

PART 7

FOR THE PROTECTION OF DOGGERBANK OFFSHORE WIND FARM PROJECT 1 PROJCO LIMITED AND DOGGERBANK OFFSHORE WIND FARM PROJECT 2 PROJCO LIMITED

1. For the protection of Doggerbank Offshore Wind Farm Project 1 Projco Limited (Company No. 07791991) and Doggerbank Offshore Wind Farm Project 2 Projco Limited (Company No. 07914510) as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Dogger Bank.

2. Part 1 of Schedule 9 shall not apply in respect of the interaction between the Hornsea Four authorised development and the Dogger Bank authorised development

3. In this Part of this Schedule—

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker to a level of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the Hornsea Four authorised development which constitute specified works and 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 shall include (but without limitation):

(a) Dogger Bank 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 Dogger Bank to cover the undertaker’s liability to Dogger Bank to a cap of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Dogger Bank and where required by Dogger Bank, 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 Dogger Bank to cover the undertaker’s liability to Dogger Bank for an amount of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Dogger Bank);

“Dogger Bank” means Doggerbank Offshore Wind Farm Project 1 Projco Limited (Company No. 07791991) and Doggerbank Offshore Wind Farm Project 2 Projco Limited (Company No. 07914510) whose registered office is at No.1 Forbury Place, 43 Forbury Road, Reading, United Kingdom, RG1 3JH;

“the Hornsea Four authorised development” means the development authorised by this Order;

“the respective authorised developments” means the Dogger Bank authorised development and the Hornsea Four authorised development;

“the Dogger Bank Order” means the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015;

“Dogger Bank limits of deviation” means the areas of the Dogger Bank Order land in respect of which the Dogger Bank authorised development may be constructed, in accordance with article 3(2) of the Dogger Bank Order;

“the Dogger Bank Order land” means the land or any part of it shown as falling within the Dogger Bank Order limits;

“the Dogger Bank authorised development” means the development authorised by the Dogger Bank Order;

“ground mitigation scheme” means a scheme approved by Dogger Bank (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 Dogger Bank authorised development which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Dogger Bank’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; and

“specified works” means the carrying out of any of the Hornsea Four authorised development in the Dogger Bank limits of deviation or within 15 metres of the Dogger Bank limits of deviation

Regulation of powers over the Hornsea Four Order land

3. —(1) The undertaker may not exercise the powers under any of the articles of the Order specified in sub-paragraph (2) over or in respect of the Dogger Bank limits of deviation otherwise than with the prior written consent of Hornsea Four.

(2) The articles referred to in sub-paragraph (1) are—

- (a) article 8 (street works);
- (b) article 10 (temporary stopping up of streets and public rights of way);
- (c) article 11 (stopping up and diversion of public rights of way and access land);
- (d) article 12 (access to works);
- (e) article 14 (power to alter layout etc. of streets);
- (f) article 15 (discharge of water);
- (g) article 17 (authority to survey and investigate the land onshore);
- (h) article 18 (compulsory acquisition of land);
- (i) article 19 (compulsory acquisition of land: minerals);
- (j) article 21 (compulsory acquisition of rights);
- (k) article 22 (private rights);
- (l) article 24 (statutory authority to override easements and other rights);
- (m) article 25 (acquisition of subsoil only);
- (n) article 27 (rights under or over streets);
- (o) article 28 (temporary use of land for carrying out authorised project);
- (p) article 29 (temporary use of land for maintaining authorised development);
- (q) article 31 (statutory undertakers);
- (r) article 36 (felling or lopping of trees and removal of hedgerows); and
- (s) article 37 (trees subject to tree preservation orders).

(3) In the event that Dogger Bank withholds its consent pursuant to sub-paragraph (1) it will notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

Co-operation during construction

4. The undertaker may not acquire any land interest or override any easement or other interest of Dogger Bank order land within the Dogger Bank limits of deviation without first obtaining the written consent of Dogger Bank.

5.—(1) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Dogger Bank, that approval or consent shall be in writing (and subject to such reasonable terms and conditions as Dogger Bank may require), but shall not be unreasonably withheld.

6. Insofar as the construction of the Hornsea Four authorised development is or may be

undertaken concurrently with the Dogger Bank authorised development, the undertaker shall—

- (2) co-operate with Dogger Bank with a view to ensuring—
 - (a) the co-ordination of construction programming and the carrying out of works; and
 - (a) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and Dogger Bank and their respective contractors.
- (2) use reasonable endeavours to avoid any conflict arising between the carrying out of the respective authorised developments.

7. Insofar as the construction of the Hornsea Four authorised development gives rise to the need to modify any scheme secured by a requirement contained in Part 3 of Schedule 1 to the Dogger Bank Order, the undertaker shall provide such assistance as is reasonably necessary to support Dogger Bank in pursuing any such modification.

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

- (2) The plan to be submitted to Dogger Bank 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 Dogger Bank authorised development;
 - (e) by way of detailed drawings, every alteration proposed to be made to or close to any of the Dogger Bank authorised development; and
 - (f) any intended maintenance regimes;
- (3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Dogger Bank has given written approval of the plan so submitted.
- (4) Any approval of Dogger Bank required under sub-paragraph (3)—
 - (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and,
 - (b) must not be unreasonably withheld.
- (5) In relation to a work to which sub-paragraphs (1) and/or (2) apply, Dogger Bank may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing the Dogger Bank authorised development against interference or risk of damage or for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any of the Dogger Bank authorised development.
- (6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraphs (1) and (2) or as relevant sub-paragraph (5), as amended from time to time by agreement between the undertaker and Dogger Bank and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) and/or (7) by Dogger Bank for the alteration or otherwise for the protection of the Dogger Bank authorised development, or for securing access to it, and Dogger Bank will be entitled to watch and inspect the execution of those works.
- (7) Where Dogger Bank 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 Dogger Bank's satisfaction prior to the commencement of any specified works for which protective works are required and

Dogger Bank must give notice of its requirement for such protective works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

- (8) Nothing in this paragraph shall preclude 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 any 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.
- (9) 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 Dogger Bank notice as soon as is reasonably practicable and a plan of those works and must—
 - (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
 - (b) comply with sub-paragraph (10) at all times.
- (10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that Dogger Bank 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 9.

Expenses

9. —(1) Save where otherwise agreed in writing between Dogger Bank and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to Dogger Bank within 30 days of receipt of an itemised invoice or claim from Dogger Bank all charges, costs and expenses reasonably anticipated within the following three months or incurred by Dogger Bank in, or in connection with this Part of this Schedule including without limitation—
- (a) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
 - (b) 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.

Indemnity

10. 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 Hornsea Four 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 the Hornsea Four authorised development (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 property of Dogger Bank, or there is any interruption in any service provided, or in the supply of any goods, by Dogger Bank, or Dogger Bank 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 Dogger Bank the cost reasonably and properly incurred by Dogger Bank in making good such damage or restoring the supply; and
- (b) indemnify Dogger Bank for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Dogger Bank, by reason or in consequence of any such damage or interruption or Dogger Bank becoming liable to any third party as aforesaid other than arising from any default by Dogger Bank.

(2) The fact that any act or thing may have been done by Dogger Bank on behalf of the undertaker or in accordance with a plan approved by Dogger Bank or in accordance with any requirement of Dogger Bank as a consequence of the Hornsea Four authorised development or under its

supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (2) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and Dogger Bank.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of Dogger Bank, its officers, servants, contractors or agents;

(4) Dogger Bank must give the undertaker reasonable notice of any such claim or demand and no settlement, admission of liability or compromise or demand must be made, unless payment is required in connection with a statutory compensation scheme 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 Hornsea Four authorised development in the Dogger Bank order limits or within 15 metres in any direction of the Dogger Bank order limits until the following conditions are satisfied:

(a) Dogger Bank is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the Hornsea Four authorised development from the proposed date of commencement of construction of the Hornsea Four authorised development) and Dogger Bank has confirmed the same to the undertaker in writing; and

(b) Dogger Bank is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Dogger Bank that it shall maintain such acceptable insurance for the construction period of the Hornsea Four authorised development from the proposed date of commencement of construction of the Hornsea Four authorised development) and Dogger Bank has confirmed the same in writing to the undertaker.

(6) In the event that the undertaker fails to comply with 10(5) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent Dogger Bank from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Arbitration

11. —(1) Any difference or dispute arising between the undertaker and Dogger Bank under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Dogger Bank, be referred to and settled in arbitration in accordance with the Rules at Schedule 14 of this Order, by a single arbitrator to be agreed upon by the parties within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Should the Secretary of State fail to appoint an arbitrator under paragraph (1) within 14 days of the application, the referring party may refer to the Centre of Effective Dispute Resolution for appointment of an arbitrator.

(3) Article 39 (arbitration) shall not apply to any difference or dispute under any provisions of the Part of this Schedule.

Access

12. If in consequence of the agreement reached in accordance with 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 Dogger Bank to maintain or use the apparatus no less effectively than was possible before such obstruction.