

SCHEDULE 13

Article 36

PROTECTIVE PROVISIONS

PART 1

Protection of Operators of Electronic Communications Code Networks

1. The provisions of this Part have effect for the protection of the operators referred to in this Part, unless otherwise agreed in writing between the undertaker and the operator concerned.

2. In this Part—

“2003 Act” means the Communications Act 2003;

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act as defined in section 106(1) of that Act;

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit 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 that the Secretary of State 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; and

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

3.—(1) Subject to sub-paragraphs (2) and (3), if, as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(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 those works) 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 reasonable and proper cost actually incurred by the operator in making good such damage or restoring the supply as the case may be and must make proper and reasonable compensation to an operator for any other reasonable and proper expenses, loss, damages, penalty or costs actually incurred by it.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption as far as 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 prior written notice of any claim or demand and no settlement or compromise may be made without the consent of the undertaker.

4.—(1) If in consequence of the exercise of the powers of this Order the access to the operator’s apparatus is materially obstructed, the undertaker must provide such reasonable alternative means

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of access to such apparatus as will enable the operator to operate, maintain, repair or replace or use the apparatus.

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 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

6. Any difference or dispute arising between the operator and the undertaker under this Part must, unless otherwise agreed in writing between the operator and the undertaker, be referred to and settled by arbitration under article 34 (arbitration).

7.—(1) Where, under this Part or anywhere else under this Order, the operator is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed.

(2) In respect of any specified work or the acquisition of rights under or over or use of the operator's property, the operator must co-operate with the undertaker with a view to avoiding undue delay.

PART 2

Protection of Electricity, Gas, Water and Sewerage Undertakers

1. Except in relation to National Grid, the provisions of this Part have effect for the protection of the statutory undertakers referred to in this Part, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned.

2. In this Part—

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

“apparatus” means any apparatus within the Order limits as follows—

- (a) in the case of a statutory undertaker within paragraph (a) of the definition, electric lines or electrical plant (as defined in section 64 of the Electricity Act 1989⁽¹⁾), belonging to or maintained by the undertaker for the purposes of electricity supply;
- (b) in the case of a statutory undertaker within paragraph (b) of the definition, any gas mains, pipes or other apparatus belonging to or maintained by the undertaker for the purposes of gas supply;
- (c) in the case of a statutory undertaker within paragraph (c) of the definition, water mains, pipes or other apparatus belonging to or maintained by the undertaker for the purposes of water supply; and
- (d) in the case of a statutory undertaker within paragraph (d) of the definition—

(1) 1989 c.29. Section 6(1) has been amended by section 30 of the Utilities Act 2000 (c.27) and sections 136 and 197 of, and part 1 of Schedule 23 to, the Energy Act 2004 (c.20). Section 64 has been amended by article 24(c) of the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999 (S.I. 1999/506), section 108 of, paragraphs 24 and 38 of part 2 of Schedule 6 to, and Schedule 8 to the Utilities Act 2000 (c.27), sections 44, 89, 102, 143, 147, 180 and 197 of, paragraphs 3 and 15 of Schedule 19 to, and Part 1 of Schedule 23 to, the Energy Act 2000 (c.20), section 79 of, and paragraph 5 of Schedule 8 to, the Climate Change Act 2008 (c.27), section 72 of, and paragraph 5 of Schedule 8 to, the Energy Act 2011 (c.16), regulation 48 of the Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), articles 2 and 13 of the Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), section 26 of, and paragraphs 30 and 43 of part 1 of Schedule 6 to, the Enterprise and Regulatory Reform Act 2013 (c.24), and regulation 5 of the Electricity and Gas (Internal Markets) Regulations (S.I. 2014/3332).

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- (i) any drain or works vested in the statutory undertaker under the Water Industry Act 1991; and
- (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and in each case 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;

“statutory undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(2);
- (c) a water undertaker; and
- (d) a sewerage undertaker,

for the area of the authorised development and, in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4.—(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, that apparatus must not be removed under this Part and any right of a statutory undertaker to maintain that apparatus in that land must not be extinguished until (if so required by the statutory undertaker) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question.

(2) If, for the purpose of executing any works in, on, over or under any land purchased, held, appropriated or used under this Order or in, on, over or under any land within the Order limits, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question written notice of that requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph (2), the statutory undertaker in question 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 other land in which the alternative apparatus is to be constructed.

(4) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 34 (arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (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.

(2) 1986 c.44. Section 7 (1) was amended by section 76 of the Utilities Act 2000 (c.27) and section 197 of, and part 1 of Schedule 23 to, the Energy Act 2004 (c.20).

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(5) Despite anything in sub-paragraph (4), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the statutory undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if so required by the statutory undertaker, and to the reasonable satisfaction of the statutory undertaker.

(6) Nothing in sub-paragraph (5) 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 without the prior approval of the statutory undertaker (such approval not to be unreasonably withheld or delayed).

5.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 4(2) that will or may adversely affect any apparatus the removal of which has not been required by the undertaker under that paragraph, the undertaker must submit to the statutory undertaker in question a plan, section and description of the works to be executed.

(2) Any works of the type referred to in paragraph 4(2) are to be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to observe and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the day on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a statutory 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, sub-paragraphs (1) to (6) apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and if this is done, the provisions of this paragraph 5 apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

6.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a statutory undertaker the proper and reasonable expenses actually incurred by that statutory 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 works referred to in paragraph 4(2).

(2) The value of any apparatus removed under the provisions of this Part is to 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 34 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding those 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 but for this paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

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

(5) An amount which but for this sub-paragraph would be payable to a statutory 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 statutory 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.

7.—(1) Subject to sub-paragraphs (2) and (3), if by reason, or in consequence, of the construction of any such works referred to in paragraph 4(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 statutory undertaker, or there is any material interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

- (a) bear and pay the proper and reasonable cost actually incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) make proper and reasonable compensation to that statutory undertaker for any other reasonable and proper expenses, loss, damages, penalty or costs actually incurred by the statutory 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 as far as it is attributable to the act, neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the undertaker reasonable prior written notice of any claim or demand, and no settlement or compromise may be made without the consent of the undertaker.

8. If in consequence of the exercise of the powers of this Order the access to the statutory undertaker's apparatus is materially obstructed, the undertaker must provide such reasonable alternative means of access to such apparatus as will enable the statutory undertaker to operate, maintain, repair or replace or use the apparatus.

9. Any difference or dispute arising between the statutory undertaker and the undertaker under this Part must, unless otherwise agreed in writing between the statutory undertaker and the undertaker, be referred to and settled by arbitration under article 34 (arbitration).

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10.—(1) Where, under this Part or anywhere else under this Order, the statutory undertaker is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed.

(2) In respect of any specified work or the acquisition of rights under or over or use of the statutory undertaker's property, the statutory undertaker must co-operate with the undertaker with a view to avoiding undue delay.

PART 3

Protection of Canal & River Trust

1. The provisions of this Part have effect for the protection of CRT, unless otherwise agreed in writing between the undertaker and CRT.

2. In this Part—

“code of practice” means the “Code of Practice for Works Affecting the Canal & River Trust” dated April 2016 and as amended from time to time;

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

“CRT” means the Canal & River Trust and any successor body performing the same functions which holds or manages any of CRT's Property within the Order limits;

“CRT's Property” means each and every part of land owned by CRT (whether beneficially or as trustee of the Waterways Infrastructure Trust) within the Order limits and includes the Waterway and any other land covered with water, sub-soil, air space and waterways;

“detriment” means any damage to the Waterway or any other of CRT's Property that CRT demonstrates to the reasonable satisfaction of the undertaker that the undertaker has caused by the authorised development or presence of the specified works and, without limiting that meaning, includes:

- (a) 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;
- (b) the deposit of materials or the siltation of the Waterway so as to damage the Waterway;
- (c) the pollution of the Waterway;
- (d) any significant alteration in the water level of the Waterway, or significant interference with the supply of water to the Waterway, or drainage of water from the Waterway; and
- (e) any harm to the ecology of the Waterway (including any adverse impact on any site of special scientific interest comprised within any of CRT's Property).

“engineer” means an engineer appointed by CRT for the relevant purposes of this Order (and includes a suitably qualified employee of CRT so appointed);

“plans” includes sections, designs, design data, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), programmes and details of the extent, timing and duration of any proposed use or occupation of any of CRT's Property;

“specified works” means so much of any of the authorised development to be situated upon, across, under, over or within CRT's Property, or which may in any way cause detriment to the Waterway;

“Waterway” means each and every part of the River Lee Navigation within the Order limits, together with its waterway wall and towing path, and any pond or other waterway or course situated on CRT's Property, any works, services, apparatus, equipment, lands (including

subsoil) or premises belonging to or under the control of CRT and held or used by it in connection with its statutory functions in relation to the River Lee Navigation.

Powers requiring CRT's consent

3.—(1) The undertaker must not use any of CRT's Property for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than—

- (a) with the consent in writing of the engineer; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of detriment; or
 - (ii) in order to avoid or reduce any inconvenience to CRT, its officers, agents and all other persons lawfully on any land or property.

(2) The consents required pursuant to this Part must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions.

(3) Nothing in this paragraph applies in relation to anything done in accordance with any approval given by CRT under paragraph 4.

Approval of plans, protective works etc.

4.—(1) Except for works the details of which are required under Schedule 2 (Requirements) to be submitted to the relevant planning authority for approval, the undertaker must, before commencing construction of specified works or carrying out any works on CRT's Property, supply to CRT proper and sufficient plans of that work for the reasonable approval (having due and proper regard to the timetable for the construction of the authorised development approved under Requirement 3) 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 (such approval not to be unreasonably withheld or delayed) or settled by arbitration in accordance with article 34 (arbitration).

(2) If the engineer has not confirmed disapproval of the plans supplied pursuant to sub-paragraph (1) and the grounds of disapproval in writing by the end of the period of 28 days beginning with the date on which the last of such required plans have been submitted to CRT by the undertaker, the engineer is deemed to have approved the plans submitted pursuant to that sub-paragraph.

(3) When confirming approval of the plans supplied pursuant to sub-paragraph (1), the engineer may specify reasonable and necessary protective works (whether temporary or permanent and which, for the avoidance of doubt, may include requirements to fence any specified works in order to separate the same from the Waterway or any other of CRT's Property) which, in the engineer's reasonable opinion, should be carried out before the commencement of the construction of a specified work, or during the undertaking of those specified works.

(4) Such protective works as may be agreed between the parties or settled by arbitration in accordance with article 34 (arbitration) must be constructed by the undertaker at a reasonable and necessary cost, with all reasonable dispatch. The undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that such of those protective works as are required to be undertaken prior to commencement of construction have been completed to the engineer's reasonable satisfaction. If the engineer has not confirmed his reasonable satisfaction of the completion of the protective works within 21 days of the undertaker's notification, the engineer is deemed to have confirmed his or her reasonable satisfaction.

Design of specified works

5. Without limiting its obligations as to the delivery of plans to CRT under the foregoing provisions of this Part, the undertaker must consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by CRT as to the design and appearance of the specified works, including the materials to be used for their construction, and must have regard to reasonable views as may be expressed by CRT in response to such consultation pursuant in particular to the requirements imposed on CRT by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the reasonable interest of CRT in preserving and enhancing the environment of the Waterway.

Surveying of Waterway

6.—(1) Both before commencing any specified works upon CRT's Property or the Waterway, and following practical completion of those specified works, the undertaker must procure, at a reasonable and necessary expense to the undertaker, the carrying out of a survey (including a dip-survey to measure the depth of the Waterway), by an appropriately qualified structural engineer (the "structural surveyor"), approved by CRT (whose approval is not to be unreasonably withheld or delayed), of so much of the Waterway as may be affected by the specified works ("the survey").

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

- (a) afford reasonable facilities to the structural 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 and to CRT's Property as will or may be affected by the specified works; and
- (b) supply the structural surveyor as soon as reasonably practicable with all such information as the structural surveyor may reasonably require with regard to such existing works of the undertaker, to the specified works and the proposed method of their construction, and with regard to the Waterway.

(3) The reasonable and necessary costs of the survey 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 apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) One electronic copy and one hard copy of the survey must be provided to CRT at no cost to CRT.

Undertaking of works

7.—(1) The undertaker must give to the engineer 14 days' notice of its intention to commence the construction of any specified works or protective works (or such notice as may be reasonably practicable in the case of repair carried out in an emergency), so that, where appropriate, CRT may publish notices bringing the undertaking of those works to the attention of users of the Waterway.

(2) All specified works, and all protective works, when commenced, must be constructed—

- (a) with all reasonable dispatch (having regard to the timetable for construction of the authorised development approved under Requirement 3) in accordance with the plans approved or deemed to have been approved or settled under paragraph 4;
- (b) in accordance with the code of practice and under the supervision (where appropriate), and to the reasonable satisfaction, of the engineer;
- (c) in such manner as to cause as little damage or disturbance as is possible to CRT's Property; and
- (d) so far as is reasonably practicable, so as not to interfere with the safe use of the Waterway.

(3) If any damage to CRT's Property is caused by the carrying out of, or in consequence of the construction of, any specified works, the undertaker must make good such damage and must pay to CRT all reasonable and proper expenses that CRT actually incurs by reason of such damage, interference or obstruction.

(4) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligent act or default of CRT or its servants, contractors or agents or any liability on CRT with respect to any damage, costs, expenses or loss attributable to the negligent act or default of the undertaker or its servants, contractors or agents.

(5) 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 the engineer may reasonably require with regard to a specified work or the method of constructing it.

(6) CRT must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by CRT 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

Effect of specified works

8. If at any time during the construction of, or after the completion of, any specified works, CRT gives notice to the undertaker informing it that the state of maintenance of those specified works appears to be such as adversely affects the operation of the Waterway, or otherwise adversely affects CRT's Property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put such specified works in such state of maintenance as will no longer have such adverse effect.

Repayment of CRT's fees etc.

9. The undertaker must repay to CRT in accordance with the code of practice all fees, costs, charges and expenses reasonably and properly incurred by CRT 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.

Agreements

10.—(1) The undertaker and CRT may enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any of CRT's Property shown on the works or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any of CRT's Property; and
- (c) rights and obligations (whether or not statutory) of CRT relating to any of CRT's Property or any lands, works or other property referred to in this paragraph.

Arbitration

11. Any difference or dispute arising between CRT and the undertaker under this Part must, unless otherwise agreed in writing between the CRT and the undertaker, be referred to and settled by arbitration under article 34 (arbitration).

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PART 4

Protection of Environment Agency

1.—(1) The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part—

“1973 Transfer Rights” means a right of way over parts of plots 1, 30 and 31 (as shown on the land plans) pursuant to a transfer dated 19 January 1973 as detailed in registered title number MX410055;

“Agency” means the Environment Agency.

2. The undertaker must not in the exercise of the powers conferred by this Order unreasonably prevent the Agency’s access to and use of the dosing station adjacent to Salmon’s Brook in the vicinity of the southern entrance to the Edmonton EcoPark except where construction and operation of the authorised development reasonably requires interference with or obstruction of the free, uninterrupted and safe use of the 1973 Transfer Rights in which case a suitable alternative access must be agreed with the Agency and provided prior to and for the duration of any such interference.

3. Any difference or dispute arising between the undertaker and the Agency under this Part must, unless otherwise agreed in writing between the Agency and the undertaker, be referred to and settled by arbitration under article 34 (arbitration).

PART 5

Protection of National Grid as Electricity and Gas Undertaker

Application

1. For the protection of the statutory undertaker referred to in this Part the following provisions, unless otherwise agreed in writing between the undertaker and the statutory undertaker, have effect.

Interpretation

2. In this Part—

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

“apparatus” means—

- (a) in the case of National Grid Electricity Transmission Plc, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by the statutory undertaker for the purposes of electricity supply, transmission or distribution and any of its subsidiaries;
- (b) in the case of National Grid Gas Distribution Limited, any mains, pipes or other apparatus belonging to or maintained by the statutory undertaker for the purposes of gas supply and any of its subsidiaries;

together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the statutory undertaker or any of its subsidiaries for the purposes of transmission, distribution and 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 and for the purposes of this Part includes the use and maintenance of the authorised works;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the statutory undertaker (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) in the event of 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, requires the undertaker to submit for the statutory undertaker’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” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the statutory undertaker: construct, use, repair, alter, inspect, renew or remove the apparatus;

“plans” 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 and assess the works to be executed;

“statutory undertaker” means, as appropriate—

- (a) National Grid Electricity Transmission Plc being a licence holder within the meaning of Part 1 of the Electricity Act 1989; and
- (b) National Grid Gas Distribution Limited as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“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 7(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22;

3. Except for paragraphs 4 (apparatus of statutory undertakers), 9 (retained apparatus: protection gas undertakers), 10 (retained apparatus: protection: electricity undertakers), 11 (expenses) and 12 (indemnity) of this Part which apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the statutory undertaker, the other provisions of this Part do not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of Statutory Undertakers

4.—(1) Subject to sub-paragraph 4(2), if as a consequence of the exercise of the powers of this Order access to the apparatus is to be materially obstructed, the undertaker must first give the statutory undertaker 14 days written notice of its intention, and provide such reasonable alternative means of access to such apparatus as will enable the statutory undertaker to operate, maintain, repair or replace, or use the apparatus.

(2) In the event of an emergency, the undertaker is at liberty to access and execute and do all such works and things in, upon or under the Order land if it reasonably considers that immediate measures must be taken. In such circumstances, the undertaker must notify the statutory undertaker as soon as reasonably practicable of such emergency measures and must provide details of the emergency measures and any alternative means of access to the relevant part of the Order land so far as is reasonably safe and practicable.

Protective works to Buildings

5.—(1) In relation to plot 4 referred to in the land plans the undertaker, in exercising the powers conferred by article 17 (protective work to buildings), must exercise those powers so as not to materially obstruct the access to any apparatus without the written consent of the statutory undertaker and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the statutory undertaker or any interruption in the supply of electricity and gas, as the case may be, by the statutory undertaker is caused, the undertaker must bear and pay on demand the cost reasonably incurred by the statutory undertaker in making good such damage or restoring the supply; and, subject to sub-paragraph 5(2), must—

- (a) pay compensation to the statutory undertaker for any loss sustained by it; and
- (b) indemnify the statutory undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that statutory undertaker, by reason of any such damage or interruption.

(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 a statutory undertaker or its contractors or workers; and the statutory undertaker must give to the undertaker reasonable notice of any claim or demand as aforesaid, and no settlement or compromise is to be made by the statutory undertaker, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker may not exercise any power to acquire any land interest or apparatus or override any easement or other interest of the statutory undertaker otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties referred to 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 the statutory undertaker and the undertaker) that are subject to the requirements of this Part that will cause any conflict with or breach the terms of any easement or other land interest of the statutory undertaker relating to the Order land or affects the provisions of any enactment or agreement regulating the relations between the statutory undertaker and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker within the Order land, the undertaker must as the statutory undertaker reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between the statutory undertaker and the

undertaker acting reasonably and which must be no less favourable on the whole to the statutory undertaker unless otherwise agreed by the statutory undertaker.

(3) The undertaker and the statutory undertaker agree that where there is any inconsistency or duplication between the provisions set out in this Part 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, used, enjoyed or exercised by the statutory undertaker and/or other enactments relied upon by the statutory undertaker as of right or other use in relation to the apparatus, then the provisions of this Part prevail.

(4) Any agreement or consent granted by the statutory undertaker under any other paragraph of this Part must not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

7.—(1) If the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part and any right of a statutory 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 statutory undertaker or the statutory undertaker has confirmed that no alternative apparatus is required.

(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 the statutory undertaker at least 56 days' advance written notice of that requirement, together with a plan of the work proposed.

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with the statutory undertaker under sub-paragraph 8(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 the statutory undertaker 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 must be referred to arbitration in accordance with paragraph 16 (arbitration) and, the arbitrator is to make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection Gas Undertakers

9.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to National Grid Gas Distribution Limited (the "statutory undertaker") a plan of the works to be carried out and, if reasonably required by the statutory undertaker, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to the statutory undertaker under sub-paragraph 9(1) must include a method statement and describe—

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- (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 the statutory undertaker has given written approval of the plan so submitted.
- (4) Any approval of the statutory undertaker required under sub-paragraph 9(2)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs 9(5) or 9(7); and,
 - (b) must not be unreasonably withheld or delayed.
- (5) In relation to any work to which sub-paragraph applies, the statutory undertaker 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 necessary means of access to any apparatus.
- (6) Works approved under this paragraph applies must be executed only in accordance with the plan, submitted under sub-paragraph, as approved or as amended from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs 9(5) or 9(7) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.
- (7) Where the statutory undertaker 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 the statutory undertaker's satisfaction (the statutory undertaker's confirmation of whether it is satisfied or not is not to be unreasonably withheld or delayed) prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required, and the statutory undertaker must give at least 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (8) If the statutory undertaker in accordance with sub-paragraphs 9(5) or 9(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 7 and 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).
- (9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.
- (10) The undertaker is not be required to comply with sub-paragraph 9(1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the statutory undertaker notice as soon as is reasonably practicable and a plan of those works and must—
- (a) comply with sub-paragraphs 9(5), 9(6) and 9(7) insofar as is reasonably practicable in the circumstances; and
 - (b) comply with sub-paragraph 9(11) at all times.

(11) At all times when carrying out any works authorised under the Order, the undertaker must comply with the statutory undertaker'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 installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive'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, provided that the statutory undertaker retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and may recover any such costs in accordance with paragraph 12 (indemnity).

Retained apparatus: Protection: Electricity Undertakers

10.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to National Grid Electricity Transmission Plc (the "statutory undertaker") a plan of the works to be carried out and seek from the statutory undertaker details of the underground extent of its electricity tower foundations. The statutory undertaker must not unreasonably withhold or delay its provision of those details.

(2) The plan to be submitted to the statutory undertaker under sub-paragraph 10(1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(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 10(1) must, in addition to the matters set out in sub-paragraph 10(2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions and clearance to pylon foundations;
- (b) how pylon foundations will not be affected prior to, during and post-construction;
- (c) details of load-bearing capacities of trenches;
- (d) details of 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 the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) an assessment of earth rise potential if reasonably required by the statutory undertaker's engineers; and
- (h) evidence that trench-bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

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(4) The undertaker must not commence any works to which sub-paragraphs 10(2) or 10(3) applies until the statutory undertaker has given written approval of the plan so submitted.

(5) Any approval of the statutory undertaker required under sub-paragraphs 10(2) or 10(3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs 10(6) or 10(8); and,

(b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs 10(2) or 10(3) applies, the statutory undertaker 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 necessary means of access to any apparatus.

(7) Works to which this paragraph applies must be carried out only in accordance with the plan, submitted under sub-paragraph 10(1), as approved or as amended from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs 10(6) or 10(8) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(8) Where the statutory undertaker 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 the statutory undertaker's satisfaction (the statutory undertaker's confirmation of whether it is satisfied or not is not to be unreasonably withheld or delayed) prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required, and the statutory undertaker must give at least 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If the statutory undertaker in accordance with sub-paragraphs 10(6) or 10(8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 7 and 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(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 apply to and in respect of the new plan.

(11) The undertaker is not required to comply with sub-paragraph 10(1) where it needs to carry out emergency works as defined in the 1991 Act, but in that case it must give to the statutory undertaker notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs 10(6), 10(7) and 10(8) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph 10(12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with the statutory undertaker's policies for development near overhead lines EN43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

11.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to the statutory undertaker on demand all charges, costs and expenses reasonably anticipated or reasonably and properly incurred by the statutory undertaker 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 carrying out of any authorised works including without limitation—

- (a) the cost of the carrying out of any diversion work;
- (b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (c) the carrying out of protective works;
- (d) 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 authorised works; and
- (e) the approval of plans.

(2) There must be deducted from any sum payable under sub-paragraph 11(1) the value of any apparatus removed under the provisions of this Part, 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 34 (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 statutory undertaker by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where 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 must 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 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 statutory 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 statutory 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.

Indemnity

12.—(1) Subject to sub-paragraphs 12(2) and 12(3), if by reason or in consequence of the construction of any such works authorised by this Part 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 the undertaker) in the course of carrying out such works, including without limitation works carried out

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by the undertaker under this Part or any subsidence resulting from any of these works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the statutory undertaker, or the statutory undertaker becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably and properly incurred by the statutory undertaker in making good such damage or restoring the supply; and
- (b) indemnify the statutory undertaker for any other proper and reasonable expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the statutory undertaker, by reason or in consequence of any such damage or interruption or the statutory undertaker becoming liable to any third party as aforesaid other than arising from any default of the statutory undertaker.

(2) The fact that any act or thing may have been done by the statutory undertaker with the agreement of and on behalf of the undertaker or in accordance with a plan submitted by the undertaker and approved by the statutory undertaker or in accordance with any requirement of the statutory undertaker or under its supervision does not (unless sub-paragraph 12(3) applies), excuse the undertaker from liability under the provisions of sub-paragraph 12(1) unless the statutory undertaker 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 12(1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the statutory undertaker, its officers, servants, contractors or agents; and
- (b) any authorised works or any other works authorised by this Part carried out by the statutory undertaker 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 8 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus, any authorised works yet to be executed and not falling within this paragraph 12(3)(b) are subject to the full terms of this Part including this paragraph 12.

(4) The statutory undertaker must give the undertaker reasonable written notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and taking into account undertaker's representations.

Enactments and agreements

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

14.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or the statutory undertaker requires the removal of apparatus under paragraph 7(2) or the statutory undertaker makes requirements for the protection or alteration of apparatus under paragraphs 9 or 10, 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 the statutory

undertaker's undertaking, and the statutory undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

(2) To avoid doubt, whenever the statutory undertaker's consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the statutory undertaker, it must not be unreasonably withheld or delayed.

Access

15. If in consequence of 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 the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

16. Any difference or dispute arising between the undertaker and the statutory undertaker under this Part must, unless otherwise agreed in writing between the undertaker and the statutory undertaker, be determined by arbitration in accordance with article 34 (arbitration).

Approval Process

17. When submitting the plans to the statutory undertaker for approval under paragraph 8 or paragraph 9 the undertaker must send the plans to the statutory undertaker in hard copy by recorded post and by email to such address as the statutory undertaker may notify the undertaker in writing from time to time and clearly bearing the name of the project and contact details for responses, unless otherwise agreed with statutory undertaker.