

SCHEDULES

SCHEDULE 12

Article 39

PROTECTIVE PROVISIONS

PART 1

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

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

2. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989⁽¹⁾), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
 - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991;
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991⁽²⁾; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

(1) 1989 c. 29.
(2) 1991 c. 56.

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“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⁽³⁾;
- (c) 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 the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary closure of 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 and Crown 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 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 38 (arbitration).

(3) 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).

(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 38 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part 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 38 (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(2), 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 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

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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 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this 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 38 (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 6(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

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 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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

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

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

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

(2) In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(4);

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

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

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network 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.

13. The exercise of the powers of article 28 (statutory undertakers) is subject to Part 10 (undertakers’ works affecting electronic communications apparatus) of the electronic communications code.

14.—(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—

(4) 2003 c. 21.

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- (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 make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

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

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 39 (arbitration).

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

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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

17. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent access to the Airwaves Solutions Limited telecommunications site located 2.68 metres from the Order limits by Airwaves Solutions Limited, its employees, contractors or sub-contractors, such access to be over plot 9-06.

PART 3

FOR THE PROTECTION OF ANGLIAN WATER

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

19. In this Part of this Schedule—

“apparatus” means any works, mains (including the strategic water main), pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage and—

- (a) any drain or works vested in Anglian Water under The Water Industry Act 1991,
- (b) 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,

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and 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;

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

“functions” includes powers and duties;

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

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

“strategic water main” means the existing 500 millimetre diameter water main located at East Site A.

20.—(1) The undertaker must not interfere with, build over, under or near to any apparatus within the Order land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus—

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe is over 750 millimetres or is the strategic water main,

unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

21. The alteration, extension, removal or re-location of any apparatus must not be implemented until—

- (a) any permits required under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed, and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water without delay for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

22. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension is to take place until Anglian Water has established, to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus. Anglian Water must use reasonable endeavours to establish contingency arrangements in a timely manner.

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23. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement with Anglian Water, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed..

24. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

25. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to Anglian Water and afforded the same protection as other Anglian Water assets.

26. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 21 to 23 and 25 above 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 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 any 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.

27. Anglian Water must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, penalties and costs to which the provisions of this Part of this Schedule apply. If requested to do so by the undertaker, Anglian Water will provide an explanation of how any claim has been minimised. The undertaker will only be liable under paragraph 26 for claims reasonably incurred by Anglian Water.

28. Nothing in paragraph 26 above 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 Anglian Water, its officers, servants, contractors or agents.

29. Any difference or dispute arising between the undertaker and Anglian Water under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Anglian Water, be determined by arbitration in accordance with article 38 (arbitration).

PART 4

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

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

Interpretation

31. In this Part of this Schedule—

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“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker and / or its contractor(s) to a level as may be approved by Cadent in writing or in the case of dispute in accordance with the terms and level of cover determined by an expert under paragraph 44. Such insurance is to be arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/ credit rating meets the same requirements as an “acceptable credit provider”, such policy is to include (but without limitation)—

- (a) Cadent as a Co-Insured;
- (b) a cross liabilities clause; and
- (c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (a) a parent company guarantee from a parent company in favour of Cadent to cover the undertaker’s liability to Cadent to a cap to be agreed on a per asset per event basis up to a total liability cap to be agreed (and not exceeding £50,000,000 (fifty million pounds) and in a form reasonably satisfactory to Cadent and where required by Cadent, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of Cadent to cover the undertaker’s liability to Cadent for an amount to be agreed on a per asset per event basis up to a total liability cap to be agreed (and not exceeding £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Cadent);

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

“apparatus” means any gas mains, 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 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” has the same meaning as in article 2 (interpretation) of the Order and “commencement” is to be construed accordingly, and for the purpose of this Part of this Schedule only includes any below ground surveys, monitoring or operations or receipt, erection of construction plant within 15 metres of any apparatus and remedial work in respect of any contamination or other adverse ground condition;

“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

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interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

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

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, 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” includes notwithstanding article 2 (interpretation) of the Order the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including construct, protect, use, repair, alter, renew or remove the apparatus;

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

“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 sub-paragraph 36(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 36(2) or otherwise.

On street apparatus

32.—(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 33, 38, 39, 40 and 41; and
- (b) where sub-paragraph (2) applies, paragraphs 36, 37 and 38.

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

Apparatus of Cadent in closed streets

33. Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 11 (temporary closure of public rights of way), 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 closure or diversion was in that street.

Protective works to buildings

34. The undertaker must exercise the powers conferred by article 15 (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

35.—(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 it will be the responsibility of the undertaker to procure or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development or maintenance thereof.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, 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 38 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 36 do not apply, the undertaker must, unless Cadent agrees otherwise—

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- (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

36.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 35, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 37(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus; and
- (b) subsequently for the maintenance of that 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 so do.

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

37.—(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 44 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

38.—(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 (6); and
- (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) For the purposes of sub-paragraph (4)(b) it will be deemed to be reasonable for any approval to be refused if Cadent considers that the specified works would—

- (a) cause interference with or risk of damage to its apparatus; or
- (b) prevent access to its apparatus at any time.

(6) In relation to any work to which sub-paragraph (1) or (2) 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.

(7) Specified works must only be executed in accordance with—

- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and

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(b) all conditions imposed under sub-paragraph (4)(a), and Cadent is entitled to watch and inspect the execution of those works.

(8) 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.

(9) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 30 to 32 and 35 to 37 apply as if the removal of the apparatus had been required by the undertaker under paragraph 36(2) and Cadent must give it 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days unless otherwise agreed by Cadent in writing 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.

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 39.

(12) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.

(13) In this paragraph, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

39.—(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 36(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;

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- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to paragraph 38(7).

(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 article 38 (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 statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus 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) Where anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by Cadent are less than the amount already paid by the undertaker, Cadent will repay the difference to the undertaker as soon as reasonably practicable.

Indemnity

40.—(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 15 (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

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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—

- (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.

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any part of the authorised development or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 (benefit of order granting development consent) of the 2008 Act or article 32 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any specified works yet to be executed and not falling within this sub-paragraph are subject to the full terms of this Part of this Schedule including this paragraph.

(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) The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised development on any land owned by Cadent or in respect of which Cadent has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of Cadent’s apparatus until the following conditions are satisfied—

- (a) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it will maintain such acceptable security for the construction period of the authorised development referred to in sub-paragraph (5) from the proposed date of commencement of construction of such works to the completion of those works) and Cadent has confirmed the same to the undertaker in writing. The acceptable security is to be released upon completion of the works referred to in sub-paragraph ; and
- (b) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Cadent that it will maintain such acceptable insurance for the construction period of the authorised development referred to in sub-paragraph (5)) from the proposed date of commencement of construction of such works) and Cadent has confirmed the same in writing to the undertaker.

(6) In the event that the undertaker fails to comply with sub-paragraph (5), nothing in this Part of this Schedule is to prevent Cadent from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

41. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

42.—(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 36(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 38, 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) Whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

43. If in consequence of any agreement reached in accordance with paragraph 35(1) or the powers granted by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

44. 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 38 (arbitration).

Notices

45. Notwithstanding article 40 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 38(1) must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com as well as via post to Plant Protection, Cadent Gas Limited, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA, or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 5

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

46.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part of this Schedule—

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“Agency” means the Environment Agency;

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

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, or tidal monitoring;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

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

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

“remote defence” means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating, flooding from, or in connection with, any main river;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within

- (a) 8 metres of the base of a remote defence which is likely to—
 - (i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence, or
 - (ii) interfere with the Agency’s access to or along that remote defence;
 - (b) 8 metres of a drainage work or is otherwise likely to—
 - (i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
 - (ii) affect the flow, purity or quality of water in any main river;
 - (iii) cause obstruction to the free passage of fish or damage to any fishery;
 - (iv) affect the conservation, distribution or use of water resources; or
 - (v) affect the conservation value of the main river and habitats in its immediate vicinity; or which involves;
 - (c) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and
 - (d) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work;
- “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

Submission and approval of plans

47.—(1) Before being to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 57.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;

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- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and
 - (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or in the discharge of its environmental duties.
- (4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).
- (5) In the case of a refusal, if requested to do so the Agency must provide reasons for the grounds of refusal.

Construction of protective works

48. Without limiting paragraph 47, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

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

by reason of any specified work.

Timing of works and service of notices

49.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 48, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than seven days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Schedule

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

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(2) Subject to sub-paragraph (3) and paragraph 55, if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (1) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (1) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 57.

51.—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5) and paragraph 55, if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 57.

(6) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage works

52. Subject to paragraph 55, if by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired,

or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

53. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of the undertaker becoming aware of such obstruction.

Free passage of fish

54.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 55, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) Subject to paragraph 55, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity

55. The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

56.—(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of—

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- (a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or
 - (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.
- (2) For the avoidance of doubt, in sub-paragraph (1)—
- “costs” includes—
- (a) expenses and charges;
 - (b) staff costs and overheads;
 - (c) legal costs; and
- “losses” includes physical damage.
- (3) The undertaker indemnifies the Agency against all liabilities, claims and demands arising out of or in connection with the authorised development or otherwise out of the matters referred to in sub-paragraphs (1)(a) and (1)(b).
- (4) For the avoidance of doubt, in sub-paragraph (3)—
- “claims” and “demands” include as applicable—
- (a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;
 - (b) any interest element of sums claimed or demanded;
- “liabilities” includes—
- (a) contractual liabilities;
 - (b) tortious liabilities (including liabilities for negligence or nuisance);
 - (c) liabilities to pay statutory compensation or for breach of statutory duty; and
 - (d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).
- (5) The Agency must give to the undertaker reasonable notice of any such claim or demand; and must not settle or compromise a claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.
- (6) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.
- (7) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.
- (8) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

Disputes

57. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 38 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Business, Energy and Industrial Strategy or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 6

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER AND NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

58. For the protection of National Grid Electricity Transmission Plc (“NGET”) or National Gas Transmission Plc (“NGT”) as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGET and NGT (as appropriate).

Interpretation

59. In this Part of this Schedule—

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

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of NGET or NGT (as appropriate) to enable NGET or NGT to fulfil their statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by NGET; or
- (b) any mains, pipes or other apparatus belonging to or maintained by NGT for the purposes of gas supply;

together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of either NGET or NGT for the purposes of transmission, distribution or supply or any one or more of the aforementioned purposes, 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(1) (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the operation and maintenance of the authorised development and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the undertaker and either NGET or NGT acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by either NGET or NGT (as appropriate)(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, will require the undertaker to submit for NGET or NGT's approval (as appropriate) a ground mitigation scheme;

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

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

“Incentive Deduction” means any incentive deduction NGET receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised development;

“maintain” and “maintenance” includes the ability and right to construct, use, repair, alter, inspect, renew or remove any apparatus or alternative apparatus;

“NGET” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

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

“NGESO” means as defined in the STC;

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

“specified works” means any of the authorised development or activities 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 64(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 64(2) or otherwise; or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 NGT's specification for “Safe Working in the Vicinity of National Grid, High pressure Gas Pipelines” and associated installation requirements for third parties, or activity that is referred to in NGET's EN43-8 “Development Near Overhead Lines” and HSE's guidance note 6 “Avoidance of Danger from Overhead Lines”, or activities referred to in any one or more of the aforementioned documents.

or any one or more of (a), (b) or (c) above.

“STC” means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

“STC Claims” means any claim made under the STC against NGET arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of NGET's transmission system which arises as a result of the authorised development;

“Transmission Owner” means as defined in the STC;

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

On Street Apparatus

60. Except for paragraphs 61 (apparatus in closed streets), 66 (retained apparatus: protection of electricity undertaker) and 67 (retained apparatus: protection of gas undertaker), 68 (expenses) and 69 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of NGET or NGT (or both), the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NGET or NGT are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of NGET or NGT in closed streets

61. Notwithstanding the temporary closure or diversion of any streets or public right of way (or both) under the powers of article 11 (temporary closure of public rights of way), NGET and NGT are at liberty at all times to take all necessary access across any such closed streets or public rights of way and to execute and do all such works and things in, upon or under any such street or public rights of way as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in such street or public rights of way.

Protective works to buildings

62. The undertaker, in the case of the powers conferred by article 15(6) (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of NGET or NGT (as appropriate).

Acquisition of land

63.—(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 must not (a) appropriate, or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus (or any one or more of the aforementioned interests or assets) of NGET or NGT otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between NGET or NGT (as appropriate) 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 NGET or NGT or affect the provisions of any enactment or agreement regulating the relations between NGET or NGT (or both) and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as NGET or NGT (as appropriate) reasonably require enter into such deeds of consent upon such terms and conditions as may be agreed between NGET or NGT and the undertaker acting reasonably and which must be no less favourable on the whole to NGET or NGT unless otherwise agreed by NGET or NGT (as appropriate), and it will be the responsibility of the undertaker to procure or secure (or both) the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development.

(3) The undertaker and NGET and NGT 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 (or both) 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 NGET or NGT or other enactments relied upon by NGET or NGT as of right or other use in relation to the apparatus (or both), then the provisions in this part of this Schedule will prevail.

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(4) Any agreement or consent granted by NGET or NGT under paragraph 66 or 67 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

64.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of NGET or NGT to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of NGET or NGT (as appropriate) in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to NGET or NGT (as appropriate) advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NGET or NGT reasonably need to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to NGET or NGT (as appropriate) to its satisfaction (taking into account paragraph 65(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, NGET or NGT (as appropriate) must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for NGET or NGT to use its compulsory purchase powers to this end unless it elects to so do.

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

(5) NGET or NGT (as appropriate) must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to NGET or NGT (as appropriate) of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

65.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for NGET or NGT facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and NGET or NGT and must be no less favourable on the whole to NGET or NGT than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by NGET or NGT.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to NGET or NGT than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 73 (arbitration) of this Part of this Schedule and the arbitrator may make such provision for the payment of compensation by the undertaker to NGET or NGT (as appropriate) as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of electricity undertaker

66.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to NGET a plan of the works to be executed and seek from NGET details of the underground extent of their electricity assets.

(2) In relation to any specified works, the plan to be submitted to NGET under sub-paragraph (1) must include a method statement and describe—

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

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

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

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

(5) Any approval of NGET required under sub-paragraph (4)—

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- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (1), (2) or (3) apply, NGET may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (1), (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and NGET and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by NGET for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGET will be entitled to watch and inspect the execution of those works.

(8) Where NGET 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 NGET's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and NGET must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If NGET in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 58 to 60 and 63 to 65 apply as if the removal of the apparatus had been required by the undertaker under paragraph 64(2).

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

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to NGET notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) or (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

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

Retained apparatus: protection of gas undertaker

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

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

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;

- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
 - (f) any intended maintenance regimes.
- (3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until NGT has given written approval of the plan so submitted.
- (4) Any approval of NGT required under sub-paragraph (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
 - (b) must not be unreasonably withheld.
- (5) In relation to any work to which sub-paragraphs (1), (2) or (3) apply, NGT may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Works executed under sub-paragraphs (1), (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (2) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and NGT and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by NGT for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGT will be entitled to watch and inspect the execution of those works.
- (7) Where NGT 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 NGT's satisfaction prior to the commencement of any specified works for which protective works are required and NGT must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (8) If NGT in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 58 to 60 and 63 to 65 apply as if the removal of the apparatus had been required by the undertaker under paragraph 64(2).
- (9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.
- (10) The undertaker will not be required to comply with sub-paragraph (2) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to NGT notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.
- (11) At all times when carrying out any works authorised under the Order the undertaker must comply with NGT's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".
- (12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme except that NGT 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 68.

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Expenses

68.—(1) Save where otherwise agreed in writing between NGET or NGT and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NGET or NGT (as appropriate) within 30 days of receipt of an invoice or claim from NGET or NGT all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by NGET or NGT (as appropriate) 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 as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by NGET or NGT (as appropriate) in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by NGET or NGT (as appropriate) as a consequence of it;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 64(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting NGET or NGT (as appropriate);
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 73 (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 NGET or NGT by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
 - (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.
- (5) Any amount which apart from this sub-paragraph would be payable to NGET or NGT 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 NGET or NGT any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

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

- (a) bear and pay on demand accompanied by an invoice or claim from NGET or NGT the cost reasonably and properly incurred by NGET or NGT (as appropriate) in making good such damage or restoring the supply; and
- (b) indemnify NGET and NGT for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from it, by reason or in consequence of any such damage or interruption or NGET or NGT (as appropriate) becoming liable to any third party including STC Claims or an Incentive Deduction other than arising from any default of either NGET or NGT (as appropriate).

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

- (3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—
- (a) any damage or interruption to the extent that it is attributable to the neglect or default of NGET or NGT, its officers, servants, contractors or agents;
 - (b) any authorised development or any other works authorised by this Part of this Schedule carried out by NGET or NGT as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 32 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development yet to be executed and not falling within this sub-section (b) will be subject to the full terms of this Part of this Schedule including this paragraph; or

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(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

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

(5) NGET or NGT (as appropriate) must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on their own behalf from their own funds.

(6) NGET must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph applies where it is within NGET's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of NGET's control and if reasonably requested to do so by the undertaker NGET must provide an explanation of how the claim has been minimised, where relevant.

(7) NGT must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within NGT's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of NGT's control and if reasonably requested to do so by the undertaker NGT must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

70. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between NGET or NGT (or both) 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 NGET or NGT (or both) 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

71.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or NGET or NGT requires the removal of apparatus under paragraph 64(2) or NGET or NGT makes requirements for the protection or alteration of apparatus under paragraph 66 or 67, 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 NGET or NGT's undertaking and NGET and NGT must separately use their best endeavours to co-operate with the undertaker for that purpose.

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

Access

72. If in consequence of the agreement reached in accordance with paragraph 63(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable NGET or NGT to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

73. Save for differences or disputes arising under paragraph 64(2), 64(4), 65(1), 66 and 67, any difference or dispute arising between the undertaker and NGET or NGT under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NGET or NGT (as appropriate), be determined by arbitration in accordance with article 38 (arbitration).

Notices

74. Notwithstanding article 40 (service of notices), any plans submitted to NGET or NGT by the undertaker pursuant to paragraph 66 and 67 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as NGET or NGT may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 7

FOR THE PROTECTION OF UK POWER NETWORKS LIMITED AND EASTERN POWER NETWORKS PLC

75. For the protection of the utility undertakers referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

76. In this Part of this Schedule—

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

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(5)), belonging to or maintained by that utility undertaker;

“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) UK Power Networks Limited, whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP;

(b) Eastern Power Networks plc, whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP,

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.

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

78. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary closure of 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) 1989 c. 29.

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79. Regardless of any provision in this Order or anything shown on the land and Crown land plans, the undertaker must not acquire any apparatus otherwise than with the prior written agreement of the utility undertaker.

80.—(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 (6).

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part 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 38 (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 38 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part 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 removal of apparatus or construction of alternative apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker if the undertaker is able to do so without unnecessary delay and only in accordance with plans and methodology approved by the utility undertaker, such approval may be subject to such reasonable conditions including but not limited to the undertaker entering into an assets protection agreement with the utility undertaker as the utility undertaker deems necessary. The undertaker must carry out the works under the superintendence subject to the undertaker paying and the undertaker must pay the proper and reasonable fees of the utility undertaker, if given, and to the reasonable satisfaction of the utility undertaker subject to the utility undertaker's reasonable specification.

81.—(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 38 (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.

82.—(1) Not less than 28 days before starting the execution of any works in, on, over or under any land purchased, held, appropriated or used under this Order that are over, under or near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 80, 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 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 28 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 75 to 81 apply as if the removal of the apparatus had been required by the undertaker under paragraph 80(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.

(7) The undertaker is not required to comply with sub-paragraph (1) in cases where for the purpose of constructing, operating, maintaining or decommissioning the authorised development the undertaker creates a footpath, footway or other means of access which is to be used for either vehicular or pedestrian access over or under any apparatus.

83.—(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 80(2).

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(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—
apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type,; 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 38 (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, 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 80(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 seven years and six 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.

84.—(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 80(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 80(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.

85. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 80(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 81, the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into

account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its reasonable endeavours to co-operate with the undertaker for that purpose.

86. 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.

87. Any difference under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the utility undertaker, be determined by arbitration in accordance with article 38 (arbitration).

PART 8

FOR THE PROTECTION OF DRAINAGE AUTHORITIES

88. The provisions of this Part of this Schedule have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

89. In this Part of this Schedule—

“authorised development” has the same meaning as in article 2(1) (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the operation and maintenance of the authorised development and the construction of any works authorised by this Part of this Schedule;

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

“drainage authority” means in relation to an ordinary watercourse—

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

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

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

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

“specified work” means so much of the authorised development as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to affect the flow of water in any watercourse.

90.—(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may reasonably require within 14 days of the submission of the plans.

(2) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 96.

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

- (a) must not be unreasonably withheld or delayed;

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- (b) is deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and
 - (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work taking into account the terms of this Order.
- (4) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

91. Without limiting the scope of paragraph 90, the requirements which the drainage authority 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 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 taking account of the terms of this Order—

- (a) to safeguard any drainage work against damage by reason of any specified work; or
- (b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased beyond the level of flood risk that was assessed in the environmental statement, by reason of any specified work.

92.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 91, must be constructed—

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

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

- (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 seven days after the date on which it is brought into use.

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

94. The undertaker must make reasonable compensation for costs, charges and expenses which the drainage authority may reasonably incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in inspecting the construction of the specified work or any protective works required by the drainage authority under this Part of this Schedule; and
- (c) in carrying out any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified work.

95.—(1) The undertaker must make reasonable compensation for liabilities, costs and losses which may be reasonably incurred or suffered by reason of—

- (a) the construction of any specified works comprised within the authorised development; or
 - (b) any act or omission of the undertaker, its employees, contractors or agents or others while engaged upon the construction of the authorised development.
- (2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand.
- (3) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.
- (4) The drainage authority must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.
- (5) The drainage authority will, having regard to its statutory functions, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.
- (6) The drainage authority will, at the request of the undertaker and having regard to its statutory functions, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.
- (7) 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 drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.
- (8) Nothing in sub-paragraph 95(1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of the drainage authority or the breach of a statutory duty of the drainage authority, its officers, servants, contractors or agents.
96. Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 38 (arbitration).

PART 9

FOR THE PROTECTION OF NATIONAL HIGHWAYS

Application

97.—(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) Nothing in this Order affects or prejudices the operation of the powers and duties of National Highways or the Secretary of State under the Highways Act 1980, the Road Traffic Regulation Act 1984, the New Roads and Street Works Act 1991, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015.

Interpretation

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

(2) In this Schedule—

“administration fee” means the fee payable pursuant to the provisions of this Part of this Schedule that represent the internal costs of National Highways in administering the

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implementation of the specified work and charged as a flat fee based on the value of the specified works only;

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

- (a) as constructed drawings in both PDF and Auto CAD DWG formats for anything designed by the undertaker; in compliance with GG184 (Specification for the use of Computer Aided Design) or any successor document;
- (b) list of suppliers and materials used and test results and (where in the opinion of National Highways, following due diligence and assessment while acting reasonably, the carrying out of a specified work may have a materially adverse effect on any part of the highways drainage system maintained by National Highways) CCTV surveys;
- (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) the health and safety file to include the geotechnical feedback report required under CD622; and
- (k) other such 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,

provided that the items referred to in sub-paragraphs (c) and (g) above will only be required to be submitted if the relevant specified work would require any of the works of a description referred to in article 13(1)(a) to (d) (agreements with street authorities) of this Order to be carried out in relation to any highway for which National Highways is the highways authority;

“condition survey” means a survey of the condition of National Highways structures and assets (including, but not limited to pavements, lighting, soft estates, signals, barriers, drainage and cabling) within the Order limits that in the reasonable opinion of National Highways may be affected by a specified work, and further to include, where the undertaker, following due diligence and assessment, identifies a specified part of the highways drainage system maintained by National Highways that National Highways reasonably considers may be materially and adversely affected by a specified work. A CCTV survey of specified drains will only form part of a condition survey where the authority, following due diligence and assessment, identifies a specified part of the highways drainage system maintained by National Highways that National Highways reasonably considers may be materially and adversely affected by a specified work;

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out a specified work;

“detailed design information” means drawings specifications and calculations as appropriate for the following—

- (a) regime of California Bearing Ratio testing;

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- (b) earthworks including supporting geotechnical assessments required by CD622 (Managing geotechnical risk) of the DMRB or any successor document and any required strengthened earthworks appraisal form certification;
- (c) proposed departures from DMRB standards;
- (d) utilities diversions;
- (e) topographical survey;
- (f) health and safety information including any asbestos survey required by GG105 (asbestos management) or any successor document; and
- (g) other such information that may be reasonably required by National Highways to inform the detailed design of a specified work.

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

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

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

“highways structure” means structures or installations within the scope of the DMRB and that are situated under, over or adjacent to a motorway or other trunk road;

“initial deposit” means the sum calculated by National Highways (acting reasonably) payable to National Highways to cover all initial stages of work until such time as the cost of the specified work and the NH costs payable under paragraph 102 of this Part can be estimated;

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

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

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

“specified work” means so much of any work authorised by this Order, including any maintenance of that work, as is in or under the trunk road and in particular means the crossing under the A11 north of junction 38 as shown in the indicative location on sheet 10 of the work plans; and

“trunk road” for the purpose of these protective provisions means any highway for which National Highways is the highway authority.

General

99.—(1) Notwithstanding the limits of deviation permitted pursuant to article 3(2) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the trunk road at a distance within 4 metres of the lowest point of the ground.

(2) Notwithstanding the powers granted to the undertaker pursuant to this Order, if the carrying out of any specified work would require any works to be carried out in relation to the trunk road, excluding the works authorised in relation to the A11 specified in Schedule 4 (cable works beneath

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the width of the highway), and Schedule 5 Part 2 (temporary alteration of layout), the undertaker must enter into an agreement with National Highways prior to the commencement of any such work.

Prior Approvals

100.—(1) No specified work may commence until—

- (a) the programme of works has been approved by National Highways;
- (b) the following details relating to the specified work have been submitted to and approved by National Highways—
 - (i) the detailed design information;
 - (ii) details of any proposed road space bookings with National Highways;
 - (iii) (if details have been supplied pursuant to sub-paragraph (ii) above) a scheme of traffic management; and
 - (iv) the identity of the contractor and nominated persons,
- (c) if the carrying out of a specified work requires the booking of any road space with National Highways and a scheme of traffic management and a process for stakeholder liaison 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;
- (d) any stakeholder liaison that may be required has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c) above;
- (e) any further information that National Highways may reasonably request within 14 days of the submission of the detailed design of a specified work has been supplied to National Highways; and
- (f) a condition survey, and a reasonable regime of monitoring the structures, assets and pavements that are the subject of the condition survey, has been submitted to and approved by National Highways.

(2) National Highways must provide the undertaker with a list, which is to be agreed between the parties acting reasonably, of all the structures, assets and pavements to be subject to both a condition survey and reasonable regime of monitoring pursuant to sub-paragraph (1)(f) and paragraph 103(1) of this Part of this Schedule before the first condition survey is conducted and the reasonable regime of monitoring is implemented.

(3) National Highways must prior to the commencement of a specified work inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways to consider the information required under sub-paragraph (1) and of the identity of the person or persons who are authorised to give consent or approval on behalf of National Highways for any matter requiring approval or consent in these provisions.

(4) Any approval of National Highways required by this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds for refusal;
- (c) is deemed to have been refused if it is neither given or refused within 56 days of the submission of the relevant information (if further information is requested by National Highways any such request must be submitted to the undertaker within 28 days of submission of the relevant information under this sub-paragraph (c) and the provision of such further information by the undertaker will not be deemed to constitute a new application for approval pursuant to this paragraph); and

- (d) may be given subject to any reasonable conditions as National Highways considers necessary.
- (5) Except where an approval has been provided under sub-paragraph (1), the undertaker must not exercise—
 - (a) article 5 (power to maintain the authorised development);
 - (b) article 14 (discharge of water);
 - (c) article 15 (protective works to buildings);
 - (d) article 16 (authority to survey and investigate the land);
 - (e) article 26 (temporary use of land for constructing the authorised development);
 - (f) article 27 (temporary use of land for maintaining the authorised development); or
 - (g) article 35 (felling or lopping of trees and removal of hedgerows)

of this Order over any part of the trunk road 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 submit a scheme of traffic management for National Highways' approval.

Construction of the specified work

101.—(1) The undertaker must, prior to commencement of a specified work, give to National Highways 28 days' notice in writing of the date on which the specified work will start unless otherwise agreed by National Highways.

(2) If the carrying out of any part of the authorised development requires the booking of road space with National Highways, the undertaker must comply with National Highway's road space booking procedures prior to and during the carrying out of the specified work and no specified work for which a road space booking with National Highways is required will commence without a road space booking having first been secured from National Highways.

(3) Any specified work must be carried out to the reasonable satisfaction of National Highways (acting reasonably) in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 100(1) above or as subsequently varied by agreement between the undertaker and National Highways;
 - (b) where relevant, the DMRB, the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works) together with all other relevant standards as required by National Highways to include, inter alia, all relevant interim advice notes and any amendment to or replacement thereof for the time being in force save to the extent that any departures or exceptions from those standards apply which have been approved by National Highways; and
 - (c) any reasonable conditions of National Highways notified by National Highways to the undertaker pursuant to paragraph 100(4)(d) of this Part of this Schedule.
- (4) The undertaker must ensure that (where possible) without entering the highway—
- (a) the highway is kept free from mud, soil and litter as a result of the carrying out of a specified work; and
 - (b) the specified work is carried out without disturbance to the highway and so that the highway remains open for traffic at all times unless otherwise agreed with National Highways.

(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

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undertaker by National Highways) to gain access to a specified work for the purposes of inspection and supervision of a specified work or method of construction of such work.

- (6) If any specified work 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, any 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 with the requirements of this Part of this Schedule or put right any damage notified to the undertaker under this Part of this Schedule.

(7) If within 56 days of the date on which a notice under sub-paragraph (6) is served on the undertaker, the undertaker has failed to take steps to comply with the notice, National Highways may carry out the steps required of the undertaker and may recover from the undertaker any expenditure reasonably incurred by National Highways in so doing, such sum to be payable within 30 days of demand. Where the steps required to be taken pursuant to any notice require the submission of any information for the prior approval of National Highways under paragraph 100 of this Part of this Schedule, the submission of that information will evidence that the undertaker has taken steps to comply with a notice served by National Highways under sub-paragraph (6).

(8) National Highways may, at its discretion, in its notice in writing to the undertaker given pursuant to sub-paragraph (6) state that National Highways intend to put right the damage notified to the undertaker, and if it intends to do so it must give the undertaker not less than 28 days' notice of its intention to do so and National Highways may recover from the undertaker any reasonable expenditure incurred by National Highways in doing so.

(9) Nothing in this Part of this Schedule prevents National Highways from, in the event of an emergency or to prevent the occurrence of danger to the public, carrying out any work or taking any such action as it reasonably believes to be necessary as a result or in connection with of the carrying out of the specified works without prior notice to the undertaker and National Highways may recover from the undertaker any reasonable expenditure incurred by National Highways in so doing.

Payments

102.—(1) The undertaker must pay to National Highways a sum equal to the whole of any costs and expenses which National Highways reasonably incurs (including costs and expenses for using internal or external staff) in relation to any specified work and in relation to any approvals sought under this Order including—

- (a) the checking and approval of the information required under paragraph 100(1);
- (b) the supervision of a specified work;
- (c) contractual costs properly payable to the highway operations and maintenance contractor as a consequence of any specified work, including costs incurred by the highway operations and maintenance contractor in carrying out the tasks referred to in sub-paragraphs (a) and (b) of this paragraph, in which case National Highways will be responsible for the payment of any sums received from the undertaker under this paragraph to the highway operations and maintenance contractor; and
- (d) the administration fee and legal costs, reasonably and properly incurred;
- (e) any value added tax which is payable by National Highways only in respect of such costs and expenses arising under this sub-paragraph 102(1) and for which it cannot obtain reinstatement from HM Revenue and Customs,

sub-paragraphs (a) to (e) together comprising “the NH costs”.

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(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 notify the undertaker of the amount required for the Initial Deposit as soon as reasonably practicable and the undertaker must pay an amount equal to that sum within 28 days of receipt of the notification.

(4) National Highways must provide the undertaker with a fully itemised invoice showing its estimate of the NH costs including its estimate of the administration fee prior to the commencement of a specified work and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified work and in any event prior to National Highways incurring any cost.

(5) If at any time after the payment referred to in sub-paragraph (3) or (4) has become payable, National Highways reasonably believes that the NH costs will exceed the relevant sum notified to the undertaker it may give notice to the undertaker of the amount that it believes the NH costs will exceed the relevant sum (excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(6) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1), as a fully itemised invoice, within 30 days of the undertaker notifying to National Highways that a specified work has been completed.

(7) Within 30 days of the issue of the final account—

- (a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it; or
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(8) 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 the payment pay to the other party interest at 1% above the rate payable in respect of compensation under Section 32 of the 1961 Act 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.

Completion of a specified work

103.—(1) Within 56 days of the completion of a specified work, the undertaker must arrange for the highway structures, assets and pavements that were the subject of the condition survey carried out in respect of the specified work to be re-surveyed and must submit the re-survey to National Highways for its approval.

(2) If the re-survey carried out pursuant to sub-paragraph (1) indicates that any damage has been caused to any highways structure or pavement, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing, which must not be unreasonably withheld or delayed, and 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 from the undertaker any expenditure reasonably incurred by National Highways in so doing, such sum to be payable within 30 days of demand.

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(4) National Highways may, at its discretion, at the same time as giving its approval to the condition survey, give notice in writing to the undertaker stating that National Highways will remedy the damage identified by the condition survey and National Highways may recover from the undertaker any reasonable expenditure incurred by National Highways in so doing.

(5) Within 10 weeks of the completion of a specified work, the undertaker must submit to National Highways the as built information, both in hard copy and electronic form.

(6) The undertaker must make available to National Highways upon reasonable 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.

Indemnification

104.—(1) Subject to sub-paragraphs (2) and (3), the undertaker must indemnify National Highways from and against all costs, expenses, damages, losses and liabilities suffered by National Highways 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 National Highways 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 National Highways which may reasonably be considered likely to give rise to a liability under this paragraph then National Highways 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 National Highways may receive statutory compensation claims and that National Highways may not be able to comply with sub-paragraph (3) above in respect of such claims.

(5) Where National Highways 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) above.

(6) National Highways must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph applies where it is within National Highway'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 National Highway's control. If reasonably requested to do so by the undertaker, National Highways 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.

Arbitration

105. Any difference or dispute arising between the undertaker and National Highways under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Highways, be determined by arbitration in accordance with article 38 (arbitration).

PART 10

FOR THE PROTECTION OF RAILWAY INTERESTS

106. 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 120 of this Part of this Schedule, any other person on whom rights or obligations are conferred by that paragraph.

107. 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⁽⁶⁾;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006⁽⁷⁾) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

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

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

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

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

(b) any easement or other property interest held or used by Network 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; 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

(6) 1993 c. 43.

(7) 2006 c. 46.

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

108.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

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

- (a) article 3 (development consent etc. granted by the Order);
- (b) article 5 (power to maintain the authorised development);
- (c) article 14 (discharge of water);
- (d) article 16 (authority to survey and investigate the land);
- (e) article 17 (compulsory acquisition of land);
- (f) article 19 (compulsory acquisition of rights);
- (g) article 22 (acquisition of subsoil only);
- (h) article 23 (power to override easements and other rights);
- (i) article 26 (temporary use of land for constructing the authorised development);
- (j) article 27 (temporary use of land for maintaining the authorised development);
- (k) article 28 (statutory undertakers);
- (l) article 35 (felling or lopping of trees and removal of hedgerows);
- (m) article 36 (trees subject to tree preservation orders);
- (n) or 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 28 (statutory undertakers), article 23 (power to override easement and other rights) or

article 20 (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 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 must 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.

110.—(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 is deemed to have approved the plans as submitted.

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

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

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111.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 110(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 110;
- (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,
- (e) 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 is to 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.

112. 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.

113. 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.

114.—(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 110(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 115(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.

115. 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 110(3) or in constructing any protective works under the provisions of paragraph 110(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 is to 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.

116.—(1) In this paragraph—

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

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 110(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

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under paragraph 110(1) in order to identify all potential causes of EMI and the measures required to eliminate them;

- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a) .

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 110(1) has effect subject to this sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker must test the use of the authorised development in a manner that must 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;
- (d) the undertaker must not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

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

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 111.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 120(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 115(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

117. 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.

118. 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.

119. 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.

120.—(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 which may be occasioned to or reasonably incurred by Network Rail—

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

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision must 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) must if relevant include a sum equivalent to the relevant costs.

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(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 is, in the event of default, 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.

121. 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 120) 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).

122. 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.

123. 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.

124. 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.

125. 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 31 (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.

126. 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 37 (certification of plans and documents,

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

127. In relation to any dispute arising under this Part of this Schedule (except for those disputes referred to in paragraph 116) the provisions of article 38 (arbitration) will not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

PART 11

FOR THE PROTECTION OF EAST OF ENGLAND AMBULANCE SERVICE NHS TRUST

Application

128. For the protection of East of England Ambulance Service NHS Trust as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and East of England Ambulance Service NHS Trust.

Site familiarisation

129.—(1) The undertaker must, prior to the date of final commissioning, use reasonable endeavours to facilitate a site familiarisation exercise in connection with the authorised development for the East of England Ambulance Service NHS Trust for the purpose of mitigating the potential impacts or risks associated with the authorised development.

(2) Save where otherwise agreed in writing between East of England Ambulance Service NHS Trust and the undertaker, the undertaker must pay to East of England Ambulance Service NHS Trust the costs and expenses reasonably and properly incurred by East of England Ambulance Service NHS Trust in, or in connection with, its attendance at the site familiarisation exercise facilitated by the undertaker pursuant to sub-paragraph (1).

Arbitration

130. Any difference or dispute arising between the undertaker and East of England Ambulance Service NHS Trust under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and East of England Ambulance Service NHS Trust, be determined by arbitration in accordance with article 38 (arbitration).

PART 12

FOR THE PROTECTION OF HPUT A LIMITED AND HPUT B LIMITED

Application

131. For the protection of HPUT and persons deriving title from HPUT the following provisions, unless otherwise agreed in writing at any time between the undertaker and HPUT, have effect.

Interpretation

132. In this Part of this Schedule—

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“Campus” means the land comprised in titles CB328220 and CB119083 registered at Land Registry on the date of this Order and shown for indicative purposes only edged red and dark blue respectively on the Campus plan;

“Campus access road” means the area tinted brown and labelled “Campus access road” on the Campus plan;

“Campus cable route corridor” means the land shown with a dashed purple line and labelled “Campus cable route corridor” on the Campus plan;

“Campus laydown area” means the land tinted yellow and labelled “Campus laydown area” on the Campus plan and which, for the avoidance of doubt, includes the Campus cable route corridor;

“Campus plan” means the drawing entitled Campus plan dated 21 March 2023 and given drawing reference 70050915-230118-WSP-PLN-AAA-001-BS-0 Rev 6 and certified by the Secretary of State as the Campus plan for the purposes of this Order;

“Campus works area” means the Campus cable route corridor and the Campus laydown area;

“HPUT” means—

- (a) HPUT A LIMITED, a company incorporated and registered in England and Wales with company registration number 09389098; and
- (b) HPUT B LIMITED, a company incorporated and registered in England and Wales with company registration number 09389118,

both having their registered office at 250 Bishopsgate, London EC2M 4AA and in their capacity as nominees for and on behalf of NatWest Trustee and Depositary Services Limited as trustee and depositary (and not otherwise) of Federated Hermes Property Unit Trust and their successors in title to the freehold of the Campus or any part of it;

“security fence” means the security fence to be installed by the undertaker pursuant to paragraph 135 (campus security) along the alignment indicated by a dashed green line and labelled “proposed security fence” on the Campus plan for the purposes of preventing any access by the undertaker from the Campus works area into the remainder of the Campus;

“undertaker” includes—

- (a) any person to whom the benefit of any or all of the provisions of the Order is transferred or granted pursuant to article 32 (consent to transfer benefit of the Order) (whether the consent of the Secretary of State is required or not); and
- (b) any agents, contractors or subcontractors acting on behalf of the undertaker;

“vibration criterion VC-B” is set out in Figure B.2 and Table B.3 of British Standard BS 5228-2:2009+A1:2014 on the date of this Order;

“written agreement of HPUT” means a written agreement between (1) the undertaker and (2) HPUT from time to time;

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

Written Agreement of HPUT

133.—(1) Subject to sub-paragraph (2), the undertaker must not exercise any powers pursuant to this Order or the powers conferred by section 11(3) (powers of entry) of the 1965 Act, and such powers have no effect, in respect of HPUT’s interests in the Campus, the interests of any person deriving title from HPUT in relation to the Campus and any other tenants or occupiers of the Campus or those interests which benefit any of the aforementioned interests, including all rights, wayleaves and easements enjoyed by HPUT, or any person deriving title from it, in relation to the Campus including pursuant to any of—

- (a) article 12 (access to works);
- (b) article 14 (discharge of water);
- (c) article 16 (authority to survey and investigate the land);
- (d) article 17 (compulsory acquisition of land);
- (e) article 19 (compulsory acquisition of rights);
- (f) article 20 (private rights);
- (g) article 23 (power to override easements and other rights);
- (h) article 25 (rights under and over streets);
- (i) article 26 (temporary use of land for constructing the authorised development);
- (j) article 27 (temporary use of land for maintaining the authorised development); or
- (k) article 35 (felling or lopping trees and removal of hedgerows),

unless the exercise of such powers is in accordance with the written agreement of HPUT.

(2) The undertaker must not exercise any powers pursuant to this Order or the powers conferred by section 11(3) (powers of entry) of the 1965 Act to which sub-paragraph (1) refers, and such powers have no effect—

- (a) in respect of any part of the Campus (which for the avoidance of doubt includes the Campus access road) except, on the terms of this Part of this Schedule, the Campus works area;
- (b) so far as they affect any rights of which HPUT, or any person deriving title from HPUT in relation to the Campus, has the benefit pursuant to the transfer dated 7 March 1994 made between Horseracing Forensic Laboratory Limited, Frances Delia Sidebottom and Harry Sidebottom unless otherwise with the written agreement of HPUT.

Limits on the authorised development within the Campus

134.—(1) The undertaker must not carry out any of the authorised development within the Campus save within—

- (a) the Campus works area on the terms of this Part of this Schedule provided that, subject to paragraph (b), any works or structures placed within it are removed in accordance with paragraph 144 (reinstatement) of this Part of this Schedule;
- (b) the Campus cable route corridor on the terms of this Part of this Schedule provided that only below ground works or structures comprised in the authorised development may remain within it, save for a single access to the below ground works or structures comprised in the authorised development the details of which have been agreed in accordance with sub-paragraph (2), following reinstatement of the Campus cable route corridor in accordance with paragraph 144 (reinstatement) of this Part of this Schedule.

(2) The undertaker must not lay any electrical cable within the Campus cable route corridor until it has submitted written details of Work No. 4(c) in the Campus cable route corridor to HPUT, such details to include the proposed location and dimensions for the single access to which paragraph 134(1)(b) refers which is not to exceed 2 metres by 2 metres wide and 2 metres deep, and the details have been approved by HPUT (such approval not to be unreasonably withheld or delayed and in any event to be given or refused no later than 40 working days following receipt of the written details) and the undertaker must comply with the approved details.

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Campus security

135.—(1) The undertaker must install the security fence to the reasonable satisfaction of HPUT before either—

- (a) commencement of any of the authorised development and the beginning of any permitted preliminary works on the Campus works area (excluding the security fence);
- (b) the undertaker enters the Campus works area (except in connection with installation of the security fence),

unless the details approved by HPUT in respect of a particular survey or investigation pursuant to paragraph 146 (surveys and investigations) expressly set out that this is not necessary in relation to the survey or investigation.

(2) The undertaker must not submit details of the proposed security fence to the relevant planning authority under requirement 11 (fencing and other means of enclosure) until it has submitted to HPUT written details of—

- (a) the proposed security fence; and
- (b) any measures on the Campus works area with which the undertaker must comply during installation of the proposed security fence, and the details have been approved by HPUT (such approval not to be unreasonably withheld or delayed and in any event to be given or refused no later than 40 working days following receipt of the written details) and the undertaker must comply with the details to which paragraph (a) refers as approved by the relevant planning authority under requirement 11 and with the details approved by HPUT to which paragraph (b) refers.

(3) The undertaker must not at any time with or without vehicles enter upon any part of the Campus (which for the avoidance of doubt includes the Campus access road) except, on the terms of this Part of this Schedule, the Campus works area.

Work dates

136.—(1) The undertaker must not carry out any of the authorised development on the Campus works area until it has proposed and agreed the dates with HPUT (such agreement not to be unreasonably withheld or delayed and in any event given or refused no later than 40 working days following receipt of the written request) on which the authorised development on the Campus works area is to be carried out and—

- (a) the undertaker must not carry out the authorised development on the Campus works area (which includes there being no on-site presence by any personnel of the undertaker)—
 - (i) other than on the agreed dates; and
 - (ii) before a period of 20 working days has passed after the dates have been agreed;
- (b) the number of working days comprised in such dates, unless otherwise agreed in writing with HPUT (such agreement not to be unreasonably withheld or delayed) must not exceed 45.

(2) This paragraph does not apply to surveys and investigations, in respect of which paragraph 146 (surveys and investigations) will apply.

Construction method and management scheme

137.—(1) The undertaker must submit a detailed construction method and management scheme in respect of that part of the authorised development to be carried out within the Campus works area no later than 40 working days prior to commencing it and must not carry out any part of the authorised development within the Campus works area until the scheme has been approved by HPUT (such approval not to be unreasonably withheld or delayed and in any event to be given or refused

no later than 40 working days following receipt of the scheme); and the undertaker must comply with the approved scheme.

- (2) The construction method and management scheme must include details in respect of—
 - (a) a construction programme specific to the authorised development on the Campus works area;
 - (b) plans showing the extent of any part of the Campus works area to be used at any time for the purposes of constructing the authorised development on it;
 - (c) the storage of plant and materials;
 - (d) the location and height of all plant and construction equipment;
 - (e) the location and size of compounds and welfare facilities;
 - (f) the management and mitigation of dust emissions and odour;
 - (g) the disposal of waste and other materials arising from the construction programme;
 - (h) security measures during the carrying out of the authorised development including any fencing (but not the security fence to which paragraph 135 (campus security) instead applies) and any hoardings, any CCTV (including the location of cameras), any security lighting and a physical security presence where appropriate;
 - (i) the lighting of works;
 - (j) impacts on the Campus's services and utilities (including surface water and foul drainage) throughout the carrying out of the authorised development (including interruption and disruption periods and emergency procedures) and appropriate management and mitigation measures;
 - (k) emergency protocols, including a 24-hour contact number for emergencies;
 - (l) any other matters relevant to the Campus and its operation.
- (3) The undertaker must not burn waste on the Campus works area at any time.

Noise and vibration

138.—(1) The undertaker must not carry out any part of the authorised development on the Campus works area until it has submitted a detailed noise and vibration management plan in respect of that part of the authorised development and the plan has been approved by HPUT (such approval not to be unreasonably withheld or delayed and in any event to be given or refused no later than 40 working days- following receipt of the plan); and the undertaker must comply with the approved plan.

- (2) The plan must include—
 - (a) a list of all equipment likely to be a source of noise or vibration affecting the Campus;
 - (b) noise and vibration predictions for the Campus;
 - (c) measures to reduce noise and vibration;
 - (d) measures to monitor compliance with this paragraph;
 - (e) the sharing of compliance monitoring information with HPUT (to be no less than weekly for the duration of the construction period for the works in the Campus works area);
 - (f) the procedure to be followed in the event of complaints (including a 24-hour contact number so that the undertaker may be contacted in the event of any issues).
- (3) The undertaker must not use vibrating rollers or impact-driven or vibro-hammer piling rigs on, and within 300 metres of, the Campus works area.

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(4) Noise levels at 1m from any office window at the Campus caused by the carrying out of the authorised development (including construction traffic) must not exceed 65 dB LAeq, 12hour between the hours of 07:00 – 19:00 Monday to Saturday and 65 dB LAeq 12 hour at other times.

(5) Noise levels at 1m from any residential window at the Campus caused by the carrying out of the authorised development (including construction traffic) must not exceed 65 dB LAeq, 12hour between the hours of 07:00 – 19:00 Monday to Saturday and 45 dB LAeq 12 hour at other times.

(6) Levels of vibration caused by the carrying out of the authorised development must not exceed vibration criterion VC-B measured on the floor of any building or part of a building on the Campus.

Construction hours

139.—(1) Subject to paragraph 136 (work dates) no part of the authorised development may be carried out on the Campus works area nor may any other powers pursuant to this Order be exercised on it—

- (a) other than between the hours of 07:00 and 19:00 on Mondays to Saturdays;
 - (b) on Sundays and public holidays.
- (2) Sub-paragraph (1) does not apply in relation to—
- (a) cases of emergency;
 - (b) overnight traffic management measures; and
 - (c) activities otherwise agreed by the undertaker with HPUT in advance (such agreement not to be unreasonably withheld or delayed),
 - (d) provided that in respect of paragraph (a) the undertaker provides HPUT with details of the emergency within 3 working days of its occurrence, in respect of paragraph (b) the undertaker has provided HPUT with no less than 10 working days written notice and in respect of paragraph (c) the undertaker’s request has been made in writing no less than 10 working days in advance.

Supervision

140. The undertaker must carry out the authorised development on the Campus works area under HPUT’s reasonable supervision (where given) and the undertaker must give HPUT all such access as it reasonably requires for those purposes.

Construction liaison

141.—(1) The undertaker must procure that a dedicated construction liaison officer will throughout the construction of the authorised development on the Campus works area—

- (a) respond to telephone calls and emails from HPUT between 07:00 and 19:00 hours Mondays to Saturdays (and at any time in case of emergencies or for the purposes of paragraphs 138(2)(f) and 139(2) of this Part of this Schedule) in respect of the construction of the authorised development;
- (b) arrange and hold meetings with HPUT no less than once a week (unless otherwise agreed in writing between HPUT and the undertaker) in respect of the construction of the authorised development on the Campus works area throughout the construction of that part of the authorised development; and the officer must issue minutes of each meeting to HPUT no later than 5 working days after each meeting;
- (c) resolve on behalf of the undertaker reasonable concerns raised by HPUT promptly in respect of the construction of the authorised development,

and the undertaker must not construct any part of the authorised development on the Campus works area until it has provided HPUT in writing with the contact details of the officer.

(2) If HPUT does not consider that the undertaker (or dedicated construction liaison officer on its behalf) has resolved its reasonable concerns in respect of the carrying out of the authorised development pursuant to this paragraph it may require the matter to be settled in accordance with article 38 (arbitration).

Use of the Campus's facilities

142. The undertaker may not use any of the Campus's facilities (including its power supply) other than on such terms as the undertaker and HPUT agree in advance from time to time.

Health and safety

143. The undertaker must make the health and safety file maintained in respect of the authorised development on the Campus works area pursuant to the Construction (Design and Management) Regulations 2007⁽⁸⁾ available for inspection by HPUT at reasonable prior written notice.

Reinstatement

144.—(1) The undertaker must not carry out any part of the authorised development within the Campus works area until it has submitted a schedule of condition of that area and the schedule has been approved by HPUT (such approval not to be unreasonably withheld or delayed and in any event to be given or refused no later than 40 working days following receipt of the schedule).

(2) The restriction on carrying out any part of the authorised development within the Campus works area to which sub-paragraph (1) refers does not apply in respect of non-intrusive surveys reasonably required for the preparation of the schedule to which the sub-paragraph refers which have been approved in advance in writing by HPUT and are carried out in accordance with such approval (such approval not to be unreasonably withheld or delayed and in any event to be given or refused no later than 40 working days following receipt of the schedule).

(3) The undertaker must within 20 working days following the earlier of—

- (a) the authorised development on the Campus works area, once commenced, not having been carried out for more than 20 consecutive working days; or
- (b) completion of the authorised development on the Campus works area,

reinstate the Campus works area to the condition set out in the schedule of condition (unless otherwise agreed by HPUT and the undertaker acting reasonably) save for the below ground works or structures comprised in the authorised development and any means of access to those works the details of which have been agreed pursuant to paragraph 134 (limits on the authorised development within the Campus) of this Part of this Schedule and which must be in accordance with the details agreed in writing between HPUT and the undertaker.

Maintenance and decommissioning

145.—(1) Subject to sub-paragraph (2), the undertaker must not carry out any maintenance or decommissioning of the authorised development on the Campus works area, or enter upon any part of it, until it has submitted details of the proposed maintenance or decommissioning activities and measures proposed to mitigate any resulting adverse impacts on the operation of the Campus and the details have been approved by HPUT (such approval not to be unreasonably withheld or delayed and

(8) [S.I. 2007/320](#).

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in any event to be given or refused no later than 40 working days of receipt of the written details); and—

- (a) such details must (unless otherwise agreed in writing between HPUT and the undertaker) accord with the principles of the provisions in this Part of this Schedule where relevant for the purposes of maintenance or decommissioning; and
- (b) the undertaker must comply with the approved details.

(2) The undertaker must not use or enter upon any part of the Campus (which for the avoidance of doubt includes the Campus access road) to carry out any maintenance or decommissioning of the authorised development except, on the terms of this Part of this Schedule, the Campus works area, unless otherwise agreed in writing between HPUT in its absolute discretion and the undertaker.

Surveys and investigations

146. The undertaker must not carry out any surveys or investigations (including environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions) on the Campus works area, or enter upon any part of it for such purposes, until it has submitted details of the proposed surveys or investigations and measures proposed to mitigate any resulting adverse impacts on the Campus works area or operation of the Campus and the details have been approved by HPUT (such approval not to be unreasonably withheld or delayed and in any event to be given or refused no later than 40 working days of receipt of the written details); and—

- (a) such details must (unless otherwise agreed in writing between HPUT and the undertaker) accord with the principles of the provisions in this Part of this Schedule where relevant for the purposes of the surveys or investigations in question; and
- (b) the undertaker must comply with the approved details.

Expenses

147. The undertaker must pay HPUT the reasonable expenses reasonably incurred by it (including by its solicitors, surveyors or other relevant consultants) for, or in connection with, the carrying out of the authorised development or any action required of HPUT in this Part of this Schedule including—

- (a) considering and giving any agreement or approval pursuant to this Part of this Schedule or otherwise required by the undertaker;
- (b) considering and liaising with the undertaker in respect of any compliance monitoring information provided by the undertaker pursuant to this Part of this Schedule;
- (c) HPUT's reasonable supervision pursuant to paragraph 140 (Supervision) of this Part of this Schedule;
- (d) attending meetings with the undertaker during the construction, maintenance or decommissioning of the authorised development,

and it will be reasonable for HPUT to withhold its agreement or approval pursuant to the relevant provision of this Part of this Schedule if the undertaker does not in advance pay such expenses or provide a solicitor's undertaking (from a firm of reasonably sufficient covenant strength) in respect of them.

Reasonableness

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

withheld or delayed (save in each aforementioned case except in respect of agreement by HPUT pursuant to paragraph 145(2) (maintenance and decommissioning)).

The HPUT Trustees

149. References in this Part of this Schedule to HPUT A Limited and HPUT B Limited (the “Nominees”) are only to them in their capacity as nominees for and on behalf of NatWest Trustee and Depositary Services Limited (“NatWest”). The same will be the case for any party succeeding them in their capacity as nominees for and on behalf of NatWest.

150. References in this Part of this Schedule to NatWest is to it solely in its capacity as trustee and depositary of Federated Hermes Property Unit Trust (the “Fund”). The same will be the case for any party succeeding NatWest in its capacity as trustee and depositary of the Fund.

PART 13

FOR THE PROTECTION OF SOUTH STAFFORDSHIRE WATER PLC

Application

151. For the protection of SSW the following provisions have effect unless otherwise agreed in writing between Sunnica Limited (“Sunnica”) and SSW.

152. The provisions of Part 1 of Schedule 12 (Protective Provisions for the protection of Water Undertakers, etc.), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

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

Interpretation

154. In this Part of this Schedule—

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

“apparatus” means—

- (i) mains, pipes or other apparatus belonging to or maintained by SSW for the purposes of water supply;
- (ii) any drain or works vested in SSW under the Water Industry Act 1991; and
- (iii) any sewer which is so vested in SSW or is the subject of a notice of intention to adopt by SSW given under section 102(4) of that Act or an agreement to adopt by SSW 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 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;

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

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“SSW” means South Staffordshire Water Plc and includes its successors in function or any successor in respect of any land interests or any successor as a water undertaker within the meaning of the Water Industry Act 1991.

Acquisition of apparatus

155. Regardless of any provision in this Order or anything shown on the deposited plans, Sunnica must not acquire any apparatus otherwise than by agreement.

Alternative apparatus

156.—(1) If, in the exercise of the powers conferred by this Order, Sunnica acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule, and any right of SSW to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of SSW.

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

(3) The proposed position of the alternative apparatus to be provided or constructed is subject to approval by SSW (such approval not to be unreasonably withheld or delayed). In the event that SSW (acting reasonably) considers the proposed position of the alternative apparatus to be unsuitable, SSW must (acting reasonably) propose an alternative position for the alternative apparatus and must give Sunnica written notice of such alternative position for the alternative apparatus within 28 days of the service of a notice under sub-paragraph (2). Any dispute regarding the alternative apparatus (including but not limited to the proposed position or the alternative proposed position) which cannot be agreed between the parties is to be determined in accordance with article 38 (arbitration).

(4) Any alternative apparatus to be constructed in land of Sunnica under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between SSW and Sunnica such agreement to be within 28 days of the service of a notice under sub-paragraph (2) (or within 28 days of service of a notice under sub-paragraph (3) where SSW has proposed an alternative position for the alternative apparatus under sub-paragraph (3) which is acceptable to Sunnica) or in default of such agreement settled by arbitration in accordance with article 38 (arbitration).

(5) In any case where alternative apparatus is to be provided or constructed under sub-paragraphs (2) or (3), or if in consequence of the exercise of any of the powers conferred by this Order SSW reasonably needs to remove any of its apparatus, Sunnica must, subject to sub-paragraph (6), afford to SSW the necessary facilities and rights for the construction of alternative apparatus in other land of Sunnica and subsequently for the maintenance of that apparatus and SSW is entitled to recover its reasonable costs incurred in securing such necessary facilities and rights from Sunnica subject to paragraph 159(3) below.

(6) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Sunnica, or Sunnica is unable to afford such facilities and rights as are mentioned in sub-paragraph (5), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SSW must, on receipt of a written notice to that effect from Sunnica, 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.

(7) SSW must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38 (arbitration), and after the grant to SSW of any such facilities and rights as are referred to in sub-paragraph (5) or (6), proceed without unreasonable

delay (having regard to the operational requirements of SSW) to construct and bring into operation the alternative apparatus and subsequently to allow Sunnica to remove any apparatus as required to be removed by Sunnica (acting reasonably) under the provisions of this Part of this Schedule PROVIDED THAT to the extent that any reasonable costs are incurred by SSW as a result of the removal of such apparatus then such reasonable costs are recoverable in full from Sunnica.

(8) Regardless of anything in sub-paragraph (7), if Sunnica gives notice in writing to SSW that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of Sunnica, that work, instead of being executed by SSW, must be executed by Sunnica without unreasonable delay under the superintendence, if given, and to the reasonable satisfaction of SSW.

(9) Nothing in sub-paragraph (8) authorises Sunnica 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 6 metres of the apparatus without the written consent of SSW (such consent not to be unreasonably withheld or denied).

(10) In relation to any works which will or may be situated on, over or within 6 metres measured in any direction of any apparatus, the plan to be submitted to SSW under sub-paragraph (1) must be detailed, include a method statement and describe—

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

157.—(1) Where, in accordance with the provisions of this Part of this Schedule, Sunnica affords to SSW facilities and rights for the construction and maintenance in land of Sunnica 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 Sunnica and SSW or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed within 6 metres of any existing apparatus of SSW, the arbitrator must—

- (a) give effect to all reasonable requirements of SSW for ensuring the protection of the existing apparatus and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the existing apparatus; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the existing apparatus for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by Sunnica 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 SSW than the facilities and rights enjoyed by SSW 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 Sunnica to SSW as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

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Existing apparatus: protection and access

158.—(1) Not less than 42 days before starting the execution of any of the authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by Sunnica under paragraph 156(2), Sunnica must submit to SSW a plan, section and description of the works to be executed.

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

(3) Any requirements made by SSW under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If SSW in accordance with sub-paragraph (3) and in consequence of the works proposed by Sunnica, reasonably requires the removal of any apparatus and gives written notice to Sunnica of that requirement, paragraphs 151 to 157 apply as if the removal of the apparatus had been required by Sunnica under paragraph 156(2).

(5) Nothing in this paragraph precludes Sunnica from submitting at any time or from time to time, but in no case less than 42 days before commencing the execution of any works, a new plan, 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) Sunnica is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to SSW 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.

Expenses

159.—(1) Subject to the following provisions of this paragraph, Sunnica must repay to SSW the reasonable expenses incurred by SSW in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including reasonable costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any of the authorised works.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule (other than apparatus that is re-used by SSW acting reasonably as alternative apparatus) is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part 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 except where this has been solely due to using the nearest currently available type; 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 Sunnica or, in default of agreement, is not determined by arbitration in accordance with article 38 (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 type, capacity, dimensions, or at the existing depth required to maintain

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the existing operational requirement, as the case may be, the amount which apart from this paragraph would be payable to SSW by virtue of sub-paragraph (1) is to be reduced by the amount of that excess (save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth).

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

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

(5) An amount which apart from this sub-paragraph would be payable to SSW in respect of works under sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on SSW 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) Any dispute as to whether a financial benefit is conferred in accordance with sub-paragraph (5) or as to the amount of such financial benefit which cannot be agreed is to be determined in accordance with article 38 (arbitration).

Damage to apparatus: costs, losses, etc.

160.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised works any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of SSW or there is any interruption in any service provided or in the supply of any goods by SSW, Sunnica must—

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

(2) Nothing in sub-paragraph (1) imposes any liability on Sunnica with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of SSW, its officers, servants, contractors or agents.

(3) SSW must give Sunnica reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of Sunnica (such consent not to be unreasonably withheld or delayed) and in the event of any dispute to be settled by arbitration in accordance with article 38 (arbitration).

Enactments and agreements

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

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PART 14

FOR THE PROTECTION OF SUFFOLK COUNTY COUNCIL AND CAMBRIDGESHIRE COUNTY COUNCIL

162. The provisions of this Part of this Schedule have effect for the protection of Suffolk County Council and Cambridgeshire County Council unless otherwise agreed in writing between the undertaker and Suffolk County Council or Cambridgeshire County Council.

163. Where Suffolk County Council or Cambridgeshire County Council are the drainage authority, Part 8 of this Schedule shall apply with the following amendments—

- (a) In sub-paragraph 90(1), for “14 days” substitute “28 days”;
- (b) In sub-paragraph 90(3)(b), for “28 days” substitute “2 months”;
- (c) In paragraph 94, for “make reasonable compensation for”, substitute “repay to the drainage authority all reasonable”; and
- (d) In paragraph 95, for “make reasonable compensation for” substitute “compensate the drainage authority for all”.