

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

Authorised Development

1. In the County of Cambridgeshire and the County of Norfolk a nationally significant infrastructure project as defined in section 14(1)(a) (nationally significant infrastructure projects: general) and section 15 (generating stations) of the 2008 Act and associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising all or part of—

In the County of Cambridgeshire

Work No. 1 – an electricity generating station with a gross installed generating capacity of up to 60 MW and capacity to process up to 625,600 tonnes of residual waste per annum, including—

- (a) fuel reception and storage facilities consisting of tipping hall, tipping bays, tipping bunker, main waste bunker, shredder, waste chutes, cranes, cabin and handling and maintenance equipment;
- (b) a combustion system including boiler house, air cooled moving grates, boilers and water tanks;
- (c) air pollution control plant and monitoring systems including silos, reactors, filter houses, fans, cabins and loading and storage areas;
- (d) a steam turbine and generator including turbine hall and cooling system;
- (e) a bottom ash handling system, including ash storage bunker, conveyors, collection bays, cranes and handling and maintenance equipment;
- (f) air cooled condenser;
- (g) compressed air system;
- (h) tank(s) for the storage of urea;
- (i) switch gear building;
- (j) control room; and
- (k) water treatment and storage plant.

Work No. 1A – two chimneys and associated continuous emissions monitoring systems and platform.

Work No. 1B – administration building, including—

- (a) roof-mounted photovoltaic solar panels to supplement energy use within the administration building, generating approximately 50kW (0.05MW) of electricity;
- (b) brown roof and green walls;
- (c) natural cooling apparatus including brise soleil to eastern elevation;
- (d) bat and bird boxes; and
- (e) rainwater harvesting apparatus.

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Work No. 2 – in connection with and in addition to Work Nos 1, 1A and 1B—

Work No. 2A

- (a) fire water tank and fire water pump cabin;
- (b) diesel generator and diesel storage tanks;
- (c) 132kV switching compound, transformers, switch gear, cabling, kiosk and associated telemetry;
- (d) workshop and stores; and
- (e) gatehouse and weighbridges; and

Work No. 2B

- (a) vehicle layby and queuing areas;
- (b) laydown and maintenance areas;
- (c) internal access roads and pedestrian walkways;
- (d) parking areas and electrical vehicle charging points;
- (e) pipes, cables, telecommunications and other services and associated infrastructure;
- (f) site drainage, including works to drains and culverts, potable and wastewater services and associated infrastructure;
- (g) hard and soft landscaping; and
- (h) biodiversity enhancement measures and environmental mitigation measures.

Work No. 3 – associated development comprising combined heat and power equipment including heat exchangers, pipework, valving, pumps, pressurisation, water treatment systems and associated instrumentation and telemetry.

Work No. 3A – associated development comprising combined heat and power equipment including steam and condensate pipes, pipe racks, supports, pipe runs, valving, electrical supply cables and associated instrumentation and telemetry, vertical expansion loops and pipe bridges.

Work No. 3B – associated development comprising combined heat and power equipment including steam and condensate pipes, pipe racks, supports, pipe runs, valving, electrical supply cables and associated instrumentation and telemetry, bellows expansion connections, vertical expansion loops and pipe bridges.

Work No. 4A – associated development comprising a new site access and access improvements on New Bridge Lane including carriageway and footway widening, highway alteration works, junction improvements including signalisation and pedestrian crossing, culverts, drains, street lighting, services and utilities connections and compact substation.

Work No. 4B – associated development comprising a new site access and access improvements on Algores Way including carriageway and footway widening, highway alteration work, culverts, drains, services and utilities connections and street lighting.

Work No. 5 – associated development being a temporary construction compound and laydown area including—

- (a) hard standings;
- (b) materials storage and laydown areas;
- (c) construction fabrication areas;
- (d) generators;
- (e) vehicle parking areas;

- (f) wheel washing facilities;
- (g) accommodation, office and welfare buildings;
- (h) new or alteration to accesses;
- (i) internal haul roads; and
- (j) temporary pedestrian bridges.

Work No. 6A – comprising associated development for the potable water connection—

- (a) water pipe(s) and associated instrumentation and telemetry;
- (b) cable trenches, ducting, protection plates and jointing bays; and
- (c) horizontal directional drilling compound.

Work No. 6B – comprising associated development for the foul water connection—

- (a) water pipe(s) and associated instrumentation and telemetry; and
- (b) cable trenches, ducting, protection plates and jointing bays.

Work No. 7 – comprising associated development—

- (a) 132kV electrical underground cables and associated instrumentation and telemetry;
- (b) cable trenches, ducting, protection plates and jointing bays; and
- (c) temporary storage compounds in laybys on the A47.

In the County of Norfolk

Work No. 8 – comprising associated development—

- (a) 132kV electrical underground cables and associated instrumentation and telemetry;
- (b) cable trenches, ducting, protection plates and jointing bays; and
- (c) temporary storage compounds in laybys on the A47.

Work No. 9 – comprising associated development—

- (a) electrical substation and compound including clean air switchgear, control room kiosks and monitoring kiosk;
- (b) cables and associated instrumentation and telemetry;
- (c) cable trenches, ducting, protection plates and jointing bays; and
- (d) new or alteration to accesses, internal pedestrian and vehicular access road and parking area.

In the County of Cambridgeshire

Work No. 10 – comprising associated development, being an acoustic fence.

In connection with and in addition to Work Nos 1, 1A, 1B, 2A, 2B, 3, 3A, 3B, 4A, 4B, 5, 6A, 6B, 7, 8, 9 and 10 and, to the extent that it does not otherwise form part of those Work Nos, further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the authorised development, and which are within the Order limits and fall within the scope of the work assessed by the environmental statement including—

- (a) external lighting infrastructure, including lighting columns;
- (b) fencing, boundary treatment and other means of enclosure;
- (c) demolition of existing buildings and structures;
- (d) signage;
- (e) CCTV and other security measures;

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- (f) surface and foul water drainage facilities;
- (g) potable water supply;
- (h) new telecommunications and utilities apparatus and connections;
- (i) hard and soft landscaping;
- (j) biodiversity enhancement measures and environmental mitigation measures;
- (k) works permanently to alter the position of existing telecommunications and utilities apparatus and connections;
- (l) works for the protection of buildings and land;
- (m) establishment of temporary construction compounds, including vehicle parking areas, hard standing, materials storage and laydown areas, construction fabrication areas, construction related buildings, accommodation buildings, temporary offices, structures, plant and machinery, lighting and fencing, internal haul routes and wheel wash facilities; and
- (n) site establishment and preparation works, including site clearance (including temporary fencing and vegetation removal), earthworks (including soil stripping and storage and site levelling) and excavations, the creation of temporary construction access points and the temporary alteration of the position of services and utilities apparatus and connections.

SCHEDULE 2

Article 2

REQUIREMENTS

Time limits

1. The authorised development must not commence after the expiration of five years beginning with the date on which this Order comes into force.

Detailed design approval

2.—(1) No part of Work Nos. 1, 1A, 1B, 2A, 2B, 3, 6A, 6B, 7, 8, 9 or 10 may commence until details of the layout, scale and external appearance for that Work No. have been submitted to and approved by the relevant planning authority.

(2) The details submitted for approval under sub-paragraph (1) must be substantially in accordance with the design principles set out in Appendix A of the design and access statement.

(3) Where a requirement requires the authorised development to be constructed in accordance with details approved by the relevant planning authority, the approved details are taken to include any amendments subsequently approved by the relevant planning authority.

(4) The authorised development must be carried out in accordance with the approved details.

Parameters of authorised development

3. The elements of the authorised development listed in column (1) of Table 11 in Schedule 14 (maximum and minimum design parameters) must not exceed the maximum and minimum dimensions and levels set out in relation to that element in columns (3) to (6) of that table.

Biodiversity and landscape mitigation

4.—(1) No part of the authorised development may commence until a written landscape and ecology strategy for that part has been submitted to and approved by the relevant planning authority.

The landscape and ecology strategy must be substantially in accordance with the outline landscape and ecology strategy.

(2) The landscape and ecology strategy must be implemented as approved under sub-paragraph (1).

Landscape and ecology management plan

5.—(1) Prior to the date of final commissioning a landscape and ecology management plan for Work No. 1, 1A, 1B, 2A, 2B and 9 must be submitted to and approved by the relevant planning authority for the operation of that part of the authorised development. The landscape and ecology management plan must be substantially in accordance with the outline landscape and ecology management plan.

(2) The landscape and ecology management plan must be implemented as approved under sub-paragraph (1).

Biodiversity net gain

6.—(1) No part of the authorised development may commence until a biodiversity net gain strategy has been submitted to and approved by the relevant planning authority, in consultation with the relevant statutory nature conservation body.

(2) The biodiversity net gain strategy must include details of how the strategy will secure a minimum of 10% biodiversity net gain, calculated using the biodiversity metric 3.0 published by Natural England in July 2021 or such other biodiversity metric approved by the relevant planning authority in consultation with the relevant statutory nature conservation body, during the operation of the authorised development including onsite and offsite measures and be substantially in accordance with the outline biodiversity net gain strategy.

(3) The biodiversity net gain strategy must be implemented as approved under sub-paragraph (1).

Highway works

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

(2) No part of Work No. 4A may commence until written details for that Work No. have been submitted to and approved by the relevant highway authority.

(3) No part of Work No. 4B may commence until written details for that Work No. have been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority.

(4) Any new permanent or temporary means of access to a highway, or alteration of an existing means of access to a highway, or other works to alter the layout of a highway must be constructed or altered in accordance with the details approved pursuant to sub-paragraph (1).

(5) Work No. 4A must be constructed in accordance with the details approved pursuant to sub-paragraph (2).

(6) Work No. 4B must be constructed in accordance with the details approved pursuant to sub-paragraph (3).

Drainage strategy

8.—(1) No part of Work No. 1, 1A, 1B, 2A, 2B, 4A, 4B, 6A, 6B and 9 may commence until written details of the drainage strategy for that Work No. has been submitted to and approved by the relevant planning authority.

(2) The written details submitted for approval must be substantially in accordance with the outline drainage strategy.

(3) The relevant planning authority must consult with Anglian Water in respect of any discharge to a public sewer before approving any drainage strategy submitted under sub-paragraph (1).

(4) The relevant planning authority must consult with the Environment Agency before approving any drainage strategy submitted under sub-paragraph (1).

(5) The drainage strategy must be implemented as approved under sub-paragraph (1).

Contamination and groundwater

9.—(1) No part of the authorised development may commence until a scheme (which may be included in the construction environmental management plan to be submitted under requirement 10) to deal with the contamination of any land (including groundwater) for that part which is likely to cause significant harm to persons or significant pollution of controlled waters or the environment has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant, to identify the extent of any contamination and any remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) The relevant planning authority must consult with the Environment Agency before approving a scheme under sub-paragraph (1).

(4) Any remedial measures must be carried out in accordance with the approved scheme.

Construction environmental management plan

10.—(1) No part of the authorised development may commence until a construction environmental management plan for that part has been submitted to and approved by the relevant planning authority.

(2) The construction environmental management plan submitted for approval must be substantially in accordance with the outline construction environmental management plan.

(3) The relevant planning authority must consult with the Environment Agency before approving the construction environmental management plan.

(4) All construction works associated with the authorised development must be undertaken in accordance with the approved construction environmental management plan unless otherwise agreed with the relevant planning authority in consultation with the Environment Agency.

Construction traffic management plan

11.—(1) No stage of the authorised development may commence until a construction traffic management plan for that stage has been submitted to and approved by the relevant planning authority in consultation with the highway authority. The construction traffic management plan must be substantially in accordance with the outline construction traffic management plan.

(2) The construction traffic management plan must be implemented as approved throughout the construction of the authorised development unless otherwise agreed by the relevant planning authority in consultation with the highway authority.

Operational traffic management plan

12.—(1) Prior to the date of final commissioning, an operational traffic management plan must be submitted to the relevant planning authority for approval in consultation with the highway authority. The operational traffic management plan must be substantially in accordance with the outline operational traffic management plan.

(2) The operational traffic management plan must be implemented as approved throughout the operation of the authorised development unless otherwise agreed by the relevant planning authority in consultation with the highway authority.

Flood emergency management plan

13.—(1) Prior to the date of final commissioning, a flood emergency management plan for Work Nos. 1, 1A, 1B, 2A, 2B and 9 must be submitted to the relevant planning authority for approval.

(2) The flood emergency management plan submitted for approval must be substantially in accordance with the outline flood emergency management plan.

(3) The relevant planning authority must consult with the Environment Agency and lead local flood authority before approving any flood emergency management plan submitted under sub-paragraph (1).

(4) The flood emergency management plan submitted and approved under sub-paragraph (1) must be implemented as approved and remain in place throughout the operation of the authorised development unless otherwise agreed by the relevant planning authority in consultation with the Environment Agency and lead local flood authority.

Waste hierarchy scheme

14.—(1) Prior to the date of final commissioning, the undertaker must submit to the relevant planning authority for approval a scheme, which sets out arrangements for maintenance of the waste hierarchy and which aims to minimise recyclable and reusable waste received at the authorised development during the commissioning and operational period of the authorised development (the “waste hierarchy scheme”).

(2) The waste hierarchy scheme must include details of—

- (a) operational procedures that seek to ensure that waste suitable for recycling and reuse is not received at the authorised development. These procedures are to be annually reviewed and, where practicable, improved;
- (b) a record of the tonnages of any waste identified by the undertaker prior to tipping into the waste bunker at the authorised development and rejected as it was identified as being suitable for recycling, reuse or both;
- (c) a record of tonnages of waste considered suitable for recycling, reuse or both that has been diverted further up the waste hierarchy by persons who also send waste to be processed at the authorised development, as far as practicable;
- (d) a record to be kept of how these procedures have been regularly reviewed (on an annual basis at a minimum), what changes were made, and how these have reduced the amount of waste potentially suitable for recycling and reuse being processed at the authorised development;
- (e) how waste transfer notes and weighbridge data detailing the sources of the residual waste will be collected and retained;
- (f) the types of waste and permitted EWC codes to be accepted at the authorised development as specified by the environmental permit;

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- (g) how waste delivered to the authorised development will be checked to ensure compliance with the permitted EWC codes;
 - (h) arrangements for ensuring that commercial suppliers deliver only those EWC codes which are permitted; and
 - (i) records which are to be kept for the purposes of demonstrating compliance with the waste hierarchy scheme and for allowing inspection of such records by the relevant planning authority.
- (3) The relevant planning authority must consult with the Environment Agency before approving any scheme submitted under sub-paragraph (1).
- (4) The waste hierarchy scheme must be implemented as approved under sub-paragraph (1).

Operational travel plan

- 15.**—(1) Prior to the date of final commissioning, an operational travel plan must be submitted to and approved by the relevant planning authority. The operational travel plan must set out measures to encourage staff working at Work No. 1, 1A, 1B, 2A and 2B to use sustainable modes of transport and must be substantially in accordance with the outline operational travel plan.
- (2) The operational travel plan must be implemented as approved under sub-paragraph (1).

Odour management plan

- 16.**—(1) Prior to completion of commissioning of any part of Work No. 1, an odour management plan must be submitted to the relevant planning authority for approval. The odour management plan submitted for approval must be substantially in accordance with the outline odour management plan.
- (2) The relevant planning authority must consult with the Environment Agency before approving the odour management plan.
- (3) The odour management plan must be implemented as approved under sub-paragraph (1).

Fire prevention plan

- 17.**—(1) Prior to the completion of commissioning of any part of Work No. 1, a fire prevention plan must be submitted to and approved by the relevant planning authority. The fire prevention plan submitted for approval must be substantially in accordance with the outline fire prevention plan.
- (2) The fire prevention plan must be implemented as approved under sub-paragraph (1).

Lighting strategy

- 18.**—(1) Prior to the installation of any permanent lighting for the authorised development, a written scheme for the management and mitigation of artificial light emissions for that part of the authorised development must be submitted to and approved by the relevant planning authority. The lighting strategy submitted for approval must be substantially in accordance with the outline lighting strategy.
- (2) The written scheme for the management and mitigation of artificial light emissions must be implemented as approved under sub-paragraph (1).

Noise management

- 19.**—(1) No part of Work No. 4A may commence until the residential use at plot numbers 11/4a and 11/4b shown on the land plans and described in the book of reference has ceased unless otherwise agreed by the relevant planning authority.

(2) Plot numbers 11/4a and 11/4b shown on the land plans and described in the book of reference must not be used for residential purposes until the authorised development has been decommissioned in accordance with requirement 28 unless otherwise agreed by the relevant planning authority.

(3) No part of Work No. 4A may commence until Work No. 10 has been constructed. Work No. 10 must be maintained until the authorised development has been decommissioned in accordance with requirement 28 unless otherwise agreed by the relevant planning authority.

(4) Prior to the date of completion of commissioning of any part of Work No. 1, 1A, 2A, 2B and 9(a), an operational noise management plan for that part must be submitted to and approved by the relevant planning authority.

(5) The operational noise management plan submitted for approval must be substantially in accordance with the outline operational noise management plan.

(6) The relevant planning authority must consult with the Environment Agency before approving the operational noise management plan.

(7) The operational noise management plan must be implemented as approved under subparagraph (4).

Notice of start of commissioning and notice of date of final commissioning

20.—(1) Notice of the commencement of commissioning of Work No. 1 must be given to the relevant planning authority within 7 days of the date on which commissioning is commenced.

(2) Notice of the completion of commissioning of Work No. 1 must be given to the relevant planning authority within 7 days of the date on which commissioning is completed.

Employment and skills strategy

21.—(1) No part of the authorised development may commence until an employment and skills strategy has been submitted to the relevant planning authority for approval. The employment and skills strategy submitted for approval must be substantially in accordance with the outline employment and skills strategy.

(2) The employment and skills strategy must be implemented as approved under subparagraph (1).

Carbon capture and export readiness reserve space

22.—(1) Prior to the date of final commissioning, the undertaker must demonstrate to the relevant planning authority that it has constructed Work No. 1 in accordance with the carbon capture and export embedded design measures.

(2) Following commencement of the authorised development and until such time as the authorised development is decommissioned, the undertaker must not, without the consent of the Secretary of State—

- (a) dispose of any interest in the carbon capture and export readiness reserve space; or
- (b) do anything, or allow anything to be done or to occur which may reasonably be expected to diminish the undertaker's ability to prepare the carbon capture and export readiness reserve space for the installation and operation of carbon capture and export equipment within two years of such action or occurrence.

(3) In this paragraph “export” means the removal of carbon from the authorised development and transporting it to a place of usage or sequestration to avoid its release to the atmosphere.

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Carbon capture readiness monitoring report

23.—(1) The undertaker must make a report (“carbon capture and export readiness monitoring report”) to the Secretary of State—

- (a) on or before the date which is three months after the date of completion of commissioning of Work No. 1A; and
- (b) within one month of the second anniversary, and each subsequent even-numbered anniversary, of that date.

(2) Each carbon capture and export readiness monitoring report must provide evidence that the undertaker has complied with Requirement 22—

- (a) in the case of the first carbon capture and export readiness monitoring report, since commencement of the authorised development; and
- (b) in the case of any subsequent report, since the making of the previous carbon capture and export readiness monitoring report,

and explain how the undertaker expects to continue to comply with Requirement 22 over the next two years.

(3) Each carbon capture and export readiness monitoring report must state whether the undertaker considers the retrofit of carbon capture and export technology is feasible explaining the reasons for any such conclusion and whether any impediments could be overcome.

(4) Each carbon capture and export readiness monitoring report must state, with reasons, whether the undertaker has decided to seek any additional regulatory clearances, or to modify any existing regulatory clearances, in respect of any carbon capture and export readiness proposals.

(5) In this paragraph “export” means the removal of carbon from the authorised development and transporting it to a place of usage or sequestration to avoid its release to the atmosphere.

Community liaison manager

24. Prior to the date of final commissioning, the undertaker must notify the relevant planning authority of the name of the community liaison manager appointed and thereafter must keep the relevant planning authority up to date on any changes.

Combined heat and power

25.—(1) Prior to the date of final commissioning, the undertaker must demonstrate to the relevant planning authority that it has constructed Work No. 1 and Work No. 2 in accordance with the combined heat and power embedded design measures.

(2) No later than the date that is 18 months after the date of final commissioning, the undertaker must submit to the relevant planning authority for its approval a report (“the CHP review”) updating the combined heat and power assessment.

(3) The CHP review submitted must—

- (a) consider the opportunities that reasonably exist for the export of heat from Work No. 3, 3A and 3B at the time of submission of the CHP review; and
- (b) include a list of actions (if any) that the undertaker is reasonably and practicably able to take (without material additional cost to the undertaker) to increase the potential for the export of heat from Work No. 3, 3A and 3B.

(4) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review.

(5) The relevant planning authority must consult with the Environment Agency before approving any CHP review.

(6) On each date (or the first date thereafter which is a working day) during the operation of Work No. 1 that is five years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(7) Sub-paragraphs (3) to (5) apply in relation to a revised CHP review submitted under sub-paragraph (6) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (7).

Air safety

26.—(1) The information specified in sub-paragraph (2), that is required by the Defence Geographic Centre of the Ministry of Defence to chart the authorised development for aviation purposes, must be submitted to the relevant planning authority and the Ministry of Defence before any part of the authorised development is commenced.

(2) The information submitted to and approved under sub-paragraph (1) must include—

- (a) location of the authorised development;
- (b) date of commencement of construction;
- (c) anticipated date of completion of construction of tall structures including the chimneys;
- (d) height above ground level of tall structures including the chimneys;
- (e) maximum extension height of any construction equipment; and
- (f) details of aviation warning lighting to be fitted to the tall structures, which must include fitting the chimneys with an infra-red light fitted at the highest practicable point of the structure.

(3) The aviation warning lighting details submitted under sub-paragraph (2)(f) must be implemented in full before the construction of the chimneys is complete unless otherwise agreed by the relevant planning authority in consultation with the Ministry of Defence.

(4) At the earliest opportunity prior to the date of completion of the construction of the chimneys, the anticipated date of construction completion must be submitted to the relevant planning authority and provided in copy to the Ministry of Defence.

(5) All details submitted to and approved under this requirement must be implemented as approved and maintained throughout (to the extent relevant) the construction of the authorised development and the operation of the authorised development unless otherwise agreed by the relevant planning authority in consultation with the Ministry of Defence.

Local air quality monitoring strategy

27.—(1) Prior to the commencement of the authorised development, a local air quality monitoring strategy must be submitted to the relevant planning authority for approval. The local air quality monitoring strategy submitted for approval must be substantially in accordance with the outline local air quality monitoring strategy.

(2) The local air quality monitoring strategy must be implemented as approved under sub-paragraph (1).

Decommissioning

28.—(1) Within 24 months of the permanent cessation of the commercial operation of the authorised development, the undertaker must submit to the relevant planning authority for its approval a decommissioning plan for the authorised development, including a timetable for its implementation.

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(2) The decommissioning plan submitted for approval must be substantially in accordance with the outline decommissioning plan.

(3) The plan submitted to and approved under sub-paragraph (1) must be implemented as approved unless otherwise agreed with the relevant planning authority.

Origin of waste

29.—(1) Not less than 17.5% of the waste processed at the authorised development per operational year must originate from within Waste Area 1 unless otherwise agreed by the relevant planning authority. Waste originating outside of Waste Area 1 and then transported to a waste loading point located in Waste Area 1 is not considered to have originated in Waste Area 1.

(2) Not less than 80% of the waste processed at the authorised development per operational year must originate from Waste Area 1 and Waste Area 2 unless otherwise agreed by the relevant planning authority. Subject to sub-paragraph (1), waste transported into Waste Area 2 to a waste loading point is considered to have originated in Waste Area 2.

(3) No more than 20% of the waste processed at the authorised development per operational year must originate from outside of Waste Area 1 and Waste Area 2 unless otherwise agreed by the relevant planning authority. Waste sent direct to the authorised development from a location that is not located in either Waste Area 1 or Waste Area 2 will be deemed to originate from outside of Waste Area 2.

(4) The maximum tonnage of waste received from any one waste planning authority's administrative area within Waste Area 2 must not exceed 312,800 tonnes in any operational year unless otherwise agreed by the relevant planning authority.

(5) From the date of final commissioning of the authorised development until the authorised development has been decommissioned in accordance with requirement 28 (unless otherwise agreed by the relevant planning authority), the undertaker must maintain a written record, retained at the authorised development, of the quantities and origin of the waste treated by the authorised development for each operational year.

(6) From the date of final commissioning until the authorised development has been decommissioned in accordance with requirement 28 (unless otherwise agreed by the relevant planning authority), on or prior to 1 February each year, the undertaker must provide to the relevant planning authority a report for the preceding operational year (the "Waste Catchment Report"). The Waste Catchment Report must identify—

- (a) the waste throughput of the authorised development including the total tonnage of waste processed at the authorised development for the operational year;
- (b) waste catchment including as far as it is reasonably practicable to audit, the waste area for each waste loading point for waste processed at the authorised development for the operational year, separately totalling tonnages received from waste area 1, waste area 2 and outside of waste area 2; and
- (c) the total annual tonnage processed at the authorised development from each waste planning authority for the operational year.

(7) The relevant planning authority can request an interim Waste Catchment Report at any time for the preceding 12 month period. The undertaker must submit an interim Waste Catchment Report to the relevant planning authority within 6 weeks of receiving the request. The interim Waste Catchment Report must cover the 12 month period ending on the last day of the month the written request was made by the relevant planning authority to the undertaker unless otherwise agreed by the relevant planning authority.

(8) In this paragraph—

“operational year” means the period from 1 January to 31 December, inclusive;

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“throughput” means the tonnage of waste received at the authorised development;

“waste area 1” means a 75 kilometre radius from the point that has grid reference N307892.6931 and E545496.9373 and shown on the waste area plan;

“waste area 2” means the area shown on the waste area plan; and

“waste loading point” means the location where the waste is loaded onto a vehicle prior to being sent directly to the authorised development.

(9) In sub-paragraph (6)(b) “waste area” means the areas or locations for each waste loading point, disaggregated to the smallest administrative area practicable, including but not limited to county, unitary, district, borough or postcode area.

Amendments to approved details

30.—(1) With respect to the documents certified under article 42 (certification of plans etc.), the parameters specified in Table 11 of Schedule 14 (maximum and minimum design parameters) and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any requirement (together “Approved Documents, Plans, Parameters, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Documents, Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Documents, Plans, Parameters, Details or Schemes are to be taken to include the amendments approved by the relevant planning authority pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to Approved Documents, Plans, Parameters, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 3

Article 10

STREETS SUBJECT TO STREET WORKS

Table 1

(1) <i>Area</i>	(2) <i>Streets subject to street works</i>	(3) <i>Description of the street works</i>
In the County of Cambridgeshire and the County of Norfolk	A47 (public highway)	Street works to the extent of the A47 coloured light purple on the access and public rights of way plan
In the County of Cambridgeshire	Algores Way (private street)	Street works to the extent of Algores Way coloured yellow on the access and public rights of way plan
In the County of Norfolk	Broadend Road (public highway)	Street works to the extent of Broadend Road coloured light

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Description of the street works</i>
		green on the access and public rights of way plan
In the County of Cambridgeshire	Cromwell Road (public highway)	Street works to the extent of Cromwell Road coloured pink on the access and public rights of way plan
In the County of Cambridgeshire	Cromwell Road (private street)	Street works to the extent of Cromwell Road coloured pink on the access and public rights of way plan
In the County of Norfolk	Elm High Road (public highway)	Street works to the extent of Elm High Road coloured turquoise on the access and public rights of way plan
In the County of Cambridgeshire	New Drove (public highway)	Street works to the extent of New Drove coloured dark green on the access and public rights of way plan
In the County of Cambridgeshire	New Bridge Lane (public highway)	Street works to the extent of New Bridge Lane coloured blue on the access and public rights of way plan
In the County of Cambridgeshire	New Bridge Lane (private street)	Street works to the extent of New Bridge Lane coloured blue on the access and public rights of way plan
In the County of Cambridgeshire	Salters Way (public highway)	Street works to the extent of Salters Way coloured dark purple on the access and public rights of way plan
In the County of Cambridgeshire	Weasenham Lane (public highway)	Street works to the extent of Weasenham Lane coloured red on the access and public rights of way plan

SCHEDULE 4

Article 11

STREETS SUBJECT TO PERMANENT ALTERATION OF LAYOUT

Table 2

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the County of Cambridgeshire	Algores Way (private street)	Permanent alteration of layout to the extent of Algores Way shown as Work No. 4B on the works plan and located within that area coloured yellow on the access and public rights of way plan including carriageway and footway widening and highway alteration works
In the County of Cambridgeshire	Cromwell Road (public highway)	Permanent alteration of layout to the extent of Cromwell Road coloured pink on the access and public rights of way plan including carriageway and footway widening and highway alteration works
In the County of Cambridgeshire	Cromwell Road (private street)	Permanent alteration of layout to the extent of Cromwell Road coloured pink on the access and public rights of way plan including carriageway and footway widening and highway alteration works
In the County of Cambridgeshire	New Bridge Lane (public highway)	Permanent alteration of layout to the extent of New Bridge Lane coloured blue on the access and public rights of way plan including carriageway and footway widening and highway alteration works
In the County of Cambridgeshire	New Bridge Lane (private street)	Permanent alteration of layout to the extent of New Bridge Lane coloured blue on the access and public rights of way plan including carriageway and footway widening and highway alteration works
In the County of Cambridgeshire	Salters Way (public highway)	Permanent alteration of layout to the extent of Salters Way coloured dark purple on the

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
		access and public rights of way plan including carriageway and footway widening and highway alteration works

SCHEDULE 5

Article 11

STREETS SUBJECT TO TEMPORARY ALTERATION OF LAYOUT

Table 3

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the County of Cambridgeshire and the County of Norfolk	A47 (public highway)	Temporary alteration of layout to the extent of the A47 coloured light purple on the access and public rights of way plan
In the County of Norfolk	Broadend Road (public highway)	Temporary alteration of layout to the extent of Broadend Road coloured light green on the access and public rights of way plan
In the County of Norfolk	Elm High Road (public highway)	Temporary alteration of layout to the extent of Elm High Road coloured turquoise on the access and public rights of way plan
In the County of Cambridgeshire	New Bridge Lane (public highway)	Temporary alteration of layout to the extent of New Bridge Lane coloured blue on the access and public rights of way plan
In the County of Cambridgeshire	New Drove (public highway)	Temporary alteration of layout to the extent of New Drove coloured dark green on the access and public rights of way plan
In the County of Cambridgeshire	Weasenham Lane (public highway)	Temporary alteration of the layout to the extent of Weasenham Lane coloured red

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
		on the access and public rights of way plan

SCHEDULE 6

Article 12

ACCESS

PART 1

THOSE PARTS OF THE ACCESS TO BE MAINTAINED AT THE PUBLIC EXPENSE

Table 4

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the County of Cambridgeshire	Weasenham Lane (public highway)	Access to the area shown coloured orange and marked A1 on sheet 2 of the access and public rights of way plan to the extent that such access is or will be located within the public highway
In the County of Cambridgeshire	Weasenham Lane (public highway)	Access to the area shown coloured orange and marked A2 on sheet 2 of the access and public rights of way plan to the extent that such access is or will be located within the public highway
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A8 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located within the public highway
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A6 on sheet 1 of the access and public rights of way plan to the

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<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
		extent that such access is or will be located within the public highway.
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A7 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located within the public highway
In the County of Cambridgeshire	New Drove (public highway)	Access to the area shown coloured orange and marked A10 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located within the public highway
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A11 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located within the public highway
In the County of Cambridgeshire	Broadend Road (public highway)	Access to the area shown coloured orange and marked A12 on sheet 4 of the access and public rights of way plan to the extent that such access is or will be located within the public highway

PART 2

THOSE PARTS OF THE ACCESS TO BE MAINTAINED BY THE STREET AUTHORITY

Table 5

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the County of Cambridgeshire	Algores Way (private street)	Access to the area shown coloured yellow between the

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<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
		area shown coloured orange and marked A3 and the area shown coloured orange and marked A5 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located outside the public highway
In the County of Cambridgeshire	Algores Way (private street)	Access to the area shown coloured orange and marked A4 on sheet 1 of the access and public rights of way plan
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A6 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located outside of the public highway
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A7 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located outside of the public highway
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A8 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located outside of the public highway

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PART 3

THOSE WORKS TO RESTORE THE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY

Table 6

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the County of Cambridgeshire	Weasenham Lane (public highway)	Access to the area shown coloured orange and marked A1 on sheet 2 of the access and public rights of way plan to the extent that such access is or will be located outside of the public highway
In the County of Cambridgeshire	Weasenham Lane (public highway)	Access to the area shown coloured orange and marked A2 on sheet 2 of the access and public rights of way plan to the extent that such access is or will be located outside of the public highway
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A9 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located outside of the public highway
In the County of Cambridgeshire	New Drove (public highway)	Access to the area shown coloured orange and marked A10 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located outside of the public highway
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A11 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located outside of the public highway
In the County of Norfolk	Broadend Road (public highway)	Access to the area shown coloured orange and marked A12 on sheet 4 of the access and

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<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
		public rights of way plan to the extent that such access is or will be located outside of the public highway

SCHEDULE 7

Article 13

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS OR PUBLIC RIGHTS OF WAY

Table 7

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to temporary prohibition or restriction of use</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of streets</i>
In the County of Cambridgeshire and the County of Norfolk	A47 (public highway)	Temporary stopping up of the extent of the A47 shown coloured light purple and hatched blue on the access and public rights of way plan
In the County of Cambridgeshire	Algores Way (private street)	Temporary stopping up of the extent of Algores Way shown coloured yellow and hatched blue on the access and public rights of way plan
In the County of Norfolk	Broadend Road (public highway)	Temporary stopping up of the extent of Broadend Road shown coloured light green and hatched blue on the access and public rights of way plan
In the County of Cambridgeshire	Cromwell Road (public highway)	Temporary stopping up of the extent of Cromwell Road shown coloured pink and hatched blue on the access and public rights of way plan
In the County of Cambridgeshire	Cromwell Road (private street)	Temporary stopping up of the extent of Cromwell Road shown coloured pink and hatched blue on the access and public rights of way plan

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to temporary prohibition or restriction of use</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of streets</i>
In the County of Norfolk	Elm High Road (public highway)	Temporary stopping up of the extent of Elm High Road shown coloured turquoise and hatched blue on the access and public rights of way plan
In the County of Cambridgeshire	New Drove (public highway)	Temporary stopping up of the extent of New Drove shown coloured dark green and hatched blue on the access and public rights of way plan
In the County of Cambridgeshire	New Bridge Lane (public highway)	Temporary stopping up of the extent of New Bridge Lane shown coloured blue and hatched blue on the access and public rights of way plan
In the County of Cambridgeshire	New Bridge Lane (private street)	Temporary stopping up of the extent of New Bridge Lane shown coloured blue and hatched blue on the access and public rights of way plan
In the County of Cambridgeshire	Salters Way (public highway)	Temporary stopping up of the extent of Salters way shown coloured dark purple and hatched blue on the access and public rights of way plan
In the County of Cambridgeshire	Weasenham Lane (public highway)	Temporary stopping up of the extent of Weasenham Lane shown coloured red and hatched blue on the access and public rights of way plan

SCHEDULE 8

Article 25

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Table 8

<i>(1)</i> <i>Number of plot shown on the land plans</i>	<i>(2)</i> <i>Rights etc. which may be acquired</i>
1/1a, 1/1b, 1/1c, 1/1d, 1/1e, 1/2a, 2/1a, 2/1b, 3/1a, 3/1b, 4/1a, 4/1b, 5/1a, 5/1b, 5/1c, 6/1a,	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct,

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(1) <i>Number of plot shown on the land plans</i>	(2) <i>Rights etc. which may be acquired</i>
6/1b, 6/1c, 6/1d, 6/1e, 6/1f, 6/1g, 6/1h, 6/1i, 6/1j, 6/1k, 6/2a, 6/2b, 7/1a, 8/1a, 8/1b, 8/2a, 9/1a, 9/1b, 9/1c, 10/1a, 10/2e, 10/2f, 10/5a, 11/1a(i), 11/2a	replace, protect and improve underground electricity cables, jointing bays, protection plates, ducting, telemetry and other ancillary apparatus (including but not limited to access chambers, manholes and marker posts) and any other works as necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telemetry and other ancillary apparatus
	Rights to pass and repass on foot, with or without vehicles, plant and machinery (including any temporary surface) for all purposes in connection with the construction, use, maintenance and decommissioning of the authorised development
	Rights to continuous vertical and lateral support for the authorised development
	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts
	Rights to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures and the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works
	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary
	Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise

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<i>(1)</i> <i>Number of plot shown on the land plans</i>	<i>(2)</i> <i>Rights etc. which may be acquired</i>
	of the rights or damage the authorised development
1/2a, 11/1a(i), 11/1a(ii), 11/1b(i), 11/1b(ii), 11/1b(iii), 11/2a, 12/1a, 12/1b, 12/1c, 12/1d, 12/1e, 12/1f, 12/1g, 12/1h, 12/1i, 12/1j, 12/1k, 12/1l, 12/2a, 12/4a, 12/5a, 13/4c(ii), 13/4d, 14/1a	<p>Rights to construct, use, maintain and improve a permanent means of access including visibility splays, carriageway and footway widening, highway alteration works and lighting</p> <p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary</p> <p>Rights to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the construction, use, maintenance and decommissioning of the authorised development</p> <p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve pipes, ducts, mains, wires, cables, conduits, flues, fibre optic cables and other conducting media of whatsoever nature</p> <p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts</p> <p>Rights to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works</p> <p>Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise</p>

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(1) <i>Number of plot shown on the land plans</i>	(2) <i>Rights etc. which may be acquired</i>
	of the rights or damage the authorised development
10/1a, 10/1b, 10/1c, 10/2a, 10/2b, 10/2c, 10/2d, 10/2e, 10/2f, 10/2g, 10/3a, 10/4a, 10/5a, 11/1a(i), 11/2a	<p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve a potable water connection (including but not limited to pipes, trenches, ducting, protection plates, jointing bays, associated telemetry and other ancillary apparatus) and any other works as necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said combined potable water connection and other ancillary apparatus</p> <p>Rights to pass and repass on foot, with or without vehicles, plant and machinery (including any temporary surface) for all purposes in connection with the construction, use, maintenance and decommissioning of the authorised development</p> <p>Rights to continuous vertical and lateral support for the authorised development</p> <p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary</p> <p>Rights to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works</p> <p>Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights</p>

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(1) <i>Number of plot shown on the land plans</i>	(2) <i>Rights etc. which may be acquired</i>
13/5a	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve a foul water connection (including but not limited to pipes, trenches, ducting, protection plates, jointing bays, associated telemetry and other ancillary apparatus) and any other works as necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said combined potable water connection and other ancillary apparatus
	Rights to pass and repass on foot, with or without vehicles, plant and machinery (including any temporary surface) for all purposes in connection with the construction, use, maintenance and decommissioning of the authorised development
	Right to continuous vertical and lateral support for the authorised development
	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary
	Rights to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works
	Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights
11/2d, 11/2f, 11/7b, 13/4a	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts,

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(1) <i>Number of plot shown on the land plans</i>	(2) <i>Rights etc. which may be acquired</i>
	<p>mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts</p> <p>Rights to pass and repass on foot, with or without vehicles, plant and machinery (including any temporary surface) for all purposes in connection with the construction, use, maintenance and decommissioning of the authorised development</p> <p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary</p> <p>Rights to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works</p> <p>Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights</p>
11/8a	<p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve acoustic fencing and gates and any other ancillary apparatus or works as necessary</p> <p>Rights to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the construction, use, maintenance and decommissioning of the acoustic fencing and gates</p> <p>Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions (including but not</p>

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(1) <i>Number of plot shown on the land plans</i>	(2) <i>Rights etc. which may be acquired</i>
	limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage acoustic fencing and gates
13/1a, 15/1a, 15/2a, 15/2b, 16/1a(i), 16/1a(ii), 16/1b(i), 16/1b(ii), 16/2a, 16/3a, 16/4a, 16/5a, 17/1a	<p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve combined heat and power equipment (including but not limited to steam and condensate pipes, pipe racks, supports, pipe runs, valving, electrical supply cables and associated telemetry, vertical expansion loops, pipe bridges and other ancillary apparatus) and any other works as necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said combined heat and power equipment and other ancillary apparatus</p> <p>Rights to pass and repass on foot, with or without vehicles, plant and machinery (including any temporary surface) for all purposes in connection with the construction, use, maintenance and decommissioning of the authorised development</p> <p>Rights to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures and the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works</p> <p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary</p> <p>Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise</p>

(1)	(2)
<i>Number of plot shown on the land plans</i>	<i>Rights etc. which may be acquired</i>
	of the rights or damage the authorised development

SCHEDULE 9

Article 25

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

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

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

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

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

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

(2) For section 5A (relevant valuation date) of the 1961 Act, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 9 to the Medworth Energy from Waste Combined Heat and Power Order 2024;
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 to the Medworth Energy from Waste Combined Heat and Power Order 2024) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

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

(1) 1973 c. 26

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Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 30 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 23 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right under article 25 (compulsory acquisition of rights and imposition of restrictive covenants)

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

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

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

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

- (a) section 9(4) (refusal to convey, failure to make title etc.);
- (b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

(5) Section 11 (powers of entry) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applied to compulsory acquisition under article 23 (compulsory acquisition of land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 30(7) (modification of Part 1 of the Compulsory Purchase Act 1965) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, or enforce the restriction imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 29 (application of the 1981 Act) of the Medworth Energy from Waste Combined Heat and Power Facility Order 2024 in respect of the land to which the notice to treat relates.

(2) But see article 26 (acquisition of subsoil only) of the Medworth Energy from Waste Combined Heat and Power Facility Order 2024 which excludes the acquisition of subsoil only from this Schedule.

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

Counter-notice requiring purchase of land

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

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

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

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

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

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

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

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

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Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

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

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

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

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

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

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

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

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

SCHEDULE 10

Article 32

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 9

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
Norfolk	4/1c, 4/1d	Temporary use (including access and compound) of a lay-by to facilitate construction for Work No. 7 and 8
Cambridgeshire	8/1c	Temporary use (including access and compound) to a lay-

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
		by to facilitate construction for Work No. 7 and 8
Cambridgeshire	11/2e, 11/2g, 11/2h, 11/2i, 11/2j, 11/2k, 11/2l, 11/2m, 11/2n, 11/2o, 13/4b	Temporary use (including access and compound) to facilitate construction for Work No. 1, 1A, 1B, 2A, 2B, 3, 3A, 3B, 4A, 4B, 5, 6A, 6B, 7, 8, 9 and 10
Cambridgeshire	11/3b, 12/4b, 12/5b	Temporary use (including access) to facilitate construction for Work No. 4A

SCHEDULE 11

Article 34

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY,
GAS, WATER AND SEWERAGE UNDERTAKERS

1. The provisions of this Part have effect for the protection of statutory undertakers (save for EPN, Cadent Gas Limited and Anglian Water) unless otherwise agreed in writing between the undertaker and the statutory undertaker in question.

2. In this Part of this Schedule—

“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—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(2)), belonging to or maintained by the utility undertaker for the purposes of electricity supply;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by the utility undertaker for the purposes of gas supply;
- (c) in the case of a water undertaker—
 - (i) mains, pipes or other water apparatus belonging to or maintained by the utility undertaker for the purposes of water supply; and
 - (ii) mains, pipes or other water apparatus that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991; and
- (d) in the case of a sewerage undertaker—

(2) 1989 c. 29.

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- (i) any drain or works vested in the utility 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) of that Act(4) 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; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(5);
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

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

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

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 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 a utility undertaker reasonably needs to

(3) 1991 c. 56.

(4) 1991 c. 56. Section 102 was amended by sections 96(1)(a), 96(1)(b), 96(1)(c), 96(1)(d) and 96(1)(e) of the Water Act 2003 c. 37 and paragraph 90 of Schedule 7 to the Water Act 2014 c.21.

(5) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

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 of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (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 46, 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 of this Schedule.

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

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to 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.

8.—(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 6, the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be

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made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

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

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

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

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

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 8(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

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 46 (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 the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 8(2); and

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

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 8(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 paragraph 8(2) 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 which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker and the operator, have effect.

13. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(6);

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

“electronic communications apparatus” has the same meaning as in paragraph 5 of Schedule 3A of the 2003 Act;

(6) 2003 c. 21.

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“the electronic communications code” has the same meaning as in section 106 of the 2003 Act⁽⁷⁾;

“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 which 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.

14. The exercise of the powers of article 34 (statutory undertakers) are subject to Part 10 of Schedule 3A to the 2003 Act⁽⁸⁾.

15.—(1) Subject to sub-paragraphs (2) to (4), 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 cost reasonably incurred by the operator in making good such damage or restoring the supply and must make reasonable compensation to that operator for loss sustained by it and indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator 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 may be made without the consent of the undertaker which, if it withholds such consent, shall have 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 paragraph must be referred to and settled by arbitration under article 46 (arbitration).

16. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 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.

(7) See section 106.

(8) 2003 c. 21.

PART 3

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

17. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

18. 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;

“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 in article 2 (interpretation) 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;

“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” has the same meaning as given in article 2(1) and for the purpose of this Part of this Schedule only includes any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

“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

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and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for Cadent's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" have effect as if Cadent's existing apparatus was authorised development and as if the term maintain includes protect and use;

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

"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 part 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 paragraph 23(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 paragraph 23(2) or otherwise.

On street apparatus

19.—(1) This Part of 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 20, 25, 26, 27 and 28; and
- (b) where sub-paragraph (2) applies, paragraphs 23 and 24.

(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 35 (apparatus and rights of statutory undertakers in altered or closed streets) of the Order which does not apply to Cadent.

Apparatus of Cadent in altered or closed streets

20. Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 11 (power to alter layout, etc., of streets), article 13 (temporary prohibition or restriction of use of streets and public rights of way) or article 17 (traffic regulation measures), Cadent will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

21. The undertaker must exercise the powers conferred by article 20 (protective works 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).

Acquisition of land

22.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the construction 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 the undertaker must use reasonable endeavours 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, 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 25 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 the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 23 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

23.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 22, the undertaker acquires any interest in any

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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 satisfaction (taking into account paragraph 24(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 does not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) 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 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

24.—(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 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, then the terms and conditions to which those facilities and rights are subject may be referred to arbitration

in accordance with paragraph 31 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

25.—(1) Not less than 56 days (or such time period as may be agreed in writing between Cadent and the undertaker) 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 which describes—

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

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

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

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and
- (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) In relation to any specified works to which sub-paragraph (1) applies, 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 is entitled to watch and inspect the execution of those works.

(7) Where Cadent 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 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 (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the

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undertaker under paragraph 23(2) provided that such written notice must be given by Cadent to the undertaker within 42 days of submission of a plan pursuant to sub-paragraph (1).

(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 (unless otherwise agreed in writing by Cadent and the undertaker) 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 for the safeguarding of its apparatus and can recover any such costs in line with paragraph 26.

(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

26.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all 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 23(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 (including any protective works pursuant to article 20 (protective works to buildings), plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works if required;
- (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; and
- (g) any watching brief pursuant to paragraph 25(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,

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 31 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) is to be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

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

(5) An amount which apart from this sub-paragraph would be payable to Cadent 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 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 the undertaker has paid to Cadent monies in respect of any reasonably anticipated charges, costs and expenses in accordance with sub-paragraph (1) and such charges, costs and expenses are subsequently not incurred by Cadent, Cadent must repay to the undertaker on demand the amount of such charges, costs and expenses.

Indemnity

27.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development (including works carried out under article 20 (protective works to buildings)) by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

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

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and Cadent.

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

- (a) any damage or interruption to the extent that it is attributable to the neglect, omission or default of Cadent, its officers, servants, contractors or agents; and
- (b) any part of the authorised development carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 8 (consent to transfer benefit of the Order).

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

(5) Cadent must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 27 applies. If requested to do so by the undertaker, Cadent must provide an explanation of how the claim has been minimised. The undertaker is only liable under this paragraph 27 for claims reasonably incurred by Cadent.

Enactments and agreements

28. Except where this Part of this Schedule provides otherwise, or by agreement in writing between Cadent 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 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

29.—(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 23(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 25, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

30. If in consequence of any agreement reached in accordance with paragraph 22(1) or the powers granted under 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.

Arbitration

31. 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 46 (arbitration).

Notices

32. Notwithstanding article 43 (service of notices) any plans submitted to Cadent by the undertaker pursuant to paragraph 25(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 4

FOR THE PROTECTION OF EASTERN POWER NETWORKS

33. For the protection of EPN as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and EPN.

34. In this Part of this Schedule—

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

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(9)), belonging to or maintained by EPN;

“EPN” means Eastern Power Networks plc (company number 02366906) whose registered office is at Newington House, 237 Southwark Bridge Road, London SE1 6NP;

“functions” includes powers and duties; and

“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;

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

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

37. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

(9) 1989 c. 29.

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38.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that EPN's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of EPN to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of EPN in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to EPN 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 EPN reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to EPN 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, EPN 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 provided that this obligation shall not require EPN to exercise any power it may have to acquire any land or rights by compulsory purchase order.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between EPN and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) EPN must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration), and after the grant to EPN 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) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to EPN that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by EPN, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of EPN.

(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.

39.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to EPN 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 EPN or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to EPN 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 EPN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

40.—(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 38(2), the undertaker must submit to EPN a plan, section and description of the works to be executed.

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

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

(4) If EPN in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 38 to 39 apply as if the removal of the apparatus had been required by the undertaker under paragraph 38(2).

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to EPN 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.

41.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to EPN the reasonable expenses incurred by EPN 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 38(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

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 46 (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

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dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to EPN by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 38(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to EPN in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on EPN 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.

42.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 38(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 EPN, or there is any interruption in any service provided, or in the supply of any goods, by EPN, the undertaker must—

- (a) bear and pay the cost reasonably incurred by EPN in making good such damage or restoring the supply; and
- (b) indemnify EPN for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from EPN,

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 EPN, its officers, servants, contractors or agents.

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

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

PART 5

FOR THE PROTECTION OF NATIONAL HIGHWAYS

Application etc.

44.—(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015 which shall continue to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

45.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2) the latter prevail.

(2) In this Part of this Schedule—

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

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) the health and safety file; and
- (l) such other information as is 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.

“the bond sum” means the sum equal to 200% of the cost of the carrying out the specified works (to include all costs plus any commuted sum) or such other sum agreed between the undertaker and National Highways;

“the cash surety” means the sum agreed between the undertaker and National Highways;

“commuted sum” means such sum calculated as provided for in paragraph 59 of this Part of this Schedule to be used to fund the future cost of maintaining the specified works;

“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;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

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

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways
- (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) regime of California Bearing Ratio testing;
- (k) electrical work for road lighting, traffic signs and signals;
- (l) motorway communications as required by DMRB;
- (m) highway structures and any required structural approval in principle;
- (n) landscaping;
- (o) proposed departures from DMRB standards;
- (p) walking, cycling and horse riding assessment and review report;
- (q) stage 1 and stage 2 road safety audits and exceptions agreed;
- (r) utilities diversions;
- (s) topographical survey;
- (t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (u) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (v) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;

“DBFO contract” means the contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“final certificate” means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 57;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

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“highway operations and maintenance contractor” means the contractor appointed by National Highways under the DBFO contract;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

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

“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 50 when it considers the specified works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard;

“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;

“specified works” means so much of any work, including highway works and signalisation, authorised by this Order including any maintenance of that work, as is undertaken on, in, under or over the strategic road network for which National Highways is the highway authority;

“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

“winter maintenance” means maintenance of the road surface to deal with snow and ice.

General

46. In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part of Schedule 11 but for the purposes of any approvals required under this Part of Schedule 11 the undertaker shall liaise directly with National Highways.

47. Notwithstanding the provisions of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road network at a distance within 4 metres of the lowest point of the ground.

48. 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.

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Works outside the Order limits

49. If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Prior approvals and security

50.—(1) The specified works must not commence until—

- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;
- (b) the programme of works has been approved by National Highways;
- (c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under paragraph (a);
 - (ii) details of the proposed road space bookings;
 - (iii) the identity and suitability of the contractor and nominated persons;
 - (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;
 - (v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding; and
- (d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
- (e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under paragraph (c)(v) above;
- (f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
- (g) the undertaker has agreed the estimate of the commuted sum with National Highways;
- (h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;
- (i) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and
- (j) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.

(2) The undertaker must not exercise—

- (a) article 4 (maintenance of authorised development);

- (b) article 10 (street works);
- (c) article 13 (temporary prohibition or restriction of use of streets and public rights of way);
- (d) article 17 (traffic regulation measures);
- (e) article 18 (discharge of water);
- (f) article 20 (protective works to buildings);
- (g) article 19 (authority to survey and investigate the land);
- (h) article 23 (compulsory acquisition of land);
- (i) article 25 (compulsory acquisition of rights and imposition of restrictive covenants);
- (j) article 32 (temporary use of land for the construction of the authorised development);
- (k) article 33 (temporary use of land for maintaining the authorised development); or
- (l) article 21 (felling or lopping trees) of this Order,

over any part of the strategic road network without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and/or submit a scheme of traffic management for National Highways' approval.

(3) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1) or (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 refused 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 within 2 months of receipt of the information to which the request for further particulars relates; and
- (d) may be subject to any 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 along with collateral warranties in a form agreed by National Highways.

(6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with sub-paragraph (1) of this Part.

Construction of the specified works

51.—(1) The undertaker must give National Highways 28 days' notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

(3) The specified works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—

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- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 50(1) above or as subsequently varied by agreement between the undertaker and National Highways;
 - (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways; and
 - (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways.
- (4) The undertaker must ensure that (where possible) without entering the highway the highway is kept free from mud, soil and litter as a result of carrying out a Specified Work.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) If within 28 days on which a notice under sub-paragraph (6) or sub-paragraph (7) 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 incurred by National Highways in so doing, such sum to be payable within 30 days of demand.
- (9) 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.
- (10) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways.
- (11) During the construction of the specified works the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 50(1)(h) and the undertaker must carry out such maintenance at its own cost.

(12) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 50(1)(b) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

52.—(1) The undertaker must pay to National Highways a sum equal to the whole of any 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 50(1);
- (b) the supervision of the specified works;
- (c) the checking and approval of the information required to determine approvals under this Order;
- (d) all costs in relation to the transfer of any land required for the specified works; and
- (e) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and paragraphs (a)(d); and
- (f) 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) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it 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.

(5) 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 issue of the provisional certificate issued pursuant to paragraph 53(4).

(6) Within 28 days of the issue of the final account—

- (a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it;
- (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.

(7) If any payment due under any of the provisions of this Part of this Schedule 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

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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.

Provisional Certificate

53.—(1) Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the specified works, National Highways will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways prior to reopening the strategic road network.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the specified works; and
- (b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

- (a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;
- (b) the specified works incorporating the approved remedial works under paragraph (a) and any further works notified to the undertaker pursuant to sub-paragraph (3)(b) have been completed to the satisfaction of National Highways;
 - (i) the as built information has been provided to National Highways; and
 - (ii) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

(5) On the issue of the provisional certificate the bond sum shall be reduced to 20% of the total bond sum save insofar as any claim or claims have been made against the bond before that date in which case National Highways will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the specified works.

(6) The undertaker must submit a stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.

Opening

54. The undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 14 days of that date.

Final condition survey

55.—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 53(2), arrange for the highways structures and assets that were the subject of the condition survey 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 (1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to sub-paragraph (1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing.

(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

Defects Period

56.—(1) The undertaker must at its own expense remedy any defects in the strategic road network as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);
- (b) in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the expiry of the defects period National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

Final Certificate

57.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the strategic road network; and
- (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.

(3) The undertaker must carry out such works notified to it pursuant to sub-paragraph (2).

(4) When National Highways is satisfied that—

- (a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph (2) and any remedial works required

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as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways; and

- (b) the NH costs have been paid to National Highways in full;

National Highways must issue the final certificate after which the bond shall be released in full.

(5) The undertaker must pay to National Highways within 28 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to these provisions.

Security

58. The specified works must not commence until—

- (a) the undertaker procures that the specified works are secured by a bond from a bondsman first approved by National Highways in the agreed form between the undertaker and National Highways to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; and
- (b) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 52 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule.

Commuted sums

59.—(1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, prior to the commencement of the specified works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provisional certificate.

Insurance

60. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (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

61. The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Maintenance of the specified works

62.—(1) The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) The undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days' in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph 54 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Land

63.—(1) Following the issue of the final certificate pursuant to paragraph 57(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works.

(2) If the undertaker receives notice under sub-paragraph (1) then the undertaker must effect a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways.

(3) The undertaker must not under the powers of this Order—

- (a) acquire or use land forming part of;
- (b) acquire new or existing rights over; or
- (c) seek to impose or extinguish any restrictive covenants over;

any of the strategic road network, or extinguish any existing rights of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalserviceteam@nationalhighways.co.uk

(4) Where any land or interest is proposed to be acquired for the benefit of National Highways, the undertaker must, unless otherwise agreed by National Highways, exercise article 23 (compulsory acquisition of land) and article 25 (compulsory acquisition of rights and imposition of restrictive covenants) as applied by article 29 (application of the 1981 Act) of this Order to directly vest in National Highways any such land or interest.

Expert Determination

64.—(1) Article 46 (arbitration) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

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- (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 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 46 (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 6

FOR THE PROTECTION OF INTERNAL DRAINAGE BOARD

65. The provisions of this Part have effect for the protection of the Board unless otherwise agreed in writing between the undertaker and the Board.

66. In this Part—

“the Board” means Hundred of Wisbech Internal Drainage Board or King’s Lynn Internal Drainage Board (as applicable);

“construction” includes execution, placing, altering, replacing, relaying and removal; and “construct” and “constructed” must be construed accordingly;

“drainage work” means any ordinary watercourse and includes any land that provides or is expected to provide flood storage capacity for any ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

“evidence” includes hydraulic modelling, infiltration test results and geotechnical evaluations;

“Internal Drainage District” has the meaning given in the Land Drainage Act 1991;

“ordinary watercourse” has the meaning given in section 72 (Interpretation) of the Land Drainage Act 1991;

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

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 9 metres of a drainage work within the Board’s Internal Drainage District or is otherwise likely to—

- (a) affect any drainage work within the Board’s Internal Drainage District
- (b) affect the total volume or volumetric rate of flow of water in or flowing to or from any drainage work within the Board’s Internal Drainage District;
- (c) affect the flow of water in any drainage work within the Board’s Internal Drainage District; or
- (d) affect the conservation, distribution or use of water resources.

67.—(1) Before beginning to construct any specified work, the undertaker must submit to the Board plans of the specified work, evidence to support said plans and any such further particulars available to it as the Board may within 28 days of the submission of the plans (or such other time period as may be agreed between the Board and the undertaker) reasonably require (or submission of further particulars if required by the Board).

(2) Not Used.

(3) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Board or determined under paragraph 76.

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

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or the submission of further particulars if applicable) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements and conditions as the Board may consider appropriate.

(5) The Board must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (4)(b).

68. Without limiting paragraph 67, the requirements which the Board may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of strike plates, flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

69.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Board under paragraph 68, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and
- (b) to the reasonable satisfaction of the Board,

and an officer of the Board is entitled to give such notice as may be reasonably required in the circumstances to watch and inspect the construction of such works.

(2) The undertaker must give to the Board—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If the Board reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the Board is constructed otherwise than in accordance with the requirements of this Part, the Board may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part or (if the undertaker so elects and the Board in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Board reasonably requires.

(5) Subject to sub-paragraph (8), to the extent that a culvert is within a watercourse maintained by the Board and the Board intends to replace such a culvert, or in the event that the Board requires or gives its consent to a third party to replace a culvert, that is crossed by Work No. 7 or 8, and the

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replacement of the culvert will reasonably require the relocation of Work No. 7 or 8 either above or below the new culvert, the Board must provide the undertaker with 28 days written notice confirming its intention to replace the culvert or that a third party intends to replace the culvert and—

- (a) the undertaker must, within 28 days of receiving the notice (or such other time period as may be agreed between the Board and the undertaker), advise the Board of the timescale it requires to relocate Work No. 7 or 8 (such timescale not to exceed 12 months unless otherwise agreed with the Board) and the specifications for the relocated Work No. 7 or 8; and
- (b) the undertaker must take all reasonable steps to relocate Work No. 7 or 8 at its own cost including the installation of strike plates if Work No. 7 or 8 is relocated below the new culvert as soon as reasonably practicable and within the timescale advised to the Board.

(6) Subject to sub-paragraph (7), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Board may execute the works specified in the notice, and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

(7) In the event of any dispute as to whether sub-paragraph (4) 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 Board must not except in an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally resolved by agreement or determined under paragraph 76.

(8) If the undertaker does not comply with the requirements set out in sub-paragraph (5)(a) within 28 days or the timescale specified under sub-paragraph (5)(b), as applicable, the Board must not except in an emergency commence any works to replace the culvert within 6 metres of Work No. 7 or 8 before the matter has been determined under paragraph 76.

70. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Board and, if the undertaker fails to do so, the Board may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

71.—(1) The undertaker must compensate the Board in respect of all costs, charges and expenses that the Board may reasonably incur, have to pay or may sustain—

- (a) in the examination or approval of plans and evidence under this Part;
- (b) in inspecting the proposed site for and construction of any specified work or any protective works required by the Board under this Part; and
- (c) in carrying out of any surveys or tests by the Board that are reasonably required in connection with the construction of the specified work.

(2) Subject to sub-paragraphs (3) and (4), where the Board notifies the undertaker that it intends to replace a culvert that is within a watercourse maintained by the Board, or in the event that the Board requires or gives its consent to a third party to replace a culvert, that is crossed by Work No. 7 or 8, and the replacement of the culvert will not require the relocation of Work No. 7 or 8 under paragraph 69(5), the undertaker must—

- (a) compensate the Board in respect of all additional costs, charges and expenses reasonably incurred by the Board relating to the construction or maintenance of the new culvert that are directly caused by the presence of Work No. 7 or 8; or

(b) compensate any third party required by the Board, or to whom the Board has given its consent, to replace a culvert in respect of all additional costs, charges and expenses reasonably incurred relating to the construction of the new culvert that are directly caused by the presence of Work No. 7 or 8 up to a maximum of 10% of the total costs of replacing the culvert or £250,000.00 (increased in accordance with the most recent published figure for the Construction Output Price Index or during any period when no such index exists the index which replaces it or is the nearest equivalent to it) whichever is the lower amount.

(3) The undertaker is not liable for any costs, charges and expenses under sub-paragraph (2) to the extent that they are attributable to the Board or a third party failing to carry out and execute works properly with due care and attention and in a skilful and workmanlike manner or are incurred as a result of damage to a culvert caused by a third party and could be recovered from such a third party.

(4) The Board or a third party must provide the undertaker with an estimate of any reasonable costs, charges and expenses to be paid by the undertaker under sub-paragraph (2) prior to such costs, charges and expenses being incurred.

72.—(1) Without limiting the other provisions of this Part, the undertaker must compensate the Board in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, reasonably recovered from or incurred by the Board by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such land

which is caused by, or results from, the construction of the specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the specified work.

(2) The Board must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(3) The Board must use its reasonable endeavours to mitigate in whole or in part and to minimise any claims, demands, proceedings, costs, damages, expenses or loss to which this paragraph applies.

73. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Board, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part.

74. If in consequence of the powers granted under this Order the access to any drainage work is materially obstructed, the undertaker must provide such alternative rights and means of access to such drainage work as will enable the Board to maintain or use the drainage work no less effectively than was possible before such obstruction.

75.—(1) The Board and the undertaker may enter into agreements with respect to the maintenance of any drainage work located within the boundary of Work No. 2B as shown on the works plans.

(2) Such an agreement may, without prejudice to the generality of sub-paragraph (1), contain such terms as to the nature and frequency of any maintenance works, payments and otherwise as the parties consider appropriate.

76. Any dispute between the undertaker and the Board under this Part, unless otherwise agreed, must be determined by arbitration under article 46 (arbitration), but must be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Energy

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Security and Net Zero acting jointly on a reference to them by the undertaker or the Board, after notice in writing by one to the other.

PART 7

FOR THE PROTECTION OF ANGLIAN WATER

77. For the protection of Anglian Water, the following provisions shall, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

78. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in no less efficient a manner than previously;

“Anglian Water” means Anglian Water Services Limited (company number 02366656) whose registered office is at Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire PE29 6XU;

“apparatus” means:

- (a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991;
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act;
- (d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian water; and
- (e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus,

and in this definition, expressions and words used in this definition and defined in section 219 (general interpretation) of the Water Industry Act 1991 have the same meaning as in that Act;

“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; and

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

On street apparatus

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

Apparatus in stopped up streets

80.—(1) Where any street is stopped up under article 11 (power to alter layout, etc., of streets), where Anglian Water has apparatus in the street or accessed by virtue of the street, it has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Anglian Water legal easements reasonably satisfactory to Anglian Water

in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Anglian Water to require the removal of that apparatus under paragraph 83 or the power of the undertaker to carry out works under paragraph 85.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 13 (temporary prohibition or restriction of use of streets and public rights of way), Anglian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

81. The undertaker, in the case of the powers conferred by article 20 (protective works to buildings), must not exercise those powers so as to obstruct or render less convenient the access to any apparatus without the written consent of Anglian Water (such consent not to be unreasonably withheld or delayed).

Acquisition of land

82. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

83.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until—

- (a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and
- (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 84.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

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(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46, and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such “deemed consent” does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors.

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use best endeavours to comply with Anglian Water’s reasonable requests for a reasonable period of time to enable Anglian Water to—

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

84.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

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

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2010 or other legislation.

Retained apparatus

85.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the

undertaker under paragraph 83(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

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

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 83 to 84 and 86 to 88 apply as if the removal of the apparatus had been required by the undertaker under paragraph 83(2).

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances, using its reasonable endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus—

- (a) 4 metres where the diameter of the pipe is less than 250 millimetres;
- (b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres, and
- (c) a distance to be agreed on a case by case basis and before the submission of the plan under sub-paragraph (1) is submitted where the diameter of the pipe exceeds 400 millimetres.

Expenses and costs

86.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule 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,

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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 46 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Anglian Water by virtue of 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 is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

87.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 81 or 83(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents.

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

88. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 83(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 85, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking,

using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

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

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

91. The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

PART 8

FOR THE PROTECTION OF RAILWAY INTERESTS

92. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 106 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

93. In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

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

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

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- (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—

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 4 (maintenance of authorised development) in respect of such works.

94.—(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 its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

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

- (a) article 3 (development consent granted by the Order);
- (b) article 4 (maintenance of authorised development);
- (c) article 18 (discharge of water);
- (d) article 19 (authority to survey and investigate the land);
- (e) article 21 (felling or lopping of trees);
- (f) article 23 (compulsory acquisition of land);
- (g) article 25 (compulsory acquisition of rights and imposition of restrictive covenants);
- (h) article 26 (acquisition of subsoil only);
- (i) article 27 (private rights);
- (j) article 28 (power to override easements and other rights);
- (k) article 32 (temporary use of land for the construction of the authorised development);
- (l) article 33 (temporary use of land for maintaining the authorised development);
- (m) article 34 (statutory undertakers);
- (n) the powers conferred by section 11(3) (power of entry) of the 1965 Act;

- (o) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (p) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (q) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 34 (statutory undertakers), article 28 (power to override easements and other rights) or article 27 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

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

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be

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approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

97.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 96(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 96;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

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

98. The undertaker must—

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

99. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

100.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as

is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 96(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 101(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.

101. 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 96(3) or in constructing any protective works under the provisions of paragraph 96(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

102.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of

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radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 96(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 96(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 96(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

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- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 97.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 106(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph 97 applies.

(10) For the purpose of paragraph 101(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 46 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

103. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

104. 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.

105. 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.

106.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 45 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

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and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands;
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

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

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

107. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 106) 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).

108. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

109. 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.

110. 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.

111. 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 8 (consent to transfer benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

112. 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 42 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

113. In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 102) the provisions of article 46 (arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator in accordance with the rules at Schedule 15 to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

PART 9

FOR THE PROTECTION OF CAMBRIDGESHIRE COUNTY COUNCIL AS HIGHWAY AUTHORITY

114.—(1) The following provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and Cambridgeshire County Council, have effect.

(2) In this Part of this Schedule—

“highway” means any highway of which Cambridgeshire County Council is the highway authority;

“plans” includes sections, designs, drawings, specifications, soil reports, staging proposals, programmes, calculations, methods of construction, risk assessments and details of the extent, timing and duration of any proposed occupation of any highway and “approved plans” means plans approved or deemed to be approved or settled by arbitration in accordance with the provisions of this Part of this Schedule; and

“property of Cambridgeshire County Council” means any apparatus or street furniture of the highway authority affixed to or placed under any highway.

“works” means so much of any part of the authorised development as forms part of or is intended to become a highway, or part of any such highway, or any work which could introduce water onto the highway or any work which is underneath or over the highway.

(3) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Cambridgeshire County Council, that approval or consent must be in writing and subject to such reasonable terms and conditions as Cambridgeshire County Council may require.

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(4) In exercising the powers conferred by this Order in relation to any highway the undertaker must have regard to the potential disruption of traffic which may be caused and must seek to minimise such disruption so far as is reasonably practicable.

115.—(1) Before commencing the construction of, or the carrying out of any work which involves interference with a highway, the undertaker must submit to Cambridgeshire County Council for its approval plans relating thereto, and the works must not be carried out except in accordance with the plans submitted to, and approved by, Cambridgeshire County Council.

(2) If within 28 days after the plans have been submitted Cambridgeshire County Council has not approved or disapproved them, it is deemed to have approved the plans as submitted provided that this sub-paragraph does not apply to any plans submitted for approval pursuant to requirement 5 of Schedule 2 where the time periods set out in Schedule 12 apply.

(3) In the event of any disapproval of plans by Cambridgeshire County Council under sub-paragraph (2), the undertaker shall re-submit the plans with modifications and, in that event, if Cambridgeshire County Council has not intimated its disapproval and the grounds of disapproval within 28 days of the plans being re-submitted, it is deemed to have approved them.

(4) The undertaker must include in any submission made to Cambridgeshire County Council under sub-paragraph (1) or any re-submission under sub-paragraph (3), a statement that the deemed approval provisions of sub-paragraph (2) or sub-paragraph (3) apply, as the case may be, and if the submission fails to do so, the deemed approval provision is null and void.

(5) Any officer of Cambridgeshire County Council duly appointed for the purpose of inspecting the works may at all reasonable times during the carrying out of work and following completion of the works, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the works authorised by this Order (and such inspection may include works to be uncovered as reasonably required by the officer at the cost of the undertaker) which—

(a) is in, over or under any highway; or

(b) which may affect any highway or any property of Cambridgeshire County Council,

during the carrying out of the work, and the undertaker must give to such officer all reasonable facilities for such inspection and shall ensure that the officer is accompanied by one of its contractors, agents or employees familiar with the works, if the officer is of the opinion that the construction of the work is attended with danger to any highway or to any property of Cambridgeshire County Council on or under any highway, the undertaker must adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway.

(6) In the construction of any part of the said works under a highway no part of it shall, except with the consent of Cambridgeshire County Council, be so constructed as to interfere with the provision of proper means of drainage of the surface of the highway.

116.—(1) The undertaker must not alter, disturb or in any way interfere with any property of Cambridgeshire County Council on or under any highway, or the access thereto, without the consent of the Cambridgeshire County Council, and any alteration, diversion, replacement or reconstruction of any such property which may be necessary may be made by Cambridgeshire County Council or the undertaker as the Cambridgeshire County Council thinks fit, and the expense reasonably incurred by Cambridgeshire County Council in so doing must be repaid to Cambridgeshire County Council by the undertaker.

(2) The undertaker must not under the powers conferred by or under this Order without the consent of Cambridgeshire County Council, acquire or enter upon, take or use whether temporarily or permanently or acquire any new rights over any part of any highway, including subsoil beneath the surface of any highway.

(3) If within 28 days after a request for consent has been submitted Cambridgeshire County Council has not given or refused such consent, it is deemed to have consented to the request as submitted provided that the undertaker includes in any such request for consent a statement confirming that the deemed consent provisions this paragraph apply to such request and if such request fails to do so, the deemed consent provision of this paragraph is null and void.

117.—(1) Where any part of any highway has been broken up or disturbed by the undertaker, the undertaker must make good the subsoil, foundations and surface of that part of the highway to the reasonable satisfaction of Cambridgeshire County Council and must maintain the same to the reasonable satisfaction of Cambridgeshire County Council for such time as may reasonably be required for the permanent reinstatement of the highway.

(2) The reinstatement of that part of the highway must be carried out by the undertaker to the reasonable satisfaction of Cambridgeshire County Council in accordance with such requirements as to specification of material and standards of workmanship as may be prescribed for equivalent reinstatement work by regulations made under section 71 of the 1991 Act.

118. If any damage to any highway or any property of Cambridgeshire County Council on or under any highway is caused by, or results from, the construction of any work authorised by this Order or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon such work, the undertaker must, in the case of damage to a highway, make good such damage to the reasonable satisfaction of Cambridgeshire County Council and, where the undertaker does not make good, or in the case of damage to property of Cambridgeshire County Council, the undertaker must pay reasonable compensation to Cambridgeshire County Council for such damage.

119. The fact that any act or thing may have been done in accordance with plans approved by Cambridgeshire County Council does not (if it was not attributable to the act, neglect or default of Cambridgeshire County Council or of any person in its employment or its contractors or agents) exonerate the undertaker from any liability, or affect any claim for damages, under this Part or otherwise.

120. Cambridgeshire County Council must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which paragraph 118 applies. If requested to do so by the undertaker, Cambridgeshire County Council must provide an explanation of how the claim has been minimised. The undertaker is only liable under paragraph 118 for claims reasonably incurred by Cambridgeshire County Council.

121. On completion of the works the undertaker must seek written certification from Cambridgeshire County Council that the works are acceptable and relevant drawings and new highway asset information shall be provided to Cambridgeshire County Council as part of the undertaker's request for certification. Cambridgeshire County Council shall only resume its maintenance responsibilities for the affected highways once certification under this paragraph has been issued.

122.—(1) Cambridgeshire County Council must not unreasonably withhold or delay the issue of a written certification under paragraph 121. Subject to sub-paragraphs (2) and (3), if Cambridgeshire County Council has not given or refused such written certification within 28 days, it is deemed to have issued a written certification provided that the undertaker includes in any such request for certification a statement confirming that the deemed certification provisions this paragraph apply to such request and if such request fails to do so, the deemed certification provision of this paragraph is null and void.

(2) Any officer of Cambridgeshire County Council duly appointed for the purpose of issuing a written certification under sub-paragraph (1) may at all reasonable times and on reasonable notice during the 28 day period enter upon and inspect any part of the completed works.

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(3) If further information is requested by Cambridgeshire County Council, the 28 day period to issue a written certificate in accordance with sub-paragraph (1) will recommence starting on the date that such further information has been submitted by the undertaker to Cambridgeshire County Council.

123. On receipt of certification that completed works are acceptable under paragraph 121 above unlocking devices for the new bollards on New Bridge Lane shall be provided by the undertaker to Cambridgeshire County Council.

124. Any difference arising between the undertaker and the Cambridgeshire County Council under this part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) shall be resolved by arbitration under article 46 (arbitration).

125.—(1) Subject to sub-paragraphs (2) and (3), the undertaker must indemnify Cambridgeshire County Council from and against all costs, expenses, damages, losses and liabilities suffered by Cambridgeshire County Council arising from or in connection with any claim, demand, action or proceedings resulting from damage caused by the construction, maintenance or use of the specified works.

(2) Sub-paragraph (1) does not apply if the costs, expenses, liabilities and damages were caused by or arose out of the neglect or default of Cambridgeshire County Council or its officers, servants, agents or contractors or any person or body for whom it is responsible.

(3) If any person makes a claim or notifies an intention to make a claim against Cambridgeshire County Council which may reasonably be considered likely to give rise to a liability under this paragraph then Cambridgeshire County Council must—

- (a) as soon as reasonably practicable give the undertaker reasonable notice of any such third party claim or demand, specifying the nature of the indemnity liability in reasonable detail; and
- (b) not make any admission of liability, agreement or compromise in relation to the indemnity liability without first consulting the undertaker and considering their representations.

(4) The undertaker acknowledges that Cambridgeshire County Council may receive statutory compensation claims and that Cambridgeshire County Council may not be able to comply with sub-paragraph (3) in respect of such claims.

(5) Where Cambridgeshire County Council considers that sub-paragraph (4) applies to any claim or demand it must give notice of that view as part of the relevant notice provided pursuant to sub-paragraph (3)(a).

(6) Cambridgeshire County Council must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph applies where it is within Cambridgeshire County Council's reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of Cambridgeshire County Council's control. If reasonably requested to do so by the undertaker, Cambridgeshire County Council must provide an explanation of how any claim has been mitigated or minimised or where mitigation or minimisation is not possible an explanation as to why.

126. All reasonable costs incurred by Cambridgeshire County Council under this part of this Schedule shall be paid in full by the undertaker on written demand by Cambridgeshire County Council.

SCHEDULE 12

Article 44

PROCEDURE FOR THE DISCHARGE OF REQUIREMENTS

Interpretation

1. In this Schedule—

“relevant authority” means the relevant planning authority, relevant highway authority, traffic authority, street authority, or the owner of a watercourse, sewer or drain as may be appropriate to the consent, agreement or approval sought; and

“requirement consultee” means any body named in a requirement as a body required to be consulted by the relevant authority in discharging that requirement.

Applications made under requirements

2.—(1) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) the relevant authority must give notice to the undertaker of their decision on the application within a period of 12 weeks beginning with—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under sub-paragraph (2); or
- (c) such longer period as may be agreed in writing by the undertaker and the relevant authority, whichever is the latest.

(2) Subject to paragraph (4), in the event that the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must:

- (a) include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are; and
- (b) include confirmation that the application has been notified and provided to the requirement consultees in accordance with sub-paragraph (5), if the provision governing or requiring the application specifies that consultation with a requirement consultee is required. Such confirmation to include contact details for the requirement consultees.

(4) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement included in this Order, and—

- (a) the relevant authority does not determine the application within the period set out in sub-paragraph (1) and such application is accompanied by a report pursuant to subparagraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) the relevant planning authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,

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then the application is to be taken to have been refused by the relevant authority at the end of that period.

(5) At the same time as submitting an application to the relevant planning authority for any consent, agreement or approval required by a requirement, the undertaker must also give notice of such application, and provide a copy of the application, to any requirement consultee, if the provision governing or requiring the application specifies that consultation with a requirement consultee is required. As part of the notification to any requirement consultee, the undertaker must include a statement that refers to:

- (a) the timeframes in which the requirement consultee can request any further information from the undertaker (via the relevant planning authority) as prescribed in paragraph 3(6)(a) and the consequences of the failure to meet those timescales as prescribed in paragraph 3(6)(b); and
- (b) the timeframes in which the requirement consultee must give notice to the relevant planning authority of its comments on the application as prescribed in paragraph 3(6)(d) and the consequences of the failure to meet those timescales as prescribed in paragraph 3(6)(e).

Further information and consultation

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

(2) In the event that the relevant authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required the relevant authority must, within 14 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant authority must notify the undertaker in writing specifying any further information requested by the requirement consultee within 15 working days of receipt of such a request and in any event within 35 working days of receipt of the application or such longer period as may be agreed in writing by the undertaker and the relevant authority.

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

(5) Where further information is requested under this paragraph 3 in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2(1)(b), paragraph 2(4) and paragraph 3.

(6) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required:

- (a) A requirement consultee is required to notify the relevant planning authority in writing specifying any further information it considers necessary in order to comment on the application within 10 working days of receipt of the application pursuant to paragraph 2(5);
- (b) If a requirement consultee does not give notification as specified in sub-paragraph (a) it is deemed to have sufficient information to comment on the application and is not thereafter entitled to request further information without the prior agreement of the undertaker and relevant planning authority;
- (c) At the same time as providing any further information to the relevant planning authority pursuant to a request under paragraph (2), if the undertaker has been notified of further

information requested by a requirement consultee, the undertaker must also give any further information to the requirement consultee;

- (d) A requirement consultee is required to notify the relevant planning authority in writing of any comments on the application within 15 working days of receipt of the application from the undertaker pursuant to paragraph 2(5), or the receipt of any further information pursuant to sub-paragraph (c) (where further information has been requested); and
- (e) If a requirement consultee does not give notification as specified in sub-paragraph (d) it is deemed to have no comments on the application.

Appeals

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

- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 2(4)) an application for any consent, agreement or approval required by an article or requirement included in this Order or grants it subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant authority and any requirement consultee required to be consulted pursuant to the article or requirement which is the subject of the appeal (together with the undertaker, these are the “appeal parties”);
- (b) the Secretary of State is to appoint a person within 20 working days of receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
- (c) the relevant authority and any consultee required to be consulted pursuant to the article or requirement which is the subject of the appeal must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to paragraph (c) above;
- (e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to paragraph (d); and
- (f) the appointment of the person pursuant to paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

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

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant authority and any consultee required to be consulted pursuant to the article or requirement the subject of the appeal on the date specified by the appointed

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person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date but otherwise is to be in accordance with the process and time limits set out in paragraphs (2)(c) to (2)(e).

- (5) On an appeal under this paragraph, the appointed person may—
 - (a) allow or dismiss the appeal; or
 - (b) reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

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

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

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

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

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

(11) On application by the relevant authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

SCHEDULE 13

Article 42

DOCUMENTS AND PLANS TO BE CERTIFIED

Table 10

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>	<i>(4)</i> <i>Date</i>
access and public rights of way plans	2.4	7	August 2023
book of reference	4.1	6	August 2023

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(1) <i>Document name</i>	(2) <i>Document reference</i>	(3) <i>Revision number</i>	(4) <i>Date</i>
carbon capture and export embedded design measures	14.7 (Appendix B)	1	June 2023
carbon capture and export readiness reserve space plan	10.7	1	March 2023
combined heat and power embedded design measures	14.7 (Appendix A)	1	June 2023
combined heat and power assessment	7.6	1	June 2022
design and access statement	7.5	1	June 2022
environmental statement	6.1, 6.2	1	June 2022
environmental statement figures	6.3	2	March 2023
environmental statement appendices	6.4	2	March 2023
flood risk assessment	6.4 (ES Appendix 12A)	1	June 2022
land plans	2.2	5	August 2023
outline biodiversity net gain strategy	6.4 (ES Appendix 11M)	5	July 2023
outline construction environmental management plan	7.12	6	July 2023
outline construction traffic management plan	6.4 (ES Appendix 6A)	7	August 2023
outline decommissioning plan	12.4	1	May 2023
outline drainage strategy	6.4 (ES Appendix 12F)	4	August 2023
outline employment and skills strategy	7.8	1	June 2022
outline fire prevention plan	7.10	3	August 2023
outline flood emergency management plan	7.9	2	March 2023

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(1) <i>Document name</i>	(2) <i>Document reference</i>	(3) <i>Revision number</i>	(4) <i>Date</i>
outline landscape and ecology strategy	6.3 (ES Figure 3.14)	2	March 2023
outline landscape and ecology management plan	7.7	2	April 2023
outline lighting strategy	6.4 (ES Appendix 3B)	3	June 2023
outline local air quality monitoring strategy	9.21	3	May 2023
outline odour management plan	7.11	3	August 2023
outline operational noise management plan	6.4 (ES Appendix 7D)	4	June 2023
outline operational traffic management plan	7.15	4	July 2023
outline operational travel plan	6.4 (ES Appendix 6C)	1	June 2022
waste area plan	15.9	1	July 2023
works plans	2.3	4	August 2023

SCHEDULE 14

Article 3

MAXIMUM AND MINIMUM DESIGN PARAMETERS

Table 11

(1)	(2)	(3)	(4)	(5)	(6)
<i>Element of authorised development</i>	<i>Work No.</i>	<i>Maximum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Maximum height (metres) (above finished floor level of 3.0m AOD)</i>	<i>Minimum height (metres) (above finished floor level of 3.0m AOD)</i>
Gatehouse weighbridge	/ 2A	9.5	2.4	3	
Tipping hall	1	58.5	38	18.5	
Fire water tank	2A		16	10	

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(1)	(2)	(3)	(4)	(5)	(6)
<i>Element of authorised development</i>	<i>Work No.</i>	<i>Maximum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Maximum height (metres) (above finished floor level of 3.0m AOD)</i>	<i>Minimum height (metres) (above finished floor level of 3.0m AOD)</i>
Fire water pump building	2A	12.5	9.5	5.5	
Waste bunker building	1	102	37	38.5	
Tipping bunker	1	–	–	-14	
Main waste bunker	1	–	–	-14	
Boiler house building	1	55	47.6	52	
Loading area (a)	1	12.2	12.2	12	
APCr silos	1	33.3	12.2	37	
Loading area (b)	1	12.2	12.2	12	
Air pollution control building	1	33.2	28.6	37	
Induced draft fans building	1	10	10	12	
Chimneys	1A	–	3.2	90	84
CEMS platform	1A	–	–	18	
Switchgear building north	1	35.2	10	35	
Switchgear building south	1	12.4	10	18	
IBA enclosure east	1	14	11	12	
IBA enclosure west	1	11	6	12	
Diesel tanks and urea tanks building	1	25.9	9.1	35	

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(1)	(2)	(3)	(4)	(5)	(6)
<i>Element of authorised development</i>	<i>Work No.</i>	<i>Maximum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Maximum height (metres) (above finished floor level of 3.0m AOD)</i>	<i>Minimum height (metres) (above finished floor level of 3.0m AOD)</i>
Compressed air station	1	13	8	10	
Main transformer	2A	11	6	12	
Emergency diesel generator	1	13.5	5.5	12	
Air cooled condenser	1	37	37	30	
Turbine hall	1	47	34	27	
Water treatment plant	1	30	22	18	
Workshop and stores	2A	34	15	18	
Administration building	1B	34	12	15	
132kV switching compound	2A	23	13	6.5	
Private wire transformer	2A	11	5	12	
Private wire switchgear compound	2A	7	6	12	
Water re-cooling system	1	18.5	7.5	27	
Steam and condensate pipelines	3	–	–	23	

SCHEDULE 15

Article 46

ARBITRATION RULES

Primary objective

1.—(1) The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 46.

(2) The parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the parties. Any dispute which is not resolved amicably by the senior management of the parties within twenty (20) working days of the dispute arising, or such longer period as agreed in writing by the parties, will be subject to arbitration in accordance with the terms of this Schedule.

(3) The Arbitration will be deemed to have commenced when a party (“the Claimant”) serves a written notice of arbitration on the other party (“the Respondent”).

Time periods

2.—(1) All time periods in these Arbitration Rules will be measured in working days and this will exclude weekends, bank and public holidays.

(2) Time periods will be calculated from the day after the arbitrator is appointed which will be either—

- (a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration will be that set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 15 days of the arbitrator being appointed, the Claimant will provide both the Respondent and the arbitrator with—

- (a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant’s contentions as to those issues, and the remedy it is seeking; and
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 15 days of receipt of the Claimant’s statements under sub-paragraph (2) by the arbitrator and Respondent, the Respondent will provide the Claimant and the arbitrator with—

- (a) a written Statement of Defence responding to the Claimant’s Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant’s claim, its acceptance of any element(s) of the Claimant’s claim, its contentions as to those elements of the Claimant’s claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and

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- (c) any objections it wishes to make to the Claimant's statements, comments on the Claimant's expert report(s) (if submitted by the Claimant) and explanations for the objections.
- (4) Within 5 days of the Respondent serving its statements pursuant to sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the arbitrator with—
 - (a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
 - (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
 - (c) any expert report in response to the Respondent's submissions;
 - (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent; and
 - (e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The arbitrator will make an award on the substantive difference(s) based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(2) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(3) Within 5 days of receiving the last submission, the arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

(4) Within 10 days of the arbitrator advising the parties that he will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the arbitrator will direct a date and venue which he considers is fair and reasonable in all the circumstances. The date for the hearing will not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(5) A decision will be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any expert(s) attending the hearing may be asked questions by the arbitrator.

(6) There will be no process of examination and cross-examination of experts, but the arbitrator will invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

- (a) at least 20 days before a hearing, the arbitrator will provide a list of issues to be addressed by the expert(s);
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 10 days of the issues being provided; and
- (c) the form and content of a joint report will be as directed by the arbitrator and must be provided at least 5 days before the hearing.

(7) Within 10 days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator will take these submissions into account in the award.

(8) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the

substantive difference within 4 months of the date on which they are appointed, unless both parties otherwise agree to an extension to the date for the award.

(9) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before them attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction or both.

(10) The arbitrator's award will include reasons. The parties will accept that the extent to which reasons are given will be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996(10), including the non-mandatory sections, save where modified by these Rules.

(2) There will be no discovery or disclosure, except that the arbitrator will have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales or procedure or both—

- (a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice; and
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The costs of the Arbitration will include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the Arbitration.

(2) Subject to sub-paragraph (3), the arbitrator will award recoverable costs on the general principle that each party should bear its own costs.

(3) The arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as defined within the National Planning Practice Guidance or such other guidance as may replace it.

Confidentiality

7.—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation will be open to and accessible by the public.

(2) The arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(10) 1996 c. 23.

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(3) Nothing in this paragraph will prevent any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.