

## KEADBY 3 CARBON CAPTURE POWER STATION

### DEADLINE 5

#### BRIEFING NOTE: DRAFT PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATIONAL GRID CARBON LIMITED

#### 1 Introduction

- 1.1 This note accompanies the draft protective provisions for the protection of National Grid Carbon Limited (“**NGC**” for the purposes of this note and the protective provisions), both of which are being submitted to the examination at Deadline 5. The provisions have been produced with a view to their inclusion within Schedule 10 (Protective Provisions) of the proposed Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order (**the K3 Order**).
- 1.2 The draft protective provisions have been drafted having regard to other relevant and routinely employed protective provisions, including those for the benefit of comparable undertakers (for instance, those responsible for water, gas or other pipeline networks). The provisions can broadly be categorised as either:
  - 1.2.1 specific provisions (see paragraphs (5) to (8) in particular) which have been drafted to deal with the design and delivery of those items of infrastructure identified within the K3 Order that would directly interface with the proposed NGC Pipeline Network (as defined), which is comprised of Work No. 7 in the K3 Order; or
  - 1.2.2 provisions of a more generic nature (see the remaining paragraphs) designed to provide NGC with an appropriate set of protections for its proposed NGC Pipeline Network and associated apparatus.
- 1.3 The draft protective provisions were issued by NGC to Keadby Generation Limited (**the Applicant**) shortly after Deadline 4. A detailed response to the same is now awaited from the Applicant. Discussions in relation to protective provisions for the protection of NGC continue to progress more generally and the parties remain committed to agreeing mutually acceptable provisions before the close of the examination. A further update will be provided at Deadline 6 in this regard.
- 1.4 The draft protective provisions and this note are being submitted to the Examining Authority at Deadline 5. This is to ensure that the Examining Authority has clarity, at this stage in the examination process, as to the protection which NGC is seeking within the K3 Order. NGC considers that the draft

protective provisions are appropriate and reasonable to protect its interests in both Work No. 7 of the K3 Order and the NGC Pipeline Network, the delivery of which is of significant importance to the future operation of the proposed Keadby 3 development.

1.5 To assist consideration of the draft protective provisions, a brief commentary is set out below in tabular form to explain the proposed approach to the drafting.

Proposed Provision	Commentary
Title	The provisions are to apply for the benefit of NGC, as well as its affiliates (as defined), transferees and assignees.
Paragraphs 1 and 2 <i>(Application)</i>	These are standard provisions, designed to give effect to the protective provisions whilst also allowing the parties to agree different arrangements.
Paragraph 3 <i>(Interpretation)</i>	<p>This paragraph defines key terms used throughout the protective provisions. In particular:</p> <p><b>“carbon dioxide export connection work”</b> – this defines the proposed items of new infrastructure included within the K3 Order works descriptions that will directly interface with the NGC Pipeline Network, namely Work No.7. In this context, the term is designed to include all aspects of Work No.7. The term is used within the specific context of the protective provisions contained within paragraphs 5 to 8 of the draft, explained below.</p> <p><b>“NGC Apparatus”</b> – this defines the physical assets which will form part of the NGC Pipeline Network and which will benefit from the protection conferred by these protective provisions. It is principally of relevance to the general provisions contained in paragraphs 13 onwards, i.e., those aspects which do not relate to the carbon dioxide export connection work.</p> <p><b>“NGC Pipeline Network”</b> –this term has been employed to describe the network of carbon dioxide and hydrogen pipelines to be developed by NGC in connection with the proposed Humber Low Carbon Pipelines Project.</p>

Proposed Provision	Commentary
	<p>“<b>NGC Pipeline Network Site</b>” – this definition relates to paragraphs 11, 12 and 18 of the protective provisions, and is intended to provide protection for land on which apparatus of NGC is or is anticipated to be located. In so far as land on which apparatus is <i>anticipated</i> to be located, this will only benefit from protection to the extent that it has been notified in writing by NGC to the undertaker.</p> <p>“<b>plan</b>” – this defines the meaning of “plan” wherever that term is employed throughout the protective provisions and is based on similar definitions used in other DCO protective provisions. It is common practice for protective provisions to provide for the submission of plans and other details for approval prior to works being carried out which may affect third party assets and interests, to avoid conflicting design / development in so far as may be possible. In this instance, provision is made for the submission of plans to NGC for approval before the undertaker executes the carbon dioxide export connection works (paragraphs 5 to 8), removes any NGC apparatus (paragraph 13) or carries out any specified works (paragraphs 15 and 16). The term “specified works” is defined below.</p> <p>“<b>specified work</b>” – this is a routinely employed concept within DCO protective provisions – specified works are those which attract plan approval rights described above. In this instance, a specified work is one which will or may be situated over, or within 15 metres of any NGC apparatus, or one which may adversely affect any NGC apparatus the removal of which has not been required by the undertaker under the process set out in paragraph 13 of the protective provisions. The carbon export connection works have been excluded from this definition as they are dealt with separately (see below).</p>
<p>Paragraph 4 (<i>Interaction with the NGC Pipeline Network</i>)</p>	<p>This paragraph is designed to ensure that the implementation of the K3 Order is sensitive to the future delivery of the NGC Pipeline Network. The provision requires the undertaker to use reasonable endeavours to avoid any conflict arising between the authorised development and the NGC Pipeline Network. The meaning of “reasonable endeavours” in this provision is then defined in subparagraphs (a) – (c).</p>
<p>Paragraphs 5 – 8 (<i>Carbon dioxide export connection works</i>)</p>	<p>These paragraphs are intended to provide NGC with oversight in relation to the design and delivery of those works comprised within Work No.7 of the K3 Order.</p> <p>Paragraph 5 provides that the undertaker must not except with the agreement of NGC proceed to carry out or procure Work No. 7B, or any part of it. Work No. 7B relates to the NGC high pressure carbon dioxide apparatus, comprising an export connection to the</p>

Proposed Provision	Commentary
	<p>NGC Pipeline Network and associated apparatus. Under article 6(c) of the K3 Order, the powers to construct, operate and maintain Work No. 7B have effect for the benefit of the undertaker or NGC. NGC will carry out the works comprised in Work No. 7B. Paragraph 5 therefore reflects this position.</p> <p>Paragraph 6 seeks to ensure that the programming, execution, commissioning and future operation and maintenance of Work No. 7B can proceed in a safe, efficient and economic manner alongside any other part of the authorised development.</p> <p>Paragraph 7 makes provision for NGC to be given the opportunity to approve 'plans' (see above for the meaning of this term) of a carbon dioxide export connection work (this would extend to Work No. 7A and any works associated with Work No. 7(c) of the K3 Order). This provision is designed to provide NGC with an appropriate degree of oversight in relation to these works, given their interface with Work No. 7B which is to be constructed by NGC. It is derived from established plan approval provisions found in other DCOs and includes provision for:</p> <ul style="list-style-type: none"> <li>• plans to be submitted to NGC before any carbon dioxide export connection works can commence;</li> <li>• NGC being able to reasonably request further information within a period of 28 days of receipt of the plans;</li> <li>• Such works to only be constructed in accordance with approved plans;</li> <li>• NGC not to unreasonably withhold or delay its approval of any proposed carbon dioxide export connection works, to give reasons for any refusal to approve and to impose reasonable requirements on any approval it might issue. The reasonable requirements which NGC may specify in relation to any approval include conditions requiring the undertaker to carry out protective works to safeguard the safe, economic and efficient construction and operation of the NGC Pipeline Network. This is a common requirement found in protective provisions for the benefit of third party undertakers; and</li> <li>• NGC to employ reasonable endeavours to respond to requests for approval within 56 days from the date of submission of the plans or receipt of further information reasonably requested by NGC.</li> </ul>

Proposed Provision	Commentary
	<p>Paragraph 8 makes provision for the execution of the carbon dioxide export connection works and provides that they must be constructed in accordance with the approved plans and that NGC will be entitled to inspect the construction of those works in so far as undertaken by the undertaker. To this end, the provisions state that:</p> <ul style="list-style-type: none"> <li>• NGC should be given not less than 14 days' notice of the intended construction commencement date; and</li> <li>• if works are not constructed correctly in accordance with the agreed plans and specifications, NGC can require that the works are removed or altered, and if necessary take such action itself and recover its associated costs.</li> </ul> <p>Again, these provisions are well precedented and are ultimately designed to ensure that the interface between the different components of Work No. 7 can be managed appropriately for the benefit of the authorised development and the future NGC Pipeline Network.</p>
Paragraph 9 ( <i>On Street Apparatus</i> )	This provision is a standard inclusion in most protective provisions and is designed to allow 'street works' to be controlled / governed pursuant to NRSWA.
Paragraphs 10 and 11 ( <i>Acquisition of land</i> )	These paragraphs are designed to protect such apparatus or interests as NGC may in due course enjoy in relation to the K3 Order land. Their effect is to preclude the acquisition of such apparatus or interests without NGC's agreement.
Paragraph 12 ( <i>Protective works to buildings</i> )	This is a standard provision, included on account of article 36 of the K3 Order which permits protective works to be carried out to buildings. This provision would attract protection to NGC apparatus (including, once constructed, Work No. 7B) and any NGC Pipeline Network site.

Proposed Provision	Commentary
<p>Paragraph 13 (<i>Removal of NGC apparatus</i>)</p>	<p>Paragraph 13 is a standard provision routinely included for the benefit of affected undertakers. In this instance, it would only take effect in relation to NGC apparatus, once such apparatus had actually been installed. Note in this context, NGC apparatus would include Work No.7B once constructed.</p> <p>In summary, it provides:</p> <ul style="list-style-type: none"> <li>• that no NGC apparatus in land acquired can be removed until alternative apparatus has been constructed and is in operation;</li> <li>• for at least 28 days' notice to be given of any proposal to remove NGC apparatus, including details of the alternative apparatus proposed;</li> <li>• that alternative apparatus must be constructed in such manner and in such location as may be agreed with NGC (or settled by arbitration in default of agreement); and</li> <li>• for NGC to bring the alternative apparatus into operation and remove the NGC apparatus it has replaced.</li> </ul>
<p>Paragraph 14 (<i>Facilities and rights for alternative apparatus</i>)</p>	<p>This paragraph is also based on well precedented provisions and complements paragraph 13. It provides for replacement facilities and rights to be granted to NGC in relation to any alternative apparatus that might be required, and for the payment of compensation if the replacement rights and facilities are less favourable on the whole than those they are replacing.</p>
<p>Paragraphs 15 to 16 (<i>specified works plan approval</i>)</p>	<p>These provisions are drafted in very similar terms to the carbon dioxide export connection work provisions in paragraphs 7 and 8 above. They would provide NGC with plan approval and works supervision powers more generally in relation to works constructed under the K3 Order that might impact on NGC apparatus (once installed) or identified NGC Network sites (see above for the proposed definition of this term).</p>

Proposed Provision	Commentary
Paragraphs 17 ( <i>expenses and costs</i> ) and 18 ( <i>indemnity</i> )	These provisions would enable NGC to recover reasonable expenses and costs associated with plan approvals and inspections undertaken pursuant to the protective provisions and <i>inter alia</i> to make reasonably compensation for damage occasioned to NGC apparatus as a result of the construction of the authorised development. These provisions are based on drafting frequently adopted in protective provisions within DCOs.
Paragraphs 19 ( <i>Co-operation</i> )	These provisions are routinely included within protective provisions and are designed to promote positive working as between the parties, recognising both parties' respective interests.
Paragraph 20 ( <i>Disputes</i> )	This provides for disputes under the provisions to be determined by arbitration pursuant to article 46 of the K3 Order if the parties so agree, failing which for disputes to be determined by the Secretary of State.

5 April 2022

PART [ ]  
FOR THE PROTECTION OF NATIONAL GRID CARBON LIMITED

*Application*

1. For the protection of NGC the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGC.
2. The undertaker hereby agrees not to exercise its powers under the Order without fully complying with the provisions of this Part of this Schedule.

*Interpretation*

3.—(1) In this Part of this Schedule—

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

“affiliates” means any of NGC’s parent or subsidiary undertakings together with any subsidiary undertakings of any such parent undertakings from time to time;

“alternative apparatus” means apparatus in the alternative to NGC apparatus adequate to enable NGC to operate and maintain its undertaking in a manner no less efficient than previously;

“carbon dioxide export connection work” means the infrastructure proposed to deliver the export and compression of carbon dioxide arising from Work No.1C to the NGC Pipeline Network and comprising Work No.7;

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

“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;

“NGC” means National Grid Carbon Limited (Company Number 03932833) whose registered office is at 1-3 Strand, London, WC2N 5EH and includes all of its affiliates, transferees and assignees;

“NGC apparatus” means any mains, pipes, plant or other apparatus belonging to, operated or maintained by NGC for the purposes of the construction, operation, maintenance and future decommissioning of the NGC Pipeline Network, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for beneficial use by NGC;

“NGC Pipeline Network” means the proposed network of high pressure carbon dioxide and hydrogen pipelines to be developed by NGC for the transportation of carbon dioxide and hydrogen to and from industrial emitters in the Humber region and references to “the NGC Pipeline Network” in this Part of this Schedule include any part of that network;

“NGC Pipeline Network site” includes—

- (a) land on which any NGC apparatus is situated; and
- (b) land on which NGC apparatus is anticipated to be situated (in so far as the same has been notified by NGC in writing to the undertaker);

“plan” includes all sections, designs, drawings, maps, specifications, method statements, soil reports and other survey data, programmes, calculations, risk assessments and other

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(a) 1991 c. 22.



documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“specified work” means so much of any work or operation authorised by this Order (other than an carbon dioxide export connection work) as—

- (a) will or may be situated over, or within 15 metres measured in any direction of any NGC apparatus; and /or
- (b) may in any way adversely affect any NGC apparatus the removal of which has not been required by the undertaker under paragraph [13] or otherwise.

(2) In paragraph (1), references to “subsidiary undertakings” and “parent undertakings” have the meaning given to them by section 1162 (parent and subsidiary undertakings) of the Companies Act 2006<sup>(a)</sup>, except that references in that section to “majority” are to be read as references to “25 per cent or more” and provided further that a company will be treated, for the purposes only of the membership requirement contained in that section of that Act, as a member of another company even if its shares in that other company are registered in the name of—

- (a) another person (or its nominee) by way of security or in connection with the taking of security; or
- (b) its nominee.

#### *Interaction with the NGC Pipeline Network*

**4.**—(1) Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the NGC Pipeline Network. For the purposes of this sub-paragraph, “reasonable endeavours” means—

- (a) undertaking consultation with NGC on detailed design and programming of works for the authorised development and ensuring the plans as submitted for approval under the requirements do not unreasonably impede or interfere with the construction of the NGC Pipeline Network;
- (b) having regard to the anticipated programme of works for the NGC Pipeline Network and facilitating a co-ordinated approach to construction programming, land assembly, and the carrying out of works in connection with the authorised development and the NGC Pipeline Network; and
- (c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development.

#### *Carbon dioxide export connections works*

**5.** Despite any provision of this Order or anything shown on the Works Plans, the undertaker must not except with the agreement of NGC carry out or procure Work No.7B, or any part of it.

**6.** Without limiting any other provision of this Order, where NGC proceeds to carry out Work No.7B or any part of it, the undertaker must use its best endeavours to facilitate the programming, execution, commissioning and future operation and maintenance of those works in a safe, efficient and economic manner alongside any other part of the authorised development.

**7.**—(1) Before beginning to construct any carbon dioxide export connection work, or any part of it, the undertaker must submit to NGC plans of the relevant carbon dioxide export connection work (or part of it) and such further particulars available to it as NGC may request within 28 days of receipt of the plans reasonably requested.

(2) Any carbon dioxide export connection work must not be constructed except in accordance with such plans as may be approved in writing by NGC.

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(a) 2006 c. 46.

- (3) Any approval of NGC required under 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 of refusal; and
  - (c) may be given subject to such reasonable requirements as NGC may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus.

(4) NGC must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans or receipt of further particulars if such particulars have been requested by NGC for approval.

(5) Without limiting sub-paragraph (3), the requirements which NGC may have under that paragraph include conditions requiring the undertaker, at its own expense—

- (a) to construct such protective works, whether temporary or permanent, before or during the construction of the carbon dioxide export connection works or other works as are reasonably considered by NGC to be necessary to safeguard the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus; and
- (b) to provide written evidence that all relevant consents, permissions, agreements, approvals and requirements for those parts of the Order land which are required to carry out the carbon dioxide export connection works have been secured and where relevant complied with, including without limitation any requirements set out in a scheme to deal with the contamination of land which has been approved under paragraph [15] (Contaminated land and groundwater) of Schedule 2 (Requirements) to this Order.

**8.—**(1) Subject to sub-paragraph (2), any carbon dioxide export connection work, and all protective or additional works required by NGC under paragraph [7], 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 NGC,

and NGC will be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to NGC not less than 14 days' notice in writing of its intention to commence construction of any carbon dioxide export connection work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a carbon dioxide export connection work or any protective or additional work required by NGC is constructed otherwise than in accordance with the requirements of this Part of this Schedule, NGC 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 NGC 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 NGC reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) 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, NGC may execute the works specified in the notice and any reasonable expenditure incurred by NGC in so doing will be recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NGC will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph [20].

*On street apparatus*

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

*Acquisition of land*

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

11. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not unless otherwise agreed in writing acquire any land forming part of a NGC Pipeline Network Site.

*Protective works to buildings*

12. The undertaker, in the case of the powers conferred by article [36] (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any NGC apparatus or any NGC Pipeline Network site.

*Removal of NGC apparatus*

13.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any NGC apparatus is placed or requires that any NGC apparatus is relocated or diverted, that NGC apparatus must not be removed under this Part of this Schedule, and any right of NGC to maintain that NGC apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of NGC 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 NGC apparatus placed in that land, the undertaker must give to NGC 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NGC reasonably needs to remove any NGC apparatus) the undertaker must, subject to sub-paragraph (3), afford to NGC 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) 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 NGC and the undertaker or in default of agreement settled by arbitration in accordance with article [46] (arbitration).

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

*Facilities and rights for alternative apparatus*

14.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGC facilities and rights for the construction, commissioning, maintenance and operation of alternative apparatus in substitution for NGC apparatus to be removed, those facilities

and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and NGC or in default of agreement settled by arbitration in accordance with article [46] (arbitration).

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

#### *Specified works plan approval*

**15.—**(1) Before beginning to construct any specified work, the undertaker must submit to NGC plans of the specified work and such further particulars available to it as NGC may within 28 days of 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 NGC, or determined under paragraph [20].

(3) Any approval of NGC required under 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 of refusal; and
- (c) may be given subject to such reasonable requirements as NGC may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus.

(4) NGC must use its reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans or receipt of further particulars if such particulars have been requested by NGC for approval.

(5) Without limiting sub-paragraph (3), the requirements which NGC 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 or other works as are reasonably considered by NGC to be necessary to safeguard the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus.

**16.—**(1) Subject to sub-paragraph (2), any specified work, and all protective or additional works required by NGC under sub-paragraph [15(5)], 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 NGC,

and NGC will be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to NGC 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 7 days after the date on which it is completed.

(3) If any part of a specified work or any protective or additional work required by NGC is constructed otherwise than in accordance with the requirements of this Part of this Schedule, NGC 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 NGC 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 NGC reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) 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, NGC may execute the works specified in the notice and any reasonable expenditure incurred by NGC in so doing will be recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NGC will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph [20].

#### *Expenses and costs*

**17.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to NGC all expenses reasonably incurred by NGC in, or in connection with, the inspection, removal, alteration or protection of any NGC apparatus or the construction of the carbon dioxide export connection works or any alternative apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph [13].

(2) Without prejudice to the generality of the provision in sub-paragraph [17(1)], the undertaker must repay to NCG all reasonable costs, charges and expenses which NGC may reasonable incur—

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

#### *Indemnity*

**18.—**(1) Subject to sub-paragraphs (2) to (3), if as a result of the authorised development or its construction, or of any subsidence resulting from any of those works, or the failure of any such work, any damage is caused to any NGC apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property belonging to NGC, or there is any interruption in the supply of the service provided by NGC, or the efficiency of that supply is impaired, the undertaker must—

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

(2) If as a result of the authorised development NGC's access to the NGC Pipeline Network, or to any NGC Pipeline Network site, is materially obstructed, the undertaker must provide such alternative means of access that will allow NGC to maintain NGC apparatus or use NGC apparatus no less efficiently than was possible before the obstruction and such alternative means of access must be provided within 24 hours of the undertaker becoming aware of such obstruction.

(3) The fact that any act or thing may have been done by NGC on behalf of the undertaker or in accordance with a plan approved by NGC or in accordance with any requirement of NGC or under its supervision does not, subject to sub-paragraph (4), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(4) 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 NGC, its officers, servants, contractors or agents.

(5) NGC must give the undertaker reasonable notice of any third party claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

#### *Co-operation*

**19.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or NGC requires the removal of NGC apparatus under paragraph [13] or NGC specifies requirements for the protection or alteration of apparatus under paragraph [15], the undertaker must use 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 the NGC Pipeline Network.

#### *Disputes*

**20.** Any dispute arising between the undertaker and NGC under this part of this Schedule will, if the parties agree, be determined by arbitration under article [46] (arbitration), but will otherwise be determined by the Secretary of State on a reference to it by the undertaker or NGC, after notice in writing by one to the other.