

## APPENDIX A – DRAFT PROTECTIVE PROVISIONS

### DCO Draft W Burton

#### Interpretation

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

(2) In this Part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal and River Trust (April 2018) or any updates or amendments thereto;

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

(a) the execution and placing of that work; and

(b) any relaying, renewal, or maintenance of that work as may be carried out during the period of 24 months from the completion of that work; and “construct” and “constructed”

have corresponding meanings;

“The Trust” means the Canal & River Trust;

“The Trust’s network” means the Trust’s network of waterways;

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

(a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);

(b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;

(c) the deposit of materials or the siltation of the waterway so as to damage the waterway;

(d) the pollution of the waterway;

(e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;

(f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the network);

(g) any interference with the exercise by any person of rights over the Trust’s network;

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

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

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

“specified work” means any part of the authorised development that may in any way affect the waterway;

“the undertaker” means EDF Energy (Thermal Generation) Limited (company number 4267569) or the person who has the benefit of this Order in accordance with article 7 (benefit of order);

“the waterway” means the River Trent, and includes any works, lands or premises belonging to the Trust, or under its management or control, and held or used by the Trust in connection with that navigation.

(3) Where the Code of Practice applies to any works or matter that are part of the authorised development or that form part of the protective works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions shall take precedent.

#### Approval of plans, protective works etc.

(1) The undertaker shall:

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(a) before commencing construction of any specified work relating to work no 5 (Surface Water Drainage System) (including any temporary works) supply to the Trust proper and sufficient plans of that work and such further particulars available to it as the Trust may within 14 days of the submission of the plans reasonably require for the approval of the engineer; and  
(b) not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

- (2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or, and if within 56 days after such plans have been supplied to the Trust (including any other particulars reasonably required under sub-paragraph (1)) the engineer has not intimated their disapproval of those plans and the grounds of their disapproval, the engineer shall be deemed to have approved the plans as submitted.
- (3) When signifying approval of the plans, the engineer may specify—  
(a) any works (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and  
(b) such other requirements as may be reasonably necessary to prevent detriment;

and such protective works or requirements shall be constructed by the undertaker or by the Trust at the undertaker's request with all reasonable dispatch and the undertaker shall not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

### **Alterations to the waterway**

- (1) If during the construction of a specified work or a protective work or during a period of twenty four (24) months after the completion of those works  
(a) any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment; and  
(b) the Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice)

the undertaker must pay to the Trust the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

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

### **Making good of detriment; compensation and indemnity, etc.**

- (1) If any detriment is caused by the construction or failure of the specified works or the protective works carried out by the undertaker, the undertaker (if so required by the Trust) must make good such detriment and pay to the Trust all reasonable expenses to which the Trust may be put, and compensation for any loss which the Trust may sustain, in making good or otherwise by reason of the detriment.
- (2) The undertaker shall be responsible for and must make good to the satisfaction of the Trust, all costs, charges, damages, expenses and losses not otherwise provided for in this part of this Schedule which may be occasioned to or reasonably incurred by the Trust—  
(a) by reason of the construction of a specified work or a protective work or the failure of such a work; or  
(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or a protective work;  
and subject to sub-paragraph (4) the undertaker shall effectively indemnify and hold harmless, the Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b).
- (3) The fact that any act or thing may have been done by the Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator is not to (if it was

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done without negligence on the part of the Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

- (4) (4) The Trust shall give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

#### **Costs of alterations, etc.**

Any additional expenses which the Trust may reasonably incur through altering, reconstructing or maintaining the waterway under any powers existing at the date when this Order was made by reason of the existence of a specified work shall (provided that 56 days' notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker) be repaid by the undertaker to the Trust.

#### **Arbitration**

Any difference arising between the undertaker and the Trust under this Schedule (other than a difference as to the meaning or construction of this Schedule) shall be referred to and settled by arbitration in accordance with article [X] (arbitration).

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