

PART 12

FOR THE PROTECTION OF EXOLUM PIPELINE SYSTEM LTD

Application

- 1 For the protection of Exolum the following provisions, unless otherwise agreed in writing at any time between the undertaker and Exolum, have effect.

Interpretation

1.1 In this Part of this Schedule,

1.2 the following terms have the following meanings—

Additional Rights: means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of retained Apparatus including any restrictions on the landowner and occupiers for the protection of the retained Apparatus and to allow Exolum to perform its functions.

Alternative Apparatus: means alternative apparatus adequate to enable Exolum to fulfil its functions as a pipeline operator in a manner not less efficient than previously.

Alternative Rights: means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of Alternative Apparatus including any restrictions on the landowner and occupiers for the protection of the Alternative Apparatus and to allow Exolum to perform its functions.

Apparatus: means the pipeline and storage system and any ancillary apparatus owned or operated by Exolum and includes:

- (a) any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;
- (b) any ancillary works, all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers;
- (c) such legal interest, and benefit of property rights and covenants as are vested in respect of these items;

and, where the context requires, includes Alternative Apparatus.

Exolum: means Exolum Pipeline System Ltd (company registration number 09497223 whose registered office is 1st Floor 55 King William Street, London, England, EC4R 9AD) and for the purpose of enforcing the benefit of any provisions in this Schedule, any group company of Exolum Pipeline System Ltd and in all cases any successor in title.

functions: includes powers, duties and commercial undertaking.

in: in a context referring to Apparatus in land includes a reference to Apparatus under, over or upon land.

Plan: includes all designs, drawings, sections, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to allow Exolum to assess the Restricted Works to be executed properly and sufficiently and in particular must describe:

- (a) the position of the works as proposed to be constructed or renewed;

- (b) the level at which the works are proposed to be constructed or renewed;
- (c) the manner of the works' construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of the affected Apparatus and/or Premises and any other apparatus belonging to another undertaker that may also be affected by the Restrictive Works;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such Apparatus;
- (f) any intended maintenance regime;
- (g) details of the proposed method of working and timing of execution of works; and
- (h) details of vehicle access routes for construction and operational traffic.

Premises: means land that Exolum owns, occupies or otherwise has rights to use including but not limited to storage facilities, administrative buildings and jetties.

Protective Works: means works for the inspection and protection of Apparatus.

Restricted Works: means any works that are near to, or will or may affect any Apparatus or Premises including:

- (a) all works within 15 metres measured in any direction of any Apparatus including embankment works and those that involve a physical connection or attachment to any Apparatus,
- (b) the crossing of Apparatus by other utilities,
- (c) the use of explosives within 400 metres of any Apparatus,
- (a) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of any Apparatus, and
- (e) all works that impose a load directly upon the Apparatus, wherever situated

whether carried out by the Promoter or any third party in connection with the Authorised Development.

Working Day: means any day other than a Saturday, Sunday or English bank or public holiday.

Acquisition of Apparatus

- 2 Regardless of any other provision in the Order or anything shown on the land plans:
 - 2.1 the undertaker must not, otherwise than by agreement with Exolum, acquire any Apparatus, Exolum's rights in respect of Apparatus or any of Exolum's interests in the Order land;
 - 2.2 where the undertaker acquires the freehold of any land in which Exolum holds an interest, the undertaker must afford to or secure for Exolum such rights in land in substitution for any right which would be extinguished by that acquisition (the replacement rights). These replacement rights must be granted upon substantially the same terms and conditions as the right to be extinguished, unless otherwise

- agreed between the undertaker and Exolum, and must be granted or put in place contemporaneously with the extinguishment of the right which they replace;
- 2.3 the undertaker must not, otherwise than in accordance with this Part of this Schedule:
 - 2.3.1 obstruct or render less convenient the access to any Apparatus;
 - 2.3.2 interfere with or affect Exolum's ability to carry out its functions as an oil pipeline operator;
 - 2.3.3 require that Apparatus is relocated or diverted; or
 - 2.3.4 remove or required to be removed any Apparatus;
 - 2.4 any right of Exolum to maintain, repair, renew, adjust, alter or inspect Apparatus must not be extinguished by the undertaker until any necessary Alternative Apparatus has been constructed and it is in operation and the Alternative Rights have been granted, all to the reasonable satisfaction of Exolum; and
 - 2.5 any right of Exolum to access the Exolum operations must not be extinguished until necessary alternative access has been provided to Exolum's reasonable satisfaction.
- 3 Prior to the carrying out of any Restricted Works or any works authorised by this Order that will affect the Apparatus, and if required by Exolum, the parties must use their reasonable endeavours to negotiate and enter into such deeds of consent (crossing consent) and (if considered necessary) variations to the existing rights upon such terms and conditions as may be agreed between Exolum and the undertaker acting reasonably and which must be no less favourable on the whole to Exolum than this Part of this Schedule, and the undertaker will use reasonable endeavours to procure and secure 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 works.
- 4 Where the undertaker acquires land which is subject to any existing rights and the provisions of paragraph 9 do not apply, the undertaker must:
- 4.1 retain any notice of the existing rights of Exolum on the title to the relevant land when registering the undertaker's title to such acquired land;
 - 4.2 (where no such notice of the existing rights or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with an application to register title to the Promoter's interest in such acquired land at the Land Registry) a notice of the existing rights or other interest in relation to such acquired land; and
 - 4.3 provide up to date official entry copies to Exolum within 20 working days of receipt of such up to date official entry copies.
- 5 Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which Exolum has Apparatus:
- 5.1 where reasonably necessary, Exolum may exercise its rights to access such land:
 - 5.1.1 in an emergency, without notice; and
 - 5.1.2 in non-emergency circumstances, having first given not less than 14 days' written notice to the undertaker in order to allow the parties to agree the

timing of their respective works during the period of temporary possession;
and

- 5.2 the undertaker must not remove or in any way alter Exolum's rights in such land, unless in accordance with the provisions of this Order.

Removal of Apparatus and Rights for Alternative Apparatus

- 6 If, having used all reasonable endeavours to implement the Authorised Development without the removal of any Apparatus:

6.1 the undertaker reasonably requires the removal of any Apparatus; or

6.2 Exolum reasonably requires the removal of any Apparatus;

then the relevant party must give written notice of that requirement to the other.

- 7 The parties must use their reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of the Alternative Apparatus to be provided or constructed.

- 8 The undertaker must afford to Exolum the necessary facilities and rights for the construction of Alternative Apparatus and subsequently the grant of Alternative Rights in accordance with paragraphs 14 to 17.

- 9 Any Alternative Apparatus is to be constructed in land owned by the undertaker or in land in respect of which Alternative Rights have been or are guaranteed to be granted to Exolum. The Alternative Apparatus must be constructed in such manner and in such line or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

- 10 After the details for the works for Alternative Apparatus to be provided or constructed have been agreed or settled in accordance with article 42 (arbitration), and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 9, Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Alternative Apparatus and subsequently to remove (or if agreed between the parties to allow the undertaker to remove) any redundant Apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

- 11 The following paragraphs 12 and 13 only apply if:

11.1 Exolum fails to comply with its obligations under paragraph 10 to remove any redundant Apparatus; and

11.2 the undertaker has served notice on Exolum specifying the default; and

11.3 Exolum has failed to remedy the default within 28 days.

- 12 In the circumstances set out in paragraph 11, if the undertaker then gives notice in writing to Exolum that it desires itself to remove the redundant Apparatus, that work, instead of being executed by Exolum, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Exolum.

- 13 Nothing in paragraph 12 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 3000 millimetres

of the Apparatus unless that Apparatus is redundant and disconnected from Exolum's remaining system.

Facilities and Rights for Alternative Apparatus

- 14 Where, in accordance with the provisions of this Schedule, the undertaker affords to Exolum facilities and rights for the construction of Alternative Apparatus and the grant of Alternative Rights, 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 Exolum and must be materially no less favourable on the whole to Exolum than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by Exolum, in accordance with this Schedule or in default of agreement settled by arbitration in accordance with article 42 (arbitration).
- 15 Alternative Rights must be granted before any Alternative Apparatus is brought into use.
- 16 The parties agree that the undertaker must use reasonable endeavours to procure the grant of the Alternative Rights by way of a 999 year sub-soil lease, substantially in the form of Exolum's precedent from time to time as amended by written agreement between the parties acting reasonably, or such other form of agreement as the parties otherwise agree acting reasonably.
- 17 Nothing in this Schedule or contained in the Alternative Rights require Exolum to divert or remove any Alternative Apparatus.
- 18 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 Exolum less favourable on the whole to Exolum 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, Exolum may refer the matter to arbitration in accordance with article 42 (arbitration).

Retained Apparatus and Alternative Apparatus: protection

- 19 Before commencing the execution of any Restricted Works, the undertaker must submit to Exolum a Plan of the works to be executed and any other information that Exolum may reasonably require to allow Exolum to assess the works.
- 20 No Restricted Works are to be commenced until the Plan to be submitted to Exolum under paragraph 19 has been approved by Exolum in writing (acting reasonably) and are to be carried out only in accordance with the details submitted under paragraph 19 and in accordance with such reasonable requirements as may be notified to the undertaker in writing in accordance with paragraph 21 by Exolum.
- 21 Any approval of Exolum in respect of Restricted Works may be given subject to such reasonable requirements as Exolum may require to be made for:
 - 21.1 the continuing safety and operational viability of any Apparatus;
 - 21.2 the requirement for Exolum to have reasonable access with or without vehicles to inspect, repair, replace, maintain and ensure the continuing safety and operation or viability of any Apparatus; and
 - 21.3 the requirement for Exolum to be entitled to watch and inspect the execution of Restricted Works to ensure the continuing safety and operational viability of any Apparatus and ensure compliance with the agreed Plan;

providing such reasonable requirements will be notified to the undertaker in writing.

- 22 Where reasonably required by either party, in view of the complexity of any proposed works, timescales, phasing or costs, the parties must with due diligence and good faith negotiate a works agreement for the carrying out of Protective Works or the installation of Alternative Apparatus.
- 23 If in consequence of the works notified to Exolum by the undertaker under paragraph 18, the circumstances in paragraph 7 apply, then the parties must follow the procedure in paragraph 7 onwards.
- 24 Nothing in paragraphs 18 to 23 precludes the undertaker from submitting prior to the commencement of works to protect retained Apparatus or to construct Alternative Apparatus (unless otherwise agreed in writing between the undertaker and Exolum) a new Plan, instead of the Plan previously submitted, in which case the parties must re-run the procedure from paragraph 18 onwards.
- 25 Where Exolum reasonably requires Protective Works, the parties must use their reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of any physical features to be provided or constructed.
- 26 The undertaker must afford to Exolum the necessary facilities and rights for the construction of Protective Works and subsequently the grant of Additional Rights in accordance with paragraphs 14 to 17.
- 27 Any Protective Works are to be constructed in land owned by the undertaker or in land in respect of which Additional Rights have been or are guaranteed to be granted to Exolum. The Protective Works must be constructed in such manner and in such line or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).
- 28 After the details for the Protective Works to be provided or constructed have been agreed or settled in accordance with article 42 (arbitration), and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 9, Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Protective Works.

Cathodic protection testing

- 29 Where in the reasonable opinion of Exolum or the undertaker:
- 29.1 the Authorised Development might interfere with the cathodic protection forming part of Apparatus; or
- 29.2 any Apparatus might interfere with the proposed or existing cathodic protection forming part of the Authorised Development;
- Exolum and the undertaker must co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.
- 30 The Parties must carry out the works and enter into such agreements as are necessary to implement the measures for providing or preserving cathodic protection.

Expenses

- 31 Subject to the following provisions of these paragraphs 32 to 34, the undertaker must pay to Exolum the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Exolum in, or in connection with:
- 31.1 undertaking its obligations under this Schedule including:
 - 31.1.1 the installation, inspection, removal, alteration, testing or protection of any Apparatus, Alternative Apparatus and Protective Works;
 - 31.1.2 the execution of any other works under this Schedule; and
 - 31.1.3 the review and assessment of Plans;
 - 31.2 the watching of and inspecting the execution of the Authorised Development, any Restricted Works and any works undertaken by third parties as a result of Authorised Development (including the assessment of Plans); and
 - 31.3 imposing reasonable requirements for the protection or alteration of Apparatus affected by the Authorised Development or works as a consequence of the Authorised Development in accordance with paragraph 21;
- together with any administrative costs properly and reasonably incurred by Exolum.
- 32 There will be no deduction from any sum payable under paragraph 31 as a result of:
- 32.1 the placing of apparatus of a better type, greater capacity or of greater dimensions, or at a greater depth than the existing Apparatus, to the extent Exolum has acted reasonably in procuring such apparatus;
 - 32.2 the placing of apparatus in substitution of the existing Apparatus that may defer the time for renewal of the existing Apparatus in the ordinary course; or
 - 32.3 the scrap value (if any) of any Apparatus removed.
- 33 Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Exolum, the undertaker shall pay Exolum sufficiently in advance to enable Exolum to undertake its obligations under this Schedule in a manner that is neutral to its cash flow provided that in the event that the costs incurred by Exolum are less than the amount paid by the undertaker pursuant to this paragraph 33 then Exolum shall within 35 days of payment being made by Exolum for the costs anticipated in the costs and expenses estimates, repay any overpayment to the undertaker.

Damage to property and other losses

- 34 Subject to paragraphs 35 to 39, the undertaker shall:
- 34.1 indemnify Exolum for all reasonably incurred loss, damage, liability, costs and expenses suffered or reasonably incurred by Exolum arising out of:
 - 34.1.1 the carrying out of works under this Schedule;
 - 34.1.2 the carrying out of the Authorised Development;
 - 34.1.3 the use or occupation of land over or in the vicinity of any Apparatus or in the vicinity of any Premises in connection with the carrying out of the Authorised Development;

- 34.1.4 any injury or damage whatsoever to any property, real or personal, including the property of Exolum; and
 - 34.1.5 any matters arising out of or in connection with this Order;
 - 34.2 indemnify Exolum against any claim made against, or loss suffered by, Exolum as a result of any act or omission committed by the undertaker's officers, employees, contractors or agents whilst on or in the vicinity of any Apparatus or Premises for the purposes of carrying out any activity authorised by this Order;
 - 34.3 pay to Exolum, in accordance with the terms of the provisions of this Part of this Schedule, the cost reasonably incurred by Exolum in making good any damage to the Apparatus (other than Apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising out of the carrying out of works under this Schedule and arising out of the carrying out of the Authorised Development; and
 - 34.4 pay to Exolum the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply through its Apparatus in consequence of the carrying out of works under this Schedule or the carrying out of the Authorised Development;
- and make reasonable compensation to Exolum for any other expenses, losses, damages, penalty or costs incurred by Exolum by reason or in consequence of any such damage or interruption including all claims by third parties.
- 35 Nothing in clause 34 imposes any liability on the Undertaker with respect to 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.
 - 36 The fact that any act or thing may have been done by Exolum on behalf of the Promoter or in accordance with a Plan approved by Exolum or in accordance with any requirement of Exolum or under its supervision shall not, subject to paragraph 37, excuse the Promoter from liability under the provisions of paragraph 34.
 - 37 Nothing in paragraph 34 imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the negligent act, neglect or default of Exolum, its officers, servants, contractors or agents.
 - 38 The undertaker and Exolum shall at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers in connection with this Schedule.
 - 39 The undertaker warrants that it will use reasonable endeavours to ensure:
 - 38.1 the information it or any of its employees, agents or contractors provide to Exolum about the Plans or the Authorised Development and on which Exolum relies in the design of and carrying out of any works is accurate; and
 - 38.2 the undertaker or any of its employees, agents or contractors have exercised all the reasonable skill, care and diligence to be expected of a qualified and experienced member of their respective profession.
 - 39 Exolum must give the undertaker reasonable notice of any such claim or demand to which paragraph 35 applies.

Insurance

- 40 The undertaker must not carry out any Restricted Works unless and until Exolum has confirmed to the undertaker in writing that it is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker (or its contractor) has procured acceptable professional indemnity insurance and public liability insurance with minimum cover of £25 million per event, with respect to the carrying out of the works.
- 41 The undertaker shall maintain such insurance for the construction period of the Authorised Development from the proposed date of Commencement of the Authorised Development.

Co-operation and reasonableness

- 42 Where Apparatus is required to be protected, altered, diverted or removed under this Schedule, the undertaker must use all reasonable endeavours to co-ordinate the execution of any works under this Part of this Schedule:
- 42.1 in the interests of safety;
- 42.2 in the interest of the efficient and economic execution of both Exolum's works and the Authorised Development; and
- 42.3 taking into account the need to ensure the safe and efficient operation of the Apparatus and carrying out of Exolum's functions.
- 43 Exolum must use its reasonable endeavours to co-operate with the undertaker for the purposes outlined in paragraph 42.
- 44 The undertaker and Exolum will act reasonably in respect of any given term of this Schedule and, in particular, (without prejudice to generality) where any approval, consent or expression of satisfaction is required by this Part of this Schedule it must not be unreasonably withheld or delayed.

Emergency circumstances

- 45 The Promoter acknowledges that Exolum provides services to His Majesty's Government, using the Apparatus, which may affect any works to be carried under this Schedule and the Authorised Development.
- 46 In the following circumstances, Exolum may on written notice to the Promoter immediately suspend all works that necessitate the stopping or suspending of the supply of product through any Apparatus under this Schedule and Exolum shall not be in breach of its obligations under this Schedule:
- 46.1 circumstances in which, in the determination of the Government, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or
- 46.2 circumstances in which a request has been received, and a decision to act upon such request has been taken, by the Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or
- 46.3 circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by the Government; or

- 46.4 any circumstances identified as such by the COBRA committee of the Government (or any successor committee thereof); or
- 46.5 any situation in connection with which the Government requires fuel capacity, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas.
- 47 The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which shall include costs of demobilising and remobilising any workforce, and any costs to protect the Apparatus "mid-works") to account for the suspension.
- 48 Exolum shall not be liable for any costs, expenses, losses or liabilities the Promoter incurs as a result of the suspension of any activities under paragraphs to or delays caused by it.

Dispute Resolution

- 49 The undertaker and Exolum must use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Part of this Schedule in accordance with the following provisions.
- 50 The undertaker and Exolum must each nominate a representative who will meet to try to resolve the matter. If the matter is not resolved at that level within ten working days of either the undertaker or Exolum requesting such a meeting (or such longer period as may be agreed between the undertaker and Exolum) the matter may at the request of either the undertaker or Exolum be referred for discussion at a meeting to be attended by a senior executive from each party.
- 51 If the meeting between senior executives fails to result in a settlement within 20 working days of the date of the request for such a meeting (or if it is not possible to convene a meeting within this period) then, unless otherwise agreed in writing between the undertaker and Exolum, the dispute or difference will be determined by arbitration in accordance with article 42 (arbitration).

Miscellaneous

- 52 No failure or delay by a party to exercise any right or remedy provided under this Part of this Schedule or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy.