment required under sub-paragraph (3) within 56 days of receipt of the updated Estimate, UU Water will be entitled to require the undertaker to suspend works from the point at which the charges, costs and expenses reach or exceed the Estimate. In addition any reasonable abortive/demobilisation costs resulting from this would be recoverable by UU Water from the undertaker.

(5) In the event of any dispute as to the reasonableness of costs included in an updated Estimate submitted under sub-paragraph (3), UU Water must not exercise the powers of sub-paragraph (4) until the dispute has been finally determined.

(6) Subject to the following provisions of this paragraph, UU Water' will retain an account of all its direct charges, costs and expenses reasonably incurred and documented by UU Water in the design, planning, inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus required as a direct result of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by UU Water in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including reasonable costs (including professional fees) incurred by UU Water as a consequence of UU Water;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 5(3) if it elects to do so; or
 - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting UU Water;
- (b) in connection with the cost of the carrying out of any necessary 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;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works, the provision of network contingency measures 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 145(6);
- (h) in connection with an assessment of flood risk from UU Water apparatus (note above comment about whether this apparatus includes a reservoir);
- (i) in connection with an assessment of the impact on a UU Water outfall;
- (j) any relevant charges in accordance with the charges scheme under the Water Industry Act 1991.

(7) UU Water shall give the undertaker regular actual and forecast cost updates at intervals to be agreed between UU Water and the undertaker, each acting reasonably.

(8) Within 90 days of completion of the specified works, UU Water shall reconcile its accounts with its supply chain and collate its internal costs and advise the undertaker of the final account position. Within 28 days of this final account, UU shall reimburse the undertaker of all remaining monies that were received as part of any advance payment arrangements. If the final account is above the Estimate, the undertaker will be required to pay UU Water within 28 days of submission of the final account.

(9) UU Water may in carrying out works, elect to place—

- (a) alternative apparatus of a better type, or greater capacity or of greater dimensions in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions save where this has been solely due to using the nearest currently available type (or where it is more economical overall or there is no practical alternative to the relevant course of action, including where the same is mandated by UU Water’s Standards); or
- (b) existing or alternative apparatus at a depth greater than the depth at which the existing apparatus was situated save for where the requirement for a greater depth cannot reasonably be avoided, (a “Betterment”).

(10) The twinning of assets crossing the authorised works or similar initiatives to provide resilience to UU Water’s network in accordance with the prevailing business and engineering requirements may be necessary, in circumstances in which the proposed authorised works will compromise the future access or present an unacceptable operational or business risk to the relevant asset (without interference with the authorised work), and such twinning or similar arrangement is not Betterment. Where UU Water can demonstrate on a case by case basis that the particular asset is critical (for example, it is critical to the provision of water or wastewater services, or the authorised works cannot accommodate a like for like asset replacement, or there is no alternative means of maintaining services to customers by bypassing the asset under the authorised works), the twinning of assets crossing the authorised works or similar arrangement is not Betterment.

(11) Where UU Water has elected to place apparatus which is assessed and agreed by UU Water as Betterment, the undertaker shall not be required to cover any additional cost associated with that Betterment. Any such assessment and decision by UU Water on whether such apparatus is Betterment or not shall always be made by UU Water acting reasonably.

Indemnity

148.—(1) If by reason of the authorised 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 UU Water, or there is any material interruption in any service provided, or in the supply of any goods by UU Water, or UU Water has to take action to protect the services to its customers, or UU Water elects to use its statutory powers, the undertaker must—

- (a) bear and pay the cost reasonably incurred by UU in making good such damage or restoring the supply or use of the UU Water’s statutory powers; and
- (b) make reasonable compensation to UU Water for any other expenses, loss, damages, penalty or costs suffered or incurred and documented by UU Water, by reason of any such damage or interruption or use of UU Water’s statutory powers,

provided always that UU Water makes all reasonable endeavours to mitigate any such expenses, losses, damages, penalties or costs.

(2) The fact that any act or thing may have been done by UU Water on behalf of the undertaker or in accordance with a plan approved by UU Water or in accordance with any requirement of UU Water or under its supervision does not, excuse the undertaker from liability under the provisions.

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(3) 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 UU Water, its officers, servants, contractors or agents.

(4) Notwithstanding any paragraph or sub-paragraph of this Part of the Schedule, the undertaker shall under no circumstances be liable for any consequential loss or indirect loss suffered by UU Water.

Enactments and agreements

149. 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 UU Water 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

150.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or UU Water requires the removal of apparatus under paragraph 144(2) or UU Water makes requirements for the protection or alteration of apparatus under paragraph 146, 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 works and taking into account the need to ensure the safe and efficient operation of UU Water’s undertaking, using existing processes where requested by UU Water, provided it is appropriate to do so, and UU Water must use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever UU Water’s consent, agreement or approval is required in relation to plans, documents or other information submitted by UU Water or the taking of action by UU Water, it must not be unreasonably withheld or delayed.

(3) Where the undertaker identifies any apparatus which may belong to or be maintainable by UU Water but which does not appear on any statutory map kept for the purpose by UU Water, it shall inform UU Water of the existence and location of the apparatus as soon as is reasonably practicable.

(4) Where UU Water identifies any apparatus which may belong to others but which does not appear on any statutory map kept for the purpose by UU Water, it shall inform the undertaker of the existence and location of the apparatus as soon as is reasonably practicable.

(5) The undertaker shall notify UU Water of any hazardous material/contamination encountered in land involving UU apparatus or where sub-paragraphs (a), (b) and/or (c) of the definition of Specified Works applies. UU Water shall likewise notify the undertaker where it believes there is a risk that the undertaker may encounter hazardous material/contamination in such land.

Access

151. If in consequence of any agreement reached in accordance with paragraph 139(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker shall seek to provide such alternative rights and means of access to such apparatus, to the extent that provision of such rights and means of access is within the ability of the undertaker to grant, as will enable UU Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

152. Save for differences or disputes arising under paragraph 141(4) any difference or dispute arising between the undertaker and UU Water under this Part of this Schedule must, unless otherwise

agreed in writing between the undertaker and UU Water, be determined by arbitration in accordance with article 47 (arbitration).

Notices

153. Notwithstanding article 45 (service of notices) any plans submitted to UU Water by the undertaker must be sent via email to UU Water s and sent to the General Counsel Department at UU Water’s registered office or such other address as UU Water may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 13

For the protection of United Kingdom Oil Pipelines Limited

154. For the protection of United Kingdom Oil Pipelines Limited

Application

155. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and UKOP.

Interpretation

156. In this Part—

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

“alternative apparatus” means alternative apparatus adequate to enable UKOP to fulfil its functions as a private commercial fuel pipeline operator/transporter in a manner no less efficient than previously;

“apparatus” means the whole or any part of any pipeline cable or other apparatus owned or operated by UKOP (or its authorised agents) used in connection with the transmission of hydrocarbon fuel together with any other plant and equipment ancillary thereto (which includes any structure in which apparatus is or is to 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 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(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, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“ground mitigation scheme” means a scheme approved by UKOP (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

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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 UKOP'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 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 UKOP including construct, use, repair, alter, inspect, renew or remove the apparatus;

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

“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 157(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 157(2) or otherwise;

“UKOP” means United Kingdom Oil Pipelines Limited (Co. No.00746709) whose registered office is at 5-7 Alexandra Road, Hemel Hempstead, Hertfordshire, HP2 5BS; and

“undertaker” means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

157. Except for paragraph 161 (retained apparatus) and 162 (expenses and costs) of this Part 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 UKOP, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and UKOP are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition or possession of land

158.—(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 apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of UKOP otherwise than by agreement (all such agreement(s) not to be unreasonably withheld or delayed) and unless it grants replacement rights to UKOP in a form agreed between the parties in accordance with the provisions of paragraph 159 (Removal of apparatus) or paragraph 160 (UKOP Replacement facilities and rights).

(2) As a condition of any 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 UKOP 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 UKOP or affect the provisions of any enactment or agreement regulating the relations between UKOP and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as UKOP reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between UKOP and the undertaker, both acting reasonably, and

which must be no less favourable on the whole to UKOP unless otherwise agreed by UKOP, 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) The undertaker and UKOP 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 UKOP and/or other enactments relied upon by UKOP 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 UKOP under paragraph 161 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

159.—(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 UKOP's apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of UKOP 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 UKOP 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 UKOP 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 UKOP 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 UKOP to its reasonable satisfaction (taking into account paragraph 160(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, UKOP must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for UKOP to use its compulsory purchase powers to this end.

(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 UKOP and the undertaker.

(5) UKOP 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 UKOP 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

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UKOP replacement facilities and rights

160.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker is to afford to or secure for UKOP facilities and rights in land for the construction, use, maintenance and protection of apparatus either in substitution for apparatus to be removed (or where existing rights are being sterilized), deeds of consent must be granted upon such terms and conditions as may be agreed between the undertaker and UKOP both acting reasonably and must be no less favourable on the whole to UKOP than the facilities and rights enjoyed by it previously in respect of the apparatus unless otherwise agreed by UKOP 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.

(2) If the facilities and rights to be afforded by the undertaker pursuant to sub-paragraph (1) above, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to UKOP 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 166 (Arbitration) of this Part of this Schedule the arbitrator must make such provision for the payment of compensation by the undertaker to UKOP as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

161.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to UKOP a plan and, if reasonably required by UKOP, a ground monitoring scheme in respect of those works taking place within 20 metres of the apparatus.

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

- (a) the exact position of the works and details of any infrastructure machinery or vehicles to be used in connection therewith;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of all excavation, positioning of plant etc and any works' compounds;
- (d) the position of all apparatus and fencelines;
- (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) In relation to any works which will or may be situated within 6.1 metres measured in any direction of any apparatus (the removal of which has not been required by the undertaker under paragraph 157(2) or otherwise), the plan to be submitted under sub-paragraph (1) must also describe—

- (a) details of any trench design including route, dimensions and clearance to the apparatus;
- (b) demonstration that the apparatus will not be affected prior to, during and post construction; and
- (c) details of load bearing capacities of trenches.

(4) The undertaker must not commence any works to which sub-paragraphs (1), (2) or (3) apply until UKOP has given written approval of the plan so submitted.

(5) UKOP may within 10 working days of initial receipt of the plan submitted under sub-paragraph (1) raise any additional questions or comments or request further information and/or clarification in relation to the plan.

- (6) Any approval of UKOP required under sub-paragraph (4):
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (8) or (10); and
 - (b) must not be unreasonably withheld or delayed.

(7) UKOP is deemed to have approved the plan as submitted under sub-paragraph (1) if UKOP has not intimated its approval or disapproval of the plan, and the grounds of that disapproval, within 30 working days after the plan or the responses to any additional questions, comments, further information or clarification raised or requested under sub-paragraph (5) has been received by UKOP.

(8) In relation to any work to which sub-paragraphs (1), (2) and/or (3) apply, UKOP 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.

(9) 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 UKOP and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (8) or (10) by UKOP for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and UKOP will be entitled to watch and inspect the execution of those works.

(10) Where UKOP 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 UKOP's satisfaction, acting reasonably, prior to the commencement of any specified works for which protective works are required and UKOP 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).

(11) If UKOP in accordance with sub-paragraphs (8) or (10) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (4) and (8) to (10) apply as if the removal of the apparatus had been required by the undertaker under paragraph 159(2).

(12) 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.

(13) 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 UKOP notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (8), (9) and (10) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (14) at all times.

(14) At all times when carrying out any works authorised under the Order the undertaker must ensure that all works comply with:

- (a) Linewatch's Booklet for Special Requirements for safe working in close proximity to high pressure pipelines (rev23.03); and
- (b) Linesearch Before U Dig (LinesearchbeforeUdig Safety Practices - LinesearchbeforeUdig (lsbud.co.uk)); and
- (c) The United Kingdom Onshore Pipeline Operators' Association Good Practice Guides (Good Practice Guides | UKOPA); and
- (d) The Pipeline Safety Regulations 1996; and
- (e) The Pipe-lines Act 1962;

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(all as updated or replaced from time to time).

(15) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that UKOP retains the right to carry out any further reasonably necessary protective works for the safeguarding of its apparatus and can recover any such reasonable costs in line with paragraph 160 (Expenses and costs).

Expenses and costs

162.—(1) Save where otherwise agreed in writing between UKOP and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to UKOP within 25 days of receipt of an itemised invoice or claim from UKOP all charges, costs and expenses (including legal expenses) reasonably and properly incurred by UKOP in, pursuant to, or in connection with these protective provisions, 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 and expenses (including but not limited to reasonable legal expenses) reasonably incurred by or compensation properly paid by UKOP in connection with the acquisition, variation or grant of any rights or the exercise of any statutory powers in respect of such apparatus;
- (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 reasonably required protective works, plus a capitalised sum to cover the reasonable 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 for the execution of any such works referred to in this Part of this Schedule; or
- (g) any costs and expenses (including but not limited to legal expenses) reasonably incurred in assisting the undertaker to procure and/or secure any consent and entering into of any deeds and/or variations by other third parties required in connection with this Part of this Schedule, save that for the avoidance of any doubt—
 - (i) the undertaker be directly responsible for the payment of all third party costs and expenses where the undertaker is a party to any such deeds or variations; and
 - (ii) where the undertaker is not a party to such deeds or variations, or where a consent is procured or secured by UKOP, UKOP and the undertaker shall, acting reasonably and without unreasonable delay, agree the amount of third party costs and expenses that can be paid by UKOP to the third party and recovered from the undertaker under this paragraph 162(1).

(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

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- (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 166 (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 UKOP 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 UKOP 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 UKOP any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.
- (6) Subject to sub-paragraph (2), if by reason or in consequence of the construction of the authorised works (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) on property of UKOP, or there is any interruption in any service provided, or in the supply of any goods, by UKOP, the undertaker must:
- (a) bear and pay the cost reasonably incurred by UKOP in making good such damage or restoring the supply; and
- (b) make reasonable compensation for any other expenses, loss, damages, penalty or costs incurred by UKOP,
- by reason or in consequence of any such damage or interruption.
- (7) 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 UKOP, its officers, servants, contractors or agents.
- (8) UKOP 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

163. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between UKOP and the undertaker, nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and UKOP in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

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Co-operation

164.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or UKOP requires the removal of apparatus under paragraph 159(2) or UKOP makes requirements for the protection or alteration of apparatus under paragraph 160, the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of UKOP's undertaking and UKOP must use reasonable endeavours to co-operate with the undertaker for that purpose including using reasonable endeavours (at the undertaker's cost) to assist the undertaker to procure and/or secure any consent and entering into of any deeds and/or variations by other third parties required in connection with this Part of this Schedule.

(2) For the avoidance of doubt whenever UKOP'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

165. If in consequence of the agreement reached in accordance with paragraph 158(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 UKOP to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

166. Any difference or dispute arising between the undertaker and UKOP under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and UKOP, be determined by arbitration in accordance with article 47 (arbitration).

Notices

167. Notwithstanding article 45 (service of notices), any plans submitted to UKOP by the undertaker pursuant to this Part must be sent to the then Company Secretary of UKOP at its then current registered address or such other address as UKOP may from time to time appoint instead for that purpose and notify to the undertaker in writing.

Deviation of authorised development

168. Notwithstanding article 5 of the Order (Power to maintain the authorised development) the undertaker is not permitted to install or deviate vertically the authorised works to a limit less than 2.5 metres below the surface of the ground and no closer than 600mm provided that where directional drilling methods are to be used this minimum distance shall be increased to a 1.5 metre clearance from the apparatus.

PART 14

For the protection of PEEL NRE Limited

169. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Peel and, in the case of paragraph 183 of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

170. In this Part of this Schedule—

“alternative access road(s)” means the existing access road at Plots 1-01a and 1-01 as identified on the Land Plans and the access road proposed to be constructed by Peel to connect Plot 1-01a to Plot 1-04 as identified on the Land Plans D2.2 Sheet 1 pursuant to planning application Ref: 23/01239/FUL for construction of gas fired electricity generators, enclosures with ancillary equipment, metering station, transformer compound and access from Grinsome Road;

“existing access road” means the existing access road over Plot 1-01 as identified on the Land Plans;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“CEMP” means Construction Environmental Management Plan;

“CTMP” means Construction Traffic Management Plan;

“LEMP” means Landscaping Environmental Management Plan;

“DEMP” means Decommissioning Environmental Management Plan;

“Network Rail Standard” means Network Rail Standard reference ‘NR/L2/CIV/044 ‘Planning, Design and Construction of Undertrack Crossings’;

“Peel” means Peel NRE Limited (company number 04480419), whose registered office is at Venus Building, 1 Old Park Lane, Traffordcity, Manchester, M41 7HA and any associated company of Peel NRE Limited which holds property;

“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 relevant property;

“relevant property” means:

- (a) any land, works, apparatus and equipment belonging to Peel; and
- (b) any easement or other property interest held or used by Peel or a tenant or licensee of Peel for the purposes of such land, works, apparatus or equipment;

“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, relevant property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to maintain the authorised development) in respect of such works.

“working days” Monday to Friday inclusive but excluding days which are public holidays.

171.—(1) Where Peel is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or delayed but may be given subject to reasonable conditions. If by the end of the period of 30 working days beginning with the date on which consent is requested Peel has not intimated their refusal together with the grounds of any such refusal, Peel will be deemed to have given its consent.

(2) In the event that Peel constructs and makes available for use by the undertaker the alternative access road the undertaker must not—

- (a) commence that part of Work No. 3 to which the existing access road relates;
- (b) use the existing access road; or
- (c) otherwise exercise the powers conferred by the provisions listed in sub-paragraph (1) over the existing access road,

provided that Peel has granted the undertaker a right to pass and repass over the alternative access road with or without vehicles.

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172.—(1) The undertaker must before commencing construction of any specified work supply to Peel proper and sufficient plans of that work for the reasonable approval of Peel and the specified work must not be commenced except in accordance with such plans as have been approved in writing by Peel or settled by arbitration under article 49 (arbitration).

(2) The approval of Peel under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Peel and Peel has not intimated their disapproval together with the grounds of any such disapproval of those plans, Peel will be deemed to have approved the plans as submitted.

173.—(1) Any specified work 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 172;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of Peel;
- (c) in such manner as to cause as little damage as is possible to relevant property; and

(2) If any damage to relevant property or any such interference or obstruction is caused by the carrying out of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Peel all reasonable and proper expenses to which Peel may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction provided that the undertaker shall only be liable up to a maximum of £20,000,000.

(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Peel or its servants, contractors or agents or any liability on Peel with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

174.—(1) The undertaker must pay to Peel all reasonable and proper costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be reasonably incurred by Peel —

- (a) by reason of the construction, maintenance or operation of a specified work or the failure of such a work; 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) in respect of any damage caused to or additional maintenance required to relevant property; and the undertaker must indemnify and keep indemnified Peel from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission provided that the undertaker shall only be liable up to a maximum limit of £20,000,000.

(2) Peel must –

- (a) give the undertaker reasonable written notice of any such sums referred to in sub-paragraph (1) as soon as reasonably possible after Peel become aware of the same;
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker;
- (c) take all reasonable steps to mitigate any liabilities; and
- (d) keep the undertaker informed and have regard to the undertaker's representations in relation to any such sums referred to in sub-paragraph (1).

175.—(1) The undertaker must consult with Peel prior to submitting any CTMP relating to or in the vicinity of relevant property (including any CTMP affecting land adjacent to relevant property) to

the relevant planning authority for approval in accordance with Requirement 6. The undertaker will provide a draft CTMP to Peel no later than 25 working days prior to submission and confirm to Peel the intended date of submission at the same time. Peel may make representations on the draft CTMP to the undertaker no later than 10 working days prior to the notified intended date of submission. The undertaker will only be required to have due regard to any representations timeously made by Peel in accordance with the timescales stipulated in this paragraph in finalising the CTMP for submission and will seek to incorporate any reasonable requests made by Peel where practicable.

(2) The undertaker must consult with Peel prior to submitting any LEMP relating to or in the vicinity of relevant property (including any LEMP affecting land adjacent to relevant property) to the relevant planning authority for approval in accordance with Requirement 11. The undertaker will provide a draft LEMP to Peel no later than 25 working days prior to submission and confirm to Peel the intended date of submission at the same time. Peel may make representations on the draft LEMP to the undertaker no later than 10 working days prior to the notified intended date of submission. The undertaker will have due regard to any representations made by Peel in finalising the LEMP for submission and will seek to incorporate any reasonable requests made by Peel where practicable.

(3) The undertaker must consult with Peel prior to submitting any CEMP relating to or in the vicinity of relevant property (including any CEMP affecting land adjacent to relevant property) to the relevant planning authority for approval in accordance with Requirement 5. The undertaker will provide a draft CEMP to Peel no later than 25 working days prior to submission and confirm to Peel the intended date of submission at the same time. Peel may make representations on the draft CEMP to the undertaker no later than 10 working days prior to the notified intended date of submission. The undertaker will have due regard to any representations made by Peel in finalising the CEMP for submission and will seek to incorporate any reasonable requests made by Peel where practicable.

(4) The undertaker must consult with Peel prior to submitting any DEMP relating to or in the vicinity of relevant property (including any DEMP affecting land adjacent to relevant property) to the relevant planning authority for approval in accordance with Requirement 19. The undertaker will provide a draft DEMP to Peel no later than 25 working days prior to submission and confirm to Peel the intended date of submission at the same time. Peel may make representations on the draft DEMP to the undertaker no later than 10 working days prior to the notified intended date of submission. The undertaker will have due regard to any representations made by Peel in finalising the LEMP for submission and will seek to incorporate any reasonable requests made by Peel where practicable.

176. The undertaker will procure that in carrying out Work No. 4 at Plots 1-19, 1-20, 1-22, 1-23 and 1-24, as identified on the Land Plans, the Network Rail Standard (as in force when the works are being carried out) shall be complied with.

PART 15

Protection of Encirc Limited

177. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Encirc.

178. In this Part—

“Ash Road bridge” means the rail bridge crossing Ash Road;

“COMAH Regulations” means the Control of Major Accident Hazards Regulations 2015;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“CTS Meetings” means construction and traffic scheduling meetings to discuss a schedule in relation to the co-ordination of traffic movements relating to the specified works.

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“Encirc” means Encirc Limited (company number NI030990, whose registered office is at 11 Gortahurk Road, Tonymore Derrylin, Enniskillen, Fermanagh, BT92 9DD and any associated company of Encirc Limited which holds property;

“Encirc’s business and operations” means the current operations and business carried out at the Encirc site and also includes any future business and operations of the Encirc site once the future development works have been implemented;

“Fence” means the existing fence erected by Encirc along the boundary between plots 1-02 and 1-06 as identified on the Land Plans;

“fit for purpose” means a road or access route which is of a standard equivalent to or better than the standard of the road or access route included in the Order for the same purpose;

“future development works” means;

- (a) construction of automated warehouse including automated link to glass manufacturing and filling facility, ancillary office space, driver welfare building, security building, HGV parking and marshalling yard and other associated works (LPA Ref: 22/03693/FUL) or any variation to or alternative to that form of development effecting Land Plan Plots 1-02 and 1-06 (Ref Land Plan D2.2 Sheet 1); and
- (b) construction of hydrogen/electricity fired furnace on site of existing dispatch yard and surrounding area effecting Land Plan Plot 1-02 (Ref: Land Plan D2.2 Sheet 1); and
- (c) construction of new rail sidings and intermodal area between existing rail sidings and Network Rail main line affecting Land Plan Plots 1-06, 1-06a 1-20, 1-21 and 1-22 (Ref: Land Plan D2.2 Sheet 1).

“Network Rail Standard” means Network Rail Standard reference ‘NR/L2/CIV/044 ‘Planning, Design and Construction of Undertrack Crossings’;

“Peel” means Peel NRE Limited (company number 004480419), whose registered office is at Venus Building, 1 Old Park Lane, Traffordcity, Manchester, M41 7HA;

“Existing Peel access road” means the existing access road at Plots 1-01a and 1-01 as shown on the Land Plans;

“Proposed Peel access road(s)” means the access road(s) proposed to be constructed to connect Plot 1-01a to Plot 1-04 as identified on the Land Plans D2.2 Sheet 1 pursuant to planning application Ref: 23/01239/FUL for construction of gas fired electricity generators, enclosures with ancillary equipment, metering station, transformer compound and access from Grinsome Road;

“Peel access road(s)” means collectively the Existing Peel access road and the Proposed Peel access road(s) and being fit for purpose to allow the undertaker access to Plot 1-01 and between Plots 1-01a and 1-04;

“relevant property” means:

- (d) any land, works, apparatus and equipment belonging to Encirc; and
- (e) any easement or other property interest held or used by Encirc or a tenant or licensee of Encirc for the purposes of such land, works, apparatus or equipment;

“specified work” means so much of any of the authorised development as is situated upon, across, under, over, or may in any way adversely affect, relevant property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to maintain the authorised development) in respect of such works.

Rights of access

179. Regardless of any provision of this Order or anything shown on the land plans, the undertaker-

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- (a) Must not extinguish any rights of access to the relevant property granted to Encirc otherwise than by agreement (both parties acting reasonably);
- (b) must provide a minimum of two working days notification prior to each entry to the relevant property, such notice to be submitted in writing to facilities.elton@encirc360.com, and a single notification may cover multiple dates of entry;
- (c) provide any such details relating to the required access as is reasonably required by Encirc;
- (d) comply with any reasonable conditions which Encirc may specify in relation to the undertaker's entry to the relevant property but only to the extent they do not restrict or impede the ability of the undertaker to construct, operate or maintain the authorised development;
- (e) must keep any existing roads used for access to the relevant property by Encirc clean but only to the extent they have been dirtied as a result of the specified works, clear from obstruction and in a usable condition as far as reasonably practicable; and
- (f) must pay a fair and reasonable proportion (according to use) of the costs incurred by Encirc in repairing and maintaining the entirety of Ash Road.

180. The parties shall hold the CTS Meetings fortnightly during detailed design and construction of the specified works. The undertaker and Encirc shall use all reasonable but commercially prudent endeavours to agree a schedule in relation to the co-ordination of traffic movements relating to the specified works. Where a schedule is agreed the parties will use the access routes only in accordance with the agreed schedule.

Rights of access – Grinsome Road to the Protos Site

- 181.** Subject to paragraph 183 (Rights of access – Ash Road (South)), provided that—
- (a) Peel has constructed the Peel access road(s) prior to the undertaker completing that part of Work No. 3 which relates to Land Plans Plots 1-01a, 1-01, 1-02, 1-03 and 1-04;
 - (b) Peel has granted the undertaker an easement for all rights of access required by the undertaker over the Peel access road(s) and Land Plans Plot 1-04 to ensure the undertaker has suitable access (to the undertaker's satisfaction) to Plots 1-05, 1-08, 1-09, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-17 and 1-18; and
 - (c) the undertaker is satisfied that the Peel access road(s) are/ is fit for purpose for the purposes of Work No.1, No.2, No. 3 and No.4:

the undertaker must not exercise the Powers conferred by this Order to (a) appropriate or acquire or take temporary possession of Land Plans Plots 1-02 and 1-03, or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right held by Encirc over Land Plans Plots 1-01a and 1-01.

182. The undertaker shall use all reasonable but commercially prudent endeavours to secure the grant by Peel of an easement for all rights of access required by the undertaker over the Peel access road(s) and Plot Plans Plot 1-04 to ensure the undertaker has suitable access (to the undertaker's satisfaction) to Plots 1-05, 1-08, 1-09, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-17 and 1-18.

Rights of access – Ash Road (South)

183. Subject to Paragraph 184 (Rights of Access – Abnormal Loads), the undertaker must use the entrance from Ash Road as the primary access route (over Plots 1-06, 1-06a, 1-06b and 1-06c as identified on the Land Plans) for construction activities within Plots 1-20, 1-21 and 1-22. Provided that Encirc has granted to the undertaker a suitable right of access across a fit for purpose access

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route (to the undertaker's satisfaction) to all of Plot 1-22 as identified on the Land Plans as required by the undertaker—

- (a) The undertaker may in relation to Plot 1-21 exercise its powers under article 35 (temporary use of land for carrying out the authorised development) for the purpose of temporary use as a construction working area and for access only; and
- (b) The undertaker may not exercise the powers conferred under article 27 (compulsory acquisition of rights and restrictive covenants) in relation to Land Plans Plot 1-21 without the prior consent in writing of Encirc.

Rights of Access – Abnormal Loads

184. In respect of abnormal loads, the undertaker may use the access route over Grinsome Road, being either (a) over Plots 1-01a, 1-01, 1-02, 1-03, 1-06, and 1-06d as identified in the Lands Plans, (b) over a route to be determined from Plots 1-01a, 1-01, part of 1-02, and from a point of egress (to be determined) in Plot 1-02 to the north end of Plot 1-06 subject to Encirc granting to the undertaker a suitable right of access across such route which must be a fit for purpose route (to the undertaker's satisfaction), or (c) over a route to be determined from that part of the Peel access road(s) constructed pursuant to planning permission reference 22/0363/FUL over Plots 1-03 and 1-02, and from an egress in Plot 1-02 (to be determined) to the north end of Plot 1-06 subject to Encirc granting to the undertaker a suitable right of access across such route which must be a fit for purpose route (to the undertaker's satisfaction). Use of any of the above routes is subject to the following conditions—

- (a) The undertaker must provide a minimum of two working days notification prior to use of the construction access, writing to be provided to facilities.elton@encirc360.com;
- (b) The undertaker must not take access through the Fence unless and until Encirc have confirmed the written approval of HMRC and shall not take any steps which would lead to Encirc being in breach of any obligations to HMRC;
- (c) The undertaker shall comply with all reasonable conditions imposed by Encirc when taking access through the Fence and shall notify Encirc immediately if there is a breach of any such condition;
- (d) The undertaker will use all reasonable endeavours to take access through the Fence in such a manner as to cause as little damage as reasonably practicable and shall inform Encirc immediately if any damage is caused to the Fence including providing full details of the location and the damage caused.
- (e) The undertaker must pay to Encirc all reasonable and proper costs incurred by Encirc in providing reasonably necessary security detail to escort abnormal loads through the Fence;
- (f) The undertaker must make good any damage to the Fence as soon as reasonably practicable and must pay to Encirc all documented reasonable and proper expenses to which Encirc may be put and any compensation for any direct loss which it may sustain by reason of such damage provided that at all times Encirc will be under an obligation to take reasonable steps to mitigate its loss.

Railway

185.—(1) The undertaker will procure that in carrying out Work No. 4 at Plots 1-19, 1-20, 1-22, 1-23 and 1-24, as identified on the Land Plans:

- (a) The Network Rail Standard (as in force when the works are being carried out) shall be complied with;
- (b) All crossings under the existing railway lines (or any future development works installed by Encirc at the relevant property prior to the commencement of Work No. 4) will use trenchless crossing methods;

- (c) COMAH Regulations shall be complied with.
- (2) The undertaker must—
 - (a) at all times before, during and after the construction of the specified works allow an engineer or other person appointed by Encirc to watch and inspect the execution of the specified work; and
 - (b) supply the appointed person with all such information and all relevant and available documents as they may reasonably require with regard to the method of constructing a specified work.
- (3) Encirc shall provide details of their scheduled trains at the relevant property to the undertaker on a monthly basis at CTS Meetings, and the undertaker and Encirc shall use all reasonable but commercially prudent endeavours to agree at the CTS Meetings provision to enable the authorised development and the operation of the scheduled trains. Where Encirc advise the undertaker of any changes to the schedule as soon as reasonably practicable, the undertaker shall use all reasonable endeavours to minimise interference of the carrying out of the specified works with the operation of Encirc's re-scheduled trains.

Construction Traffic Management Plan

186. The undertaker must consult with Encirc prior to submitting any CTMP to the relevant planning authority for approval in accordance with Requirement 6. The undertaker will provide a draft CTMP to Encirc no later than 20 working days prior to submission, and confirm to Encirc the intended date of submission at the same time. Encirc may make representations on the draft CTMP to the undertaker no later than 14 days prior to the notified intended date of submission. The undertaker will have due regard to any reasonable representations timeously made by Encirc in finalising the CTMP for submission.

Co-operation

187. Where Encirc propose to carry out any piling or construction works on the Order land within Land Plan Plots 1-20 and 1-22, prior to carrying out such works Encirc must agree with the undertaker the design and methodology which will be used, and the operational use of such works.

188. The undertaker and Encirc must use all reasonable but commercially prudent endeavours to reach agreement to enable the authorised development, Encirc's business and operations and any future development works to be carried out (subject to Encirc obtaining all necessary consents, permissions and authorisations).

189. The undertaker shall ensure that the pipeline is buried to a minimum depth of 4.3m under the existing railway ground level.

Specified work

190. The undertaker must give Encirc no less than 56 days written notice of the intended commencement of any specified works and must include with this notification a plan and description of the works to be commenced and a programme for these works.

191. Any specified work must, when commenced, be constructed-

- (a) In such a manner as to cause as little damage and disruption as reasonably practicable to the relevant property, including damage by way of pollution or to the operation of Encirc's business and operations;
- (b) In such a manner so as not to cause any breaches of Encirc's obligations to HMRC or under the COMAH Regulations; and

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- (c) If any damage to the relevant property or Encirc's business and operations or any such interference or obstruction is caused by the carrying out of the construction of a specified work, the undertaker must promptly inform Encirc of such damage, must make good such damage and must pay to Encirc all reasonable and proper expenses to which Encirc may be put and any compensation for any loss which it may sustain by reason of such damage, interference or obstruction, provided that at all times Encirc will be under an obligation to take reasonable steps to mitigate its loss.

Expenses

192.—(1) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Encirc or its servants, contractors or agents or any liability on Encirc with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

(2) The undertaker must pay to Encirc all reasonable and proper costs, charges, penalties, damages and expenses not otherwise provided for in this Part of this Schedule which may be reasonably incurred by Encirc, provided that at all times Encirc will be under an obligation to take reasonable steps to mitigate its loss -

- (a) by reason of the construction, maintenance or operation of a specified work or the failure of such a work; 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) in respect of any damage caused to or additional maintenance required to relevant property
- (d) in respect of any damage to any access routes to the relevant property for which Encirc have a maintenance obligation but always limited to the extent such damage is attributable to the undertaker and the undertaker has not reimbursed the costs of remediation of such damage under sub-paragraph (e);
- (e) in respect of any claim against Encirc by any third party in respect of the access routes to the extent such claim relates to damage to the access routes but always limited to the extent such damage is attributable to the undertaker and the undertaker has not reimbursed the costs of remediation of such damage under sub-paragraph (d);
- (f) by the provision of reasonably necessary security detail for any land, works, apparatus and equipment belonging to Encirc to the extent attributable to the specified works;
- (g) in respect of securing any required consents from HMRC in respect of the undertaking authorised development by the undertaker.

(3) The undertaker must indemnify and keep indemnified Encirc from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission to a maximum cap on liability of £5 million for each individual claim and an aggregate cap of £15 million provided that there shall be no cap on liability in respect of any damage caused to the Ash Road bridge which prevents access to the relevant property, provided that at all times Encirc will be under an obligation to take reasonable steps to mitigate its loss Encirc must—

- (a) give the undertaker reasonable written notice of any such sums referred to in paragraph 192 (3) as soon as reasonably possible after Encirc become aware of the same;
- (b) not make any offers to settle claims or demands without the prior consent of the undertaker;
- (c) take all reasonable steps to mitigate any liabilities;
- (d) where any claims or demands are made by Network Rail, advise Network Rail that any claims and demands should be directed to the undertaker only; and

- (e) keep the undertaker informed and have regard to the undertaker’s representations in relation to any such sums referred to in this paragraph.

General

193.—(1) Any difference or dispute arising between the undertaker and Encirc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Encirc, be determined by arbitration in accordance with article 49 (arbitration) of this Order.

(2) The undertaker and Encirc must each act reasonably in connection with the implementation of this Part of this Schedule.

Notices

194. Any plans or notices submitted to Encirc by the undertaker pursuant to this Part must be sent to Encirc at legal@encirc360.com or such other address as Encirc may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 16

For the protection of Welsh Ministers as Strategic Highway Authority

Application

195. The provisions of this Part have effect for the protection of the Welsh Ministers (“the WM”) as the Highway Authority for the strategic road network in Wales, in addition to all other applicable statutory protections, unless otherwise agreed in writing between the undertaker and the WM.

Interpretation

196. In this Part—

“highway structure” means any bridge, subway, culvert, pipe, tunnel, manhole, chamber, wall, reinforced soil embankment, piece of street furniture, building or other structure built in, over, under or adjacent to any part of the highway which materially affects the support of that highway and/or the safety of the travelling public;

“strategic highway” means any part of the highway network including trunk roads or special roads which the WM are responsible for;

“NMWTRA” means the North and Mid Wales Trunk Road Agency, who act as the highway agents of the WM and exercise functions relating to the management and operation of the relevant part of the strategic highway on behalf of the WM pursuant to an agreement between the WM and Gwynedd Council under section 6 of the Highways Act 1980. In practice therefore, the procedural matters contained in this Part will be largely dealt with by NMWTRA on behalf of the WM; and

“works” means—

- (a) that part of Work No. 39 which requires the trenchless installation of the pipeline under the A494 (Aston Expressway) highway;
- (b) that part of Work No. 44 which requires the open cut installation of the pipeline under the verge of the A55 adjacent to Junction 33a, heading north under Chester Road; or
- (c) any other work forming part of the authorised development within or which affects or requires occupation of the strategic highway.

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Approvals

197. The crossing of the A494 and its associated assets must only be carried out by trenchless techniques. The installation of the pipeline under the verge of the A55 adjacent to Junction 33a, heading north under Chester Road shall be carried out as open cut installation.

198.—(1) Prior to the commencement of the works the undertaker must obtain the written approval of the WM to such works.

- (2) When requesting approval under sub-paragraph (1), the undertaker must submit to the WM:
- (a) Copy of location plan to a scale not less than 1/10,000 showing the location and/or proposed route and siting of the works;
 - (b) Details of the methodology of the works;
 - (c) Details of the proposed timing of the works;
 - (d) Details of any traffic management measures (including signage) proposed in connection with the works; and
 - (e) Where approval is sought for works to or within the carriageway of a strategic highway, evidence of NHSS (National Highways Sector Scheme) certification and Street Works Qualifications.

199. No crossing is to take place until a monitoring regime and the Geotechnical Design Report (GDR as defined by the DMRB CD622 Managing Geotechnical Risk) is agreed and certified by the WM.

200. Technical Approval from WM in accordance with DMRB CG300 is required in advance of any part of the works which is likely to affect any existing highway structure(s)

201. Approval under this Part may be sought in one or more applications.

202. Any approval of the WM under this Part may be given subject to such reasonable requirements or conditions as the WM may determine.

203. The undertaker must contact any owners or operators of apparatus in, on, over, under or near the strategic highway including other statutory undertakers to ascertain whether their existing or proposed apparatus to within or under the strategic highway is likely to be affected by the works. The undertaker must comply with the reasonable requirements and conditions imposed by the owners or operators relating to the protection of existing apparatus in, on, over, under or near the strategic highway likely to be affected by the works.

204. The undertaker must pay a fee of £250 to the WM with any application for approval under this Part.

Indemnity

205. The undertaker indemnifies the WM against any and all claims in respect of injury, damage or loss arising out of—

- (a) the placing or presence in the strategic highway of apparatus as part of the works; or
- (b) the excavation by any person of any works within the strategic highway,

always provided that the undertaker shall not be liable for any consequential loss or any indirect loss under any circumstances.

206. The undertaker (or any person carrying out works on its behalf) must have and maintain in force for the duration of any works to or within the strategic highway network, public liability/third party insurance to the sum of £10 million covering its liability under paragraph 205. The undertaker must provide evidence of such insurance to the WM if requested.

Traffic management

207. The undertaker must contact the NMWTRA, the WM RA Control Room, North Wales Traffic Management Centre, Ffordd Sam Parri, Morfa, Conwy, LL32 8HH – Telephone number 01492 564790 before erecting or removal of traffic management measures on the strategic highway on each occasion that erection or removal is required.

208. The undertaker must execute the works in strict accordance with the requirements contained in Chapter 8 of the Traffic Signs Manual (2009) as published by Her Majesty’s Stationery Office HMSO and any amendments thereof.

Inspections

209. The WM or any person authorised by them for this purpose is entitled to inspect any works to, within or under the strategic highway while such works are being carried out and following completion of such works.

210. Exercise of the right to inspect under paragraph 209 must be carried out reasonably, in compliance with any requirements of any health and safety requirements in place within the site of any works, and in accordance with the instructions of the undertaker.

211.—(1) The undertaker must compensate the WM in respect of any loss, damage, charge, cost or expense reasonably suffered or incurred by the WM as a result of the execution, use or maintenance of the works.

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

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of WM, its officers, employees, contractors or agents; and / or
- (b) any indirect or consequential loss of WM or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption).

Reinstatement

212. Any reinstatement of the strategic highway required in connection with or as a consequence of the works must be carried out in strict conformity with the Code of Practice “Specification for the Reinstatement of Openings in Highways”.

213.—(1) Where, in the reasonable opinion of the WM, any reinstatement carried out by the undertaker is defective, three defect inspections will be carried out comprising:

- (a) A joint inspection by the WM and the undertaker to determine the nature of the failure and what remedial works need to be carried out;
- (b) Inspection by or on behalf of the WM of remedial works in progress; and
- (c) Inspection by or on behalf of the WM when remedial works have been completed.

(2) The undertaker must pay an inspection fee of £47.50 for each inspection carried out under this paragraph.

214. Any and all reasonable costs associated with the reinstatement work will be met by the undertaker.

Notice of completion of Works

215. The undertaker must notify the WM of the completion of works approved by the WM under this Part within 10 working days of such completion.

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216. The undertaker must supply the WM with as built records of any apparatus sited within or under the strategic highway within 20 working days of the completion of works, including, in particular, the location and depth of any electrical cables on a plan to a scale of 1/500 with a longitudinal and vertical accuracy of + or - 100mm.

217. The undertaker must submit a Geotechnical Feedback Report (GFR as defined in the DMRB CD622 Managing Geotechnical Risk) including all monitoring results and as built drawings to the WM no later than six months from the date of completion.

218. After the apparatus has been placed, the undertaker must not carry out any further works or maintenance to the apparatus or works or any other works involving excavation within the boundaries of the strategic highway without the prior written approval of the WM, such approval not to be unreasonably withheld or delayed, and any such works must be carried out and completed to the reasonable satisfaction of WM.

Arbitration

219. Any difference or dispute arising between the undertaker and the WM under this Part must, unless otherwise agreed in writing between the undertaker and the WM, be determined by arbitration in accordance with article 49 (arbitration).

Notices

220. The plans submitted to the WM by the undertaker pursuant to this Part must be submitted to North & Mid Wales Trunk Road Agent, Unit 5 Llys Britannia, Parc Menai, Bangor, Gwynedd, LL57 4BN and streetworks@nmwtra.org.uk or such other address as the WM may from time to time appoint instead for that purpose and notify to the undertaker in writing.

Maintenance

221. The undertaker must maintain the apparatus in an appropriate state of repair and condition. The undertaker must if required place and maintain within the limits of the said highway suitable permanent signs of a type and in positions to be approved by the WM for the purpose of indicating as nearly as possible the exact position under the highway in which the said apparatus is laid.

PART 17

For the protection of National Highways Limited

Application etc.,

222. 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.

Interpretation

223.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with subparagraph (2) the latter prevail.

(2) In this Part of this Schedule—

“acceptable security” means either:

- (a) a parent company guarantee from a parent company in favour of National Highways to cover the undertaker’s liability to National Highways to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National

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Highways and where required by National Highways, 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 Highways to cover the undertaker's liability to National Highways 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 Highways);

“as built information” means one electronic copy of the following information—

- (c) as constructed drawings in both PDF and AutoCAD DWG formats showing the location and depth of the pipeline as installed and any ancillary or protective measures installed within the strategic road network;
- (d) as constructed information for any utilities discovered or moved during the specified works;
- (e) method statements for the specified works carried out;
- (f) in so far as it is relevant to the specified works, the health and safety file; and
- (g) such other information as is reasonably required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's Asset Data Management Manual as is in operation at the relevant time.

“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 works;

“detailed design information” means such of the following drawings specifications and calculations as are relevant to the specified works—

- (h) site clearance details;
- (i) boundary, environmental and mitigation fencing;
- (j) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (k) utilities diversions; and
- (l) other such information that may be reasonably required by National Highways to be used to inform the detailed design of the specified works;

“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 specified works 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;

“parent company” means a parent company of the undertaker acceptable to National Highways acting reasonably;

“programme of works” means a document setting out the sequence and timetabling of the specified works;

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“specified works” means so much of the authorised development, including any maintenance of that work, as is on, in, under or over the strategic road network for which National Highways is the highway authority, and specifically including Work No.12 in so far as that crosses the M56 motorway, Work No.16 in so far as that crosses the M53 motorway, and Work No. 22 in so far as that crosses the A41 highway.

“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;

“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; and

(3) 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.

General

224. The undertaker acknowledges that parts of the works authorised by this Order affect or may affect parts of the strategic road network in respect of which National Highways may have appointed or may appoint a highway operations and maintenance contractor.

225. Notwithstanding the limits of deviation permitted pursuant to article 6 (limits of deviation) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road carriageway at a distance less than 4 metres below the lowest point of the carriageway surface.

226. 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.

Prior approvals and security

227.—(1) Any specified works which involve tunnelling, boring or otherwise installing the pipeline under the strategic road network without trenching from the surface, must be designed by the undertaker in accordance with DMRB CD622 unless otherwise agreed in writing by National Highways.

(2) The specified works must not commence until—

- (a) the programme of works has been approved by National Highways;
- (b) 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;
 - (ii) the identity and suitability of the contractor and nominated persons; and
 - (iii) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;
- (c) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways reasonably considers will be affected by the specified works, has been agreed in writing by National Highways; and

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- (d) an acceptable security in favour of National Highways for the indemnity set out in paragraph 232 below has been put in place, which security must be maintained in place until the expiry of 12 months following the completion of all of the specified works.
- (3) National Highways must, prior to the commencement of the specified works, 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-paragraph (2).
- (4) Any approval of National Highways required under this paragraph-
 - (a) must not be unreasonably withheld;
 - (b) must be given in writing;
 - (c) shall be deemed to have been given if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways (acting reasonably) within 2 months of receipt of the information to which the request for further particulars relates; and
 - (d) may be subject to any reasonable conditions as National Highways considers necessary.
- (5) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request.
- (6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 227(2) of this Part.

Construction of the specified works

- 228.**—(1) The undertaker must give National Highways 28 days’ notice in writing of the date on which the specified works will start.
- (2) The specified works must be carried out by the undertaker to the reasonable satisfaction of National Highways in accordance with—
 - (a) the relevant detailed design information and programme of works approved pursuant to paragraph 227(2) above or as subsequently varied by agreement between the undertaker and National Highways;
 - (b) in so far as it may be applicable, the DMRB, 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.
 - (3) 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.
 - (4) 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.

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(5) 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 by notice in writing require the undertaker, at its own expense, to remedy the damage.

(6) If within 28 days on which a notice under sub-paragraph (4) or sub-paragraph (5) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure reasonably incurred by National Highways in so doing.

(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.

(8) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities.

(9) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme of works pursuant to paragraph 227(2)(b) of this Part, or suspends the carrying out of any specified work beyond 14 days, and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

229.—(1) The undertaker must pay to National Highways a sum equal to the whole of any reasonable costs and expenses which National Highways 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 and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph 227(2);
- (b) the supervision of the specified works;
- (c) any costs reasonably incurred under paragraph 228(7) of this Part, 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 provide the undertaker with a schedule showing its reasonable estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the reasonable estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

(3) If at any time after the payment referred to in sub-paragraph (2) has become payable, National Highways reasonably believes that the NH costs will exceed the reasonably estimated NH costs it may give notice to the undertaker of the amount that it reasonably believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(4) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of the date of completion of the specified works as set out in the programme of works.

(5) Within 28 days of the issue of the final account:

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- (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; or
- (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.

(6) If any payment due under sub-paragraph (2) above, is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Condition survey and as built details

230.—(1) The undertaker must, as soon as reasonably practicable after completing the specified work, arrange for any highways structures and assets that were the subject of the condition survey under paragraph 227(2)(c) to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to sub-paragraph 230(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. National Highways must remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing from the undertaker.

(3) 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.

(4) Within 30 days of completion of the specified works, the as built details must be provided by the undertaker to National Highways.

Insurance

231. Prior to the commencement of the specified works the undertaker must effect and maintain in place until the completion of all of the specified works, public liability insurance with an insurer in the minimum sum of £10,000,000.00 (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 specified works or use of the strategic road network by the undertaker.

Indemnity

232. The undertaker fully indemnifies National Highways from and against all reasonable costs, claims, expenses, damages, losses and liabilities suffered by National Highways directly 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 save for any loss arising out of or in consequence of any negligent act or default of National Highways and always excluding any indirect or consequential loss suffered by National Highways.

Maintenance of the specified works

233.—(1) The undertaker must, prior to the commencement of any works of external 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. Works of inspection or maintenance undertaken from within the pipeline will not be subject to this paragraph.

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(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 14 days' in advance of the planned commencement date of the maintenance works.

Land

234.—(1) The undertaker must not, in reliance on or in exercise of any power under this Order, interfere with, remove, damage or prevent or impair the functioning of, and must on reasonable request (or in case of emergency, on demand) allow access by National Highways to, the highway drainage assets located in plots 2-14, 4-20, 5-01, 5-02, 5-03, 5-04, 5-10, 5-12, 5-14, 5-15, 5-20, 5-22, 5-23, 6-02, 6-03, 6-04, 6-05, 6-06,

(2) The undertaker must not, in reliance on or in exercise of any power under this Order, interfere with, remove or prevent access by National Highways in pursuance of any right held over plots 2-03, 2-14 and 5-05.

(3) The undertaker must not, in reliance on or in exercise of any power under this Order, acquire, extinguish or remove any right National Highways holds for the purposes of its undertaking in any of the plots listed in sub-paragraphs (1) and (2) and plot 9-04.

Expert Determination

235.—(1) Article 47 (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 all reasonable but commercially prudent 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 47 (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.

PART 18

For the protection of local highway authorities

236. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the relevant local highway authority.

237. In this Part of this Schedule—

“Consents” means approvals, consents, licences, permissions, or registrations;

“RSA” or “Road Safety Audit” means a review of the proposed design or any works and any road safety impacts carried out in accordance with the Design Manual for Roads and Bridges or such other standard as the undertaker and the relevant local highway authority may agree;

“highway” means a highway vested in or maintainable by the relevant local highway authority as highway authority under the 1980 Act and this definition shall include any bridge or structure carrying a highway;

“relevant local highway authority” means in relation to highways within Cheshire West and Chester, Cheshire West and Chester Council, and in relation to highways in Flintshire, Flintshire County Council

“specified work” means the works under the Order to create new, permanent junctions to the public highway and the installation of the pipeline in or under the highway where that requires breaking open of the surface of the highway.

Highway condition and highway assets surveys

238.—(1) The undertaker will notify the of relevant local highway authority -

- (a) of the anticipated date of commencement of any Works to be undertaken under this Order; and
- (b) of the anticipated construction programme and date of completion of the authorised development;

not less than 3 months prior to that anticipated date of commencement of any Works to be undertaken under this Order.

(2) The undertaker and relevant local highway authority may agree that the relevant local highway authority will procure the highway condition surveys required under this Part of this Schedule at the cost of the undertaker.

(3) The undertaker will agree a proposed scope with the relevant local highway authority setting out the number (having regard to the construction programme), content and format of the highway condition surveys no later than 4 weeks after notification under sub- paragraph (1). If the undertaker fails to provide a highway condition survey or does not provide the relevant local highway authority with sufficient time to undertake a highway condition survey prior to any Works being undertaken pursuant to the Order then in default the last highway condition survey undertaken by the relevant local highway authority will amount to the baseline condition of the relevant highway and/or highway asset.

(4) A final highway condition survey must be procured by the undertaker within 28 days of the relevant local highway authority being notified by the undertaker that the construction of the authorised development is complete.

(5) Copies of any highway condition survey carried out in accordance with this paragraph must be provided to the relevant local highway authority by the undertaker within 10 working days of the completion of the relevant survey.

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HGV route remediation

239.—(1) The undertaker must maintain and provide to the relevant local highway authority at 3 month intervals from the date of any Works being undertaken under this Order until the authorised development is complete, records of the number of HGVs using the highway identified in paragraph 238(2) and/ or any amendments thereto to access the authorised development and details of which route such HGVs used.

(2) The relevant local highway authority will, having regard to the highway condition surveys, identify any need for remediation of the highway on the highway identified in paragraph 238(3) and/ or any amendments made thereto.

(3) Where a need for remediation works or measures is identified under sub-paragraph (1), the relevant local highway authority must prepare a schedule of the works or measures required and of the cost of the delivery of those works or measures identified. For the avoidance of doubt, the reasonable cost of reviewing the highway condition surveys and preparing the schedule of works will be met by the undertaker.

(4) Upon receipt of the schedule of works identified in paragraph (2) and/or any amendments made thereto, the undertaker will apply for a licence from the relevant local highway authority to undertake the remediation works to the highway and must undertake these works within 3 months of that licence being granted. The cost of the licence and relevant approvals will be paid by the undertaker to the relevant local highway authority.

Specified work

240.—(1) The undertaker will allow and facilitate an appropriately qualified officer of the relevant local highway authority to participate in the design process for any Work authorised by this Order which involves a specified work and/or any other Work to the local highway network required pursuant to this Order, and will have reasonable regard to any views of that officer in finalising the detailed design of that Work, provided always that any such view shared by the officer will not be an instruction, requirement or authorisation under this Order.

(2) Any officer of the relevant local highway authority duly appointed for the purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the authorised development which—

- (a) is in, on, over or under any highway; or
- (b) which may affect any highway;

during the carrying out of the Work, and the undertaker will give to such officer all reasonable facilities for such inspection (subject to any reasonable adjustments necessary for the safety of such officer) and, if the officer is of the opinion that the construction of the Work poses danger to any highway or to any property of the relevant local highway authority or danger to persons or vehicles or other property in relation to which the relevant local highway authority might be liable on, in, over or under any highway, the undertaker will adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway or persons or vehicles or other property aforesaid.

(3) Any officer of the relevant local highway authority exercising the right to inspect works under sub-paragraph (1) must comply with all reasonable health and safety requirements and instructions of the undertaker in doing so.

(4) The undertaker must, if reasonably required by the relevant local highway authority, provide and maintain during such time as the undertaker may occupy any part of a highway for the purpose of the construction of any part of the authorised development, temporary ramps for vehicular or pedestrian traffic and any other traffic measures required to protect the safety of road users in

accordance with chapter 8 of the Traffic Signs Manual and the Safety at Street Works and Road Works A Code of Practice as may be necessary.

241.—(1) Where, under this Order, any street works require to be undertaken to the reasonable satisfaction of the local highway authority, this paragraph will apply.

(2) The relevant local highway authority will, as soon as reasonably practicable following the receipt of notice from the undertaker that it considers any street works to which this paragraph applies to be complete, carry out an inspection of such street works.

(3) The relevant local highway authority will confirm when any street works have been completed to their reasonable satisfaction in writing and will set out in such confirmation the date on which the works were last inspected to establish such reasonable satisfaction. For the period of 24 months from the date of last inspection as stated in the confirmation of reasonable satisfaction, the undertaker will be liable to pay to the relevant local highway authority the reasonable costs of repairing or rectifying any defect in the highway which, in the opinion of the relevant local highway authority (acting reasonably) was caused by or is attributable to the carrying out of street works by the undertaker.

(4) The reasonable costs set out in paragraph (3) may include the costs of the time of the relevant local highway authority's officers and employees incurred in the remediation or rectification of a defect as well as the cost of the remediation or repair, whether carried out by the local highway authority or on their instruction. The costs payable under paragraph (3) must be paid by the undertaker in full within 30 days of receipt of an invoice for such costs provided that such invoice includes a breakdown of the charges incurred and is accompanied by copies of any invoices received by the relevant local highway authority for works undertaken to remedy or repair the defect. Disputes.

(5) Any difference arising between the undertaker and the relevant local highway authority under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) will be resolved by arbitration under article 47 (arbitration).

PART 19

For the protection of drainage authorities

242. The provisions of this Part of this Schedule apply for the protection of the drainage authority unless otherwise agreed between the undertaker and the drainage authority.

243. In this Part of this Schedule—

“construction” includes execution, placing, altering, laying, replacing, relaying, connecting, building, installing, removal and excavation, and “construct” and “constructed” are to be construed accordingly;

“the drainage authority” means—

- (a) the drainage board concerned within the meaning of section 23(a) (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991; or
- (b) in the case of any area for which there is no such drainage board, the lead local flood authority within the meaning of section 6 (other definitions) of the Flood and Water Management Act 2010(b);

“drainage work” means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse which is the responsibility of the drainage authority;

“ordinary watercourse” has the same meaning as given in section 72 (interpretation) of the Land Drainage Act 1991(a);

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“plans” includes sections, drawings, specifications and method statements; and

“specified work” means works carried out in relation to or which may alter or obstruct any ordinary watercourse including by—

- (c) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;
- (d) construction or installation of a bridge or other crossing structure;
- (e) installing a culvert in the watercourse; or
- (f) altering a watercourse or a culvert or other form of drainage infrastructure in a manner that would be likely to affect the flow of the watercourse.

244.—(1) Before beginning to construct any specified work, the undertaker must submit to the drainage authority plans of the work, and such further particulars as the drainage authority may within 14 days of the first submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority, or determined under paragraph 250.

(3) The drainage authority must approve or refuse approval of the plans for a specified work within 56 days of receipt of the later of—

- (a) the plans under sub-paragraph (1); or
- (b) such further particulars as the drainage authority may reasonably require under sub-paragraph (1).

(4) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is to be deemed to have been given if it is neither given nor refused within the period specified in sub-paragraph (3); and
- (c) may be given subject to such reasonable requirements or conditions as the drainage authority may make for the protection of any ordinary watercourse or for the prevention of flooding.

245. The requirements or conditions which the drainage authority may make under paragraph 244 include conditions requiring the undertaker at its own expense to construct such protective works (including any new works as well as alterations to existing works) as are reasonably necessary—

- (a) to safeguard any ordinary watercourse against damage, or
- (b) to secure that the efficiency of any ordinary watercourse for flood defence or land drainage purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of the specified work in relation to the ordinary watercourse.

246.—(1) Any specified work in relation to an ordinary watercourse, and all protective works required by the drainage authority under paragraph 244, must be constructed to the reasonable satisfaction of the drainage authority and an officer of the drainage authority is entitled, on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works.

(2) The undertaker must give to the drainage authority not less than 14 days’ notice of its intention to commence construction of any specified work and the undertaker must give to the drainage authority notice of completion of a specified work not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work in, over or under any ordinary watercourse is constructed otherwise than in accordance with the requirements of this Part of this Schedule or as agreed between the undertaker and the drainage authority, the drainage authority may by notice require

the undertaker at its own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld) at the undertaker's expense to remove, alter or pull down the work and, where removal is agreed, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress toward their implementation, the drainage authority may execute the works specified in the notice, subject to the undertaker having the right to supervise the planning and execution of such works to the extent they may affect the pipeline to the extent that those works are compliant with and do not compromise the undertaker's ability to comply with the Pipeline Safety Regulations 1996, and any expenditure reasonably incurred by it in so doing is to be recoverable from the undertaker. Notwithstanding the foregoing, the drainage authority may not under any circumstances undertake any works to the pipeline itself which could or would 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.

(5) In the event of any dispute as to whether sub-paragraph (3) 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 drainage authority must not, except in an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

247.—(1) From the commencement of the construction of any specified work until the date falling 12 months from the date of completion of the specified work (“the maintenance period”), the undertaker must at its expense, maintain in at least as good repair and condition immediately prior to commencement of the construction of the specified work and keep free from obstruction any part of a drainage work which is situated within land held or occupied by the undertaker in respect of the specified work, whether the drainage work is constructed under this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain during the maintenance period is not maintained to the reasonable satisfaction of the drainage authority, it may by notice require the undertaker to maintain the drainage work at the undertaker's expense, or any part of it, to such extent as the drainage authority reasonably requires.

(3) 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 reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance, subject to the undertaker having the right to supervise the planning and execution of such works to the extent they may affect the pipeline to the extent that those works are compliant with and do not compromise the undertaker's ability to comply with the Pipeline Safety Regulations 1996, and may recover any expenditure reasonably incurred by it in doing so from the undertaker. Notwithstanding the foregoing, the drainage authority may not under any circumstances undertake any works to the pipeline itself which could or would 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.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not, except in a case of emergency, exercise the powers of sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

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- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

248. Subject to paragraph 247(5)(b), if by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the undertaker at its own expense to the reasonable satisfaction of the drainage authority and if the undertaker fails to do so, the drainage authority may make good the same and recover the expense reasonably incurred by it in so doing from the undertaker.

249.—(1) The undertaker must make reasonable compensation to the drainage authority for costs, charges and expenses which it may reasonably incur or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule; and
- (b) in the inspection and supervision of the construction of a specified work in respect of an ordinary watercourse or any protective works required by the drainage authority under this Part of this Schedule.

250. Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule is to be determined by arbitration in accordance with article 47 (arbitration) of the Order.

PART 20

For the protection of Exolum Pipeline System Ltd

Application

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

Interpretation

252. In this Part of this Schedule, the following terms have the following meanings—

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

“Alternative Apparatus” means alternative apparatus adequate to enable Exolum to fulfil its functions as a pipeline operator in a manner 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 Exolum to perform its functions;

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

- (a) any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

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- (b) any ancillary works, all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers;
- (c) such legal interest, and benefit of property rights and covenants as are vested in in respect of these items;

and, where the context allows, includes Alternative Apparatus;

“Application” means the application to the Secretary of State for the Order made by the undertaker under the Planning Act 2008 on 3 October 2022;

“Authorised Development” has the same meaning as that given in article 2(1) (interpretation) of 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;

“Commence” has the same meaning as that given in article 2(1) of the Order (and commencing must 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 or to provide for access to Apparatus in a manner consistent with the terms of this Part of this Schedule;

“Exolum” means Exolum Pipeline System Ltd (company number 09497223) and for the purpose of enforcing the benefit of any provisions in this Schedule, any group company of Exolum Pipeline System Ltd and in all cases any successor in title;

“Expert” is a person appointed in accordance with paragraphs 306 to 314 to resolve a dispute under this Schedule;

“Functions” includes powers, duties and commercial undertaking;

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

“Order” means the order granting development consent, made by the Secretary of State and brought into force following the Application under the Planning Act 2008

“parties” means the undertaker and Exolum and “party” is to be construed accordingly;

“Plan” includes all designs, drawings, sections, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to allow Exolum to assess the relevant works to be executed 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, positioning 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 that Exolum owns, occupies or otherwise has rights to use including but not limited to storage facilities, administrative buildings and jetties;

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

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

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

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

“Working Day” means any day other than a Saturday, Sunday or English bank or public holiday.

Acquisition of Apparatus

253.—(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 not, otherwise than by agreement with Exolum, acquire any Apparatus or Exolum’s rights in respect of Apparatus;
- (b) Where the undertaker acquires the freehold of any land in which Exolum holds an interest, the undertaker must afford to or secure for Exolum such rights in land in substitution for any right which would be extinguished by that acquisition (the replacement rights). These replacement rights must be granted upon substantially the same terms and conditions as the right to be extinguished, unless otherwise agreed between the undertaker and Exolum, and must be granted or put in place contemporaneously with the extinguishment of the right which they replace;
- (c) the undertaker must not, otherwise than in accordance with this Schedule:
 - (i) obstruct or render less convenient the access to any Apparatus or Premises;
 - (ii) interfere with or affect Exolum’s ability to carry out its functions as an oil pipeline operator;
 - (iii) require that Apparatus is relocated or diverted; or
 - (iv) remove or required to be removed any Apparatus;
- (d) any right of Exolum 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 Exolum; and
- (e) any right of Exolum to access the Exolum Apparatus and/or Premises must not be extinguished until necessary alternative access has been provided to Exolum’s reasonable satisfaction.

254. Prior to the carrying out of any Restricted Works or any works authorised by this Order that will affect the existing rights of Exolum, the parties must use all reasonable endeavours to negotiate and enter into such Deeds of Consent (crossing consent) and (if necessary) variations to the existing rights upon such terms and conditions as may be agreed between Exolum and the undertaker acting reasonably and which must be no less favourable on the whole to Exolum than this Schedule, 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 works.

255. Where the undertaker acquires land which is subject to any existing rights held by Exolum and the provisions of paragraph 265 do not apply, the undertaker must—

- (a) Retain any notice of the existing rights held by Exolum on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) provide up to date official entry copies to Exolum within 20 working days of receipt of such up to date official entry copies.

256. Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which Exolum has an easement, right, asset, interest, Apparatus or Premises:

- (a) where reasonably necessary, and provided that all health and safety requirements are complied with (including any requirements applicable to the undertaker under the Construction, Design and Management Regulations 2015), Exolum may exercise its rights to access such land—
 - (i) in an emergency, without notice but in all such instances Exolum will notify the undertaker as soon as reasonably practicable and until service of such notice, entry will be at Exolum's own risk; and
 - (ii) in non-emergency circumstances, having first given prior written notice to the undertaker in order to allow the parties to agree the timing of their respective works during the period of temporary possession; and
- (b) the undertaker may not remove or in any way alter Exolum's rights in such land, unless in accordance with the provisions of this Order.

Removal of Apparatus and Rights for Alternative Apparatus

257. If, having used all reasonable endeavours to implement the Authorised Development without the removal of any Apparatus:

- (a) the undertaker reasonably requires the removal of any Apparatus; or
- (b) Exolum reasonably requires the removal of any Apparatus;

then the relevant party must give written notice of that requirement to the other.

258. The parties must use all reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of the Alternative Apparatus to be provided or constructed.

259. The undertaker must afford to Exolum the necessary facilities and rights for the construction of Alternative Apparatus and subsequently the grant of Alternative Rights in accordance with paragraphs 265 to 269.

260. Any Alternative Apparatus is to be constructed in land owned by the undertaker or in land in respect of which Alternative Rights have been or are guaranteed to be granted to Exolum. The Alternative Apparatus must be constructed in such manner and in such position or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by expert determination in accordance with paragraphs 306 to 314.

261. After the details for the works for Alternative Apparatus to be provided or constructed have been agreed or settled by expert determination in accordance with paragraphs 306 to 314, and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 257, Exolum must proceed as soon as reasonably practicable using all reasonable endeavours to construct and bring into operation the Alternative Apparatus and subsequently to remove (or if agreed between

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the parties to allow the undertaker to remove) any redundant Apparatus required by the undertaker to be removed under the provisions of this Schedule.

262. The following paragraphs 263 and 264 only apply if:

- (a) Exolum fails to comply with its obligations under paragraph 261 to remove any redundant Apparatus; and
- (b) the undertaker has served notice on Exolum specifying the default; and
- (c) Exolum has failed to remedy the default within 28 days.

263. In the circumstances set out in paragraph 262, if the undertaker then gives notice in writing to Exolum that it will remove the redundant Apparatus, that work, instead of being executed by Exolum, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Exolum.

264. Nothing in paragraph 263 authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any Apparatus, or execute any filling around the Apparatus (where the Apparatus is laid in a trench) within 3000 millimetres of the Apparatus unless that Apparatus is redundant and disconnected from Exolum's remaining system.

Facilities and Rights for Alternative Apparatus

265. Where, in accordance with the provisions of this Schedule, the undertaker affords to Exolum facilities and rights for the construction of Alternative Apparatus and the grant of Alternative Rights, in substitution for Apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Exolum in accordance with this Schedule or in default of agreement settled by expert determination in accordance with paragraphs 306 to 314.

266. Alternative Rights must be granted before any Alternative Apparatus is operating as part of the pipeline and storage system which forms the Apparatus.

267. The parties agree that the Alternative Rights be granted by way of a 999 year lease, substantially in the form of Exolum's precedent from time to time as amended by written agreement between the parties acting reasonably.

268. Nothing in this Schedule or contained in the Alternative Rights shall require Exolum to divert or remove any Alternative Apparatus.

269. 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 Exolum than the facilities and rights enjoyed by it in respect of the Apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the Expert will make such provision for the payment of compensation by the undertaker to Exolum as appears to the Expert to be reasonable having regard to all the circumstances of the particular case.

Retained Apparatus and Alternative Apparatus: protection

270. Before commencing the execution of any Restricted Works, the undertaker must submit to Exolum a Plan of the works to be executed and any other information that Exolum may reasonably require to allow Exolum to assess the works.

271. No Restricted Works are to be commenced until the Plan to be submitted to Exolum under paragraph 270 has been approved by Exolum in writing and are to be carried out only in accordance with the details submitted under paragraph 270 and in accordance with such reasonable requirements as may be notified to the undertaker in writing in accordance with paragraph 272 by Exolum.

272. Any approval by Exolum of the Plan of works submitted under paragraph 270 must not be unreasonably withheld or delayed, and Exolum must communicate its approval or refusal of the plans within 56 days of the date of submission of the plan under paragraph 270 and any approval of the Plan of works may be given subject to such reasonable requirements as Exolum may require to be made for—

- (a) the continuing safety and operational viability of any Apparatus and/or Premises; and
- (b) the requirement for Exolum to have reasonable access with or without vehicles to inspect, repair, replace, maintain and ensure the continuing safety and operation or viability of any Apparatus and/or Premises

providing such reasonable requirements are notified to the undertaker in writing.

273. Exolum will be entitled to watch and inspect the execution of Restricted Works at any time.

274. Where reasonably required by either party, in view of the complexity of any proposed works, timescales, phasing or costs, the parties must with due diligence and good faith negotiate a works agreement for the carrying out of Protective Works or the installation of Alternative Apparatus.

275. If in consequence of the works notified to Exolum by the undertaker under paragraph 271, the circumstances in paragraph 257 apply, then the parties will follow the procedure in paragraph 257 onwards.

276. Nothing in paragraphs 270 to 275 precludes the undertaker from submitting prior to the commencement of works to protect retained Apparatus or to construct Alternative Apparatus (unless otherwise agreed in writing between the undertaker and Exolum) a new Plan, instead of the Plan previously submitted, in which case the parties will re-run the procedure from paragraph 275 onwards.

277. Where Exolum reasonably requires Protective Works, the parties must use all reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of any physical features to be provided or constructed.

278. The undertaker must afford to Exolum the necessary facilities and rights for the construction of Protective Works and subsequently the grant of Additional Rights in accordance with paragraphs 265 to 269.

279. Any Protective Works are to be constructed in land owned by the undertaker or in land in respect of which Additional Rights have been or are guaranteed to be granted to Exolum. The Protective Works must be constructed in such manner and in such position or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by expert determination in accordance with paragraphs 306 to 314.

280. After the details for the Protective Works to be provided or constructed have been agreed or settled in accordance with paragraphs 306 to 314, and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 259, Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Protective Works.

281. Where the undertaker needs to carry out emergency works—

- (a) it must give to Exolum notice before such works commence, or as soon as is reasonably practicable after the works have commenced where it is not reasonably practicable to provide notice prior to commencement;
- (b) the parties will work together to co-ordinate their respective works and agree a plan of those works before such works commence, or as soon as is reasonably practicable after the works have commenced where it is not reasonably practicable to provide notice prior to commencement; and

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- (c) it must comply with the conditions imposed under paragraph 272 insofar as is reasonably practicable in the circumstances.

282. In this Part of this Schedule, “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.

Cathodic protection testing

283. Where in the reasonable opinion of Exolum or the undertaker—

- (a) the Authorised Development might interfere with the cathodic protection forming part of Apparatus; or
- (b) any Apparatus might interfere with the proposed or existing cathodic protection forming part of the Authorised Development;

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

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

Expenses

285.—(1) Subject to the following provisions of these paragraphs 285 to 288, the undertaker must pay to Exolum the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Exolum in, or in connection with—

- (a) undertaking its obligations under this Schedule including:
 - (i) the installation, inspection, removal, alteration, testing or protection of any Apparatus, Alternative Apparatus and/or Protective Works;
 - (ii) the execution of any other works under this Schedule; and
 - (iii) the review and assessment of Plans;
- (b) the watching of and inspecting the execution of the Authorised Development, any Restricted Works and any works undertaken by third parties as a result of Authorised Development (including the assessment of Plans); and
- (c) imposing reasonable requirements for the protection or alteration of Apparatus affected by the Authorised Development or works as a consequence of the Authorised Development in accordance with paragraph 272;

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

286. Provided that Exolum takes all reasonable steps to minimise the costs incurred in the following circumstances, there will be no deduction from any sum payable under paragraph 285 as a result of—

- (a) the placing of apparatus of a better type, greater capacity or of greater dimensions, or at a greater depth than the existing Apparatus; or
- (b) the placing of apparatus in substitution of the existing Apparatus that may defer the time for renewal of the existing Apparatus in the ordinary course;

287. The scrap value (if any) of any Apparatus removed under the provisions of this Schedule is to be deducted from any sum payable under paragraph 285.

288. Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Exolum, the undertaker must pay Exolum sufficiently in advance but to enable Exolum to undertake its obligations under this Schedule provided that in the event that the costs reasonably incurred by Exolum are less than the amount paid by the undertaker pursuant to this paragraph 288 then Exolum must promptly repay any overpayment to the undertaker within 30 days of the payment of those costs.

Damage to property and other losses

289. Subject to paragraphs 290 to 293, the undertaker will—

- (a) indemnify Exolum for all reasonable loss, damage, liability, costs and expenses reasonably suffered or incurred by Exolum directly arising out of—
 - (i) the carrying out of works under this Schedule;
 - (ii) the carrying out of the Authorised Development;
 - (iii) 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;
 - (iv) any injury or damage whatsoever to any property, real or personal, including the property of Exolum; and
 - (v) any matters arising out of or in connection with this Order;
- (b) indemnify Exolum against any claim made against, or loss suffered by, Exolum as a result of any act or omission committed by the undertaker's officers, employees, contractors or agents whilst on or in the vicinity of any Apparatus or Premises;
- (c) pay to Exolum on demand the cost reasonably incurred by Exolum in making good any damage to the Apparatus (other than Apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising out of the carrying out of works under this Schedule and arising out of the carrying out of the Authorised Development; and
- (d) pay to Exolum the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply through its Apparatus in consequence of the carrying out of works under this Schedule or the carrying out of the Authorised Development;

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

290. The fact that any act or thing may have been done by Exolum on behalf of the undertaker or in accordance with a Plan approved by Exolum or in accordance with any requirement of Exolum or under its supervision will not, subject to paragraph 291, excuse the undertaker from liability under the provisions of paragraph 289.

291. The undertaker and Exolum must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers in connection with this Schedule.

292. The undertaker warrants that—

- (a) the information it or any of its employees, agents or contractors provide to Exolum about the Plans or the Authorised Development and on which Exolum relies in the design of and carrying out of any works is accurate; and
- (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.

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293. Exolum must give to the undertaker reasonable notice of any claim or demand to which paragraph 289 applies.

Insurance

294. The undertaker must not commence the Authorised Development or any intrusive environmental (including archaeological) surveys and investigation or intrusive site or soil surveys on any land in respect of which Exolum has an easement, right, operations, assets or other interests or carry out any Restricted Works unless and until Exolum has confirmed to the undertaker in writing that it is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker (or its contractor) has procured acceptable professional indemnity insurance, where relevant, and public liability insurance with minimum cover of £25 million per event, with respect to the carrying out of the works.

295. The undertaker must maintain such insurance for the construction period of the Restricted Works, being from the proposed date of commencement of the Authorised Development to the completion of any Restricted Works or Protective Works.

Co-operation and reasonableness

296. Where Apparatus is required to be protected, altered, diverted or removed under this Schedule, the undertaker must use all reasonable endeavours to co-ordinate the execution of any works under this Schedule—

- (a) in the interests of safety;
- (b) 47.2 in the interest of the efficient and economic execution of both Exolum's works and the Authorised Development; and
- (c) 47.3 taking into account the need to ensure the safe and efficient operation of Apparatus and carrying out of Exolum's functions.

297. Exolum must use all reasonable endeavours to co-operate with the undertaker for the purposes outlined in paragraph 296.

298. The undertaker and Exolum must act reasonably in respect of any given term of this Schedule and, in particular, (without prejudice to generality) where any approval, consent or expression of satisfaction is required by this Schedule it must not be unreasonably withheld or delayed.

Emergency circumstances

299. The undertaker acknowledges that Exolum provides services to His Majesty's Government, using the Apparatus, which may affect any works to be carried under this Schedule and the Authorised Development.

300. In the following circumstances, Exolum may on written notice to the undertaker immediately suspend all works that necessitate the stopping or suspending of the supply of product through any Apparatus under this Schedule and Exolum will not be in breach of its obligations under this Schedule—

- (a) circumstances in which, in the determination of the Government, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or
- (b) circumstances in which a request has been received, and a decision to act upon such request has been taken, by the Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or

- (c) circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by the Government; or
- (d) any circumstances identified as such by the COBRA committee of the Government (or any successor committee thereof); or
- (e) any situation in connection with which the Government requires fuel capacity, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas.

301. The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which will include costs of demobilising and remobilising any workforce, and any costs to protect the Apparatus “mid-works”) to account for the suspension.

302. Exolum is not liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under paragraphs 299 to 301 or delays caused by it.

Escalation of differences

303. The undertaker and Exolum must use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Schedule in accordance with the following provisions.

304. The undertaker and Exolum will each nominate a representative who will meet to try to resolve the matter. If the matter is not resolved at that level within ten working days of either the undertaker or Exolum requesting such a meeting (or such longer period as may be agreed between the undertaker and Exolum) the matter may at the request of either the undertaker or Exolum be referred for discussion at a meeting to be attended by a senior executive from each party.

305. If the meeting between senior executives fails to result in a settlement within 20 working days of the date of the request for such a meeting (or if it is not possible to convene a meeting within this period) then either the undertaker or Exolum may refer the matter to expert determination or arbitration in accordance with the provisions of paragraphs 303 to 314.

Dispute resolution

306. If any dispute or difference arising out of or in connection with this Schedule is not resolved in accordance with paragraphs 303 to 305, either the undertaker or Exolum may refer the matter to:

- (a) in the case of any dispute or difference pursuant to paragraphs 260, 265, 269 or 283, expert determination under paragraphs 306 to 314; or
- (b) in the case of any dispute or difference not falling within paragraphs 306(a), arbitration under article 49 (arbitration) of the Order.

307. The parties will agree on the appointment of an independent Expert and must agree with the Expert the terms of their appointment.

308. If the parties are unable to agree on an Expert or the terms of their appointment within five working days of either party serving details of a suggested expert on the other, either party will then be entitled to request the Institution of Civil Engineers or its successor to appoint an Expert and to agree with the Expert the terms of their appointment.

309. The Expert is required to prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to them.

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310. If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by paragraph 309 then either party may re-apply to the relevant professional body referred to above to discharge the Expert and to appoint a replacement Expert with the required expertise and paragraph 306 onwards will apply to the new Expert as if they were the first Expert appointed.

311. The parties are entitled to make submissions to the Expert and will provide the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.

312. The Expert will act as an expert and not as an arbitrator. The Expert may award interest as part of their decision. The Expert's written decision on the matters referred to them will be final and binding on the parties in the absence of manifest error or fraud.

313. The Expert may direct that any legal costs and expenses incurred by a party in respect of the determination will be paid by another party to the determination on the general principle that costs should follow the event, except where it appears to the Expert that, in the circumstances, this is not appropriate in relation to the whole or part of such costs. The Expert's fees and any costs properly incurred by them in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) will be borne by the parties equally or in such other proportions as the Expert directs.

314. The dispute resolution procedure set out in this Schedule will apply to matters dealt with in this Schedule notwithstanding any dispute resolution procedure provided for either in the Order or as part of any other consent in respect of the Authorised Development.

Miscellaneous

315. Nothing in this Schedule affects the provisions of any enactment or prior agreement regulating the relations between the undertaker and Exolum in respect of any Apparatus laid or erected in land belonging to the undertaker on the date the Order is granted.

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

PART 21

For the protection of the Environment Agency

317.—(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;

“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;

“flood risk activity permit” means an environmental permit granted under regulation 13 of the Environmental Permitting (England and Wales) Regulations 2016 for the purposes of a flood risk activity;

“main river” has the same meaning given in section 113 of the Water Resources Act 1991;

“specified work” means any development authorised by this Order and carried out in relation to or which may affect any drainage work.

318.—(1) Subject to sub-paragraph (4) the undertaker must, for the duration of the construction of the specified work, as far as reasonably practicable maintain in good repair and condition and keep free from obstruction any part of any drainage work which is situated on land held or occupied by the undertaker for the purposes of or in connection with the specified work, 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) 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 undertake the works reasonably necessary for such compliance, subject to the undertaker having the reasonable opportunity to supervise the planning and execution of such works to the extent reasonably necessary to ensure they are compliant with and do not compromise the undertaker’s ability to comply with the Pipeline Safety Regulations 1996 and any expenditure reasonably and properly incurred by the Agency in so doing is recoverable from the undertaker. Notwithstanding the foregoing, the Agency may not under any circumstances undertake any works to the pipeline itself which would or would be likely to 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 the operation and maintenance of the pipeline.

(4) 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 a flood risk activity permit and carried out in accordance with the provisions of that flood risk activity permit provided that any obstruction is removed as soon as reasonably practicable.

(5) Where the authorised development involves the crossing of any watercourse by open cut trench installation, the use of a dam as part of such installation works shall not constitute an obstruction for the purpose of these provisions.