

# HyNet North West

## **DRAFT DEVELOPMENT CONSENT ORDER**

### **HyNet Carbon Dioxide Pipeline DCO**

#### **Revision I (Deadline 7)**

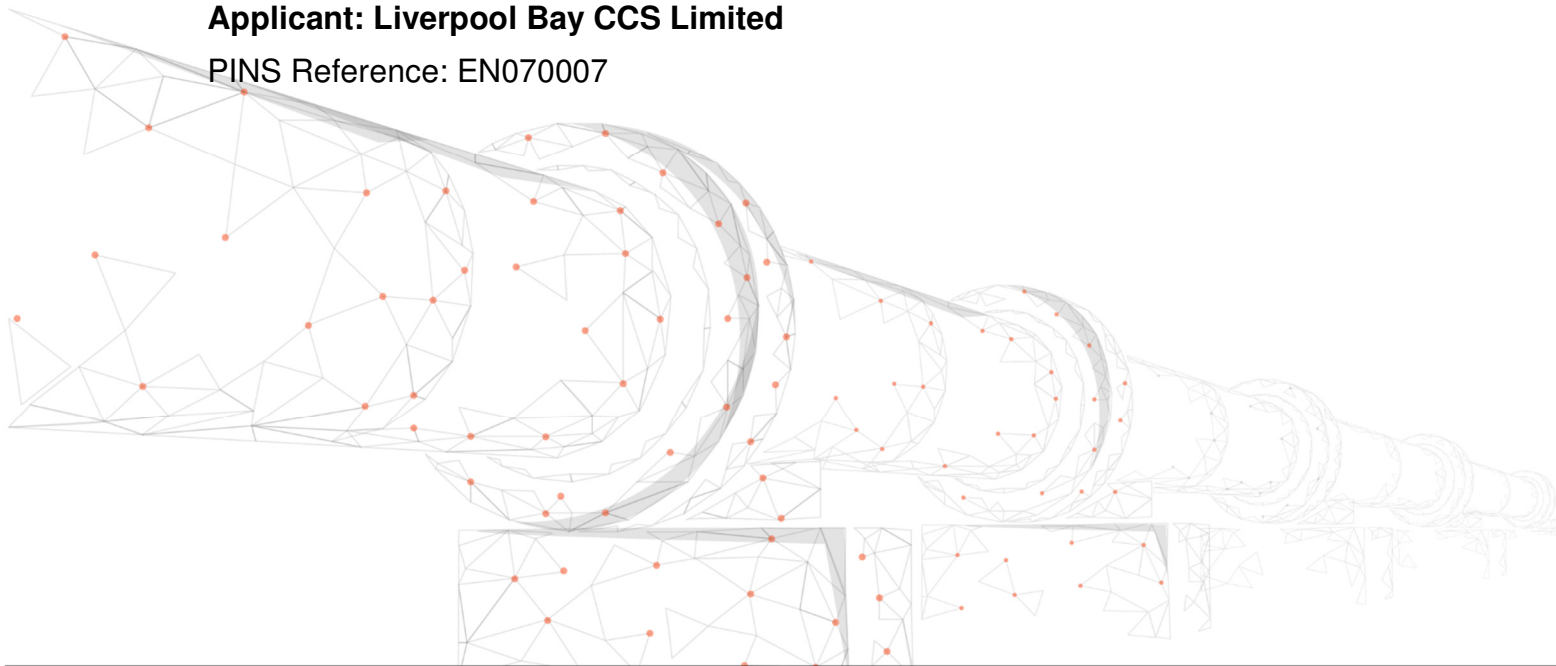
Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 – Regulations 5(2)(b)

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Applicant: Liverpool Bay CCS Limited

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Author Name and Sign	Burges Salmon	Burges Salmon	Burges Salmon	Burges Salmon	Burges Salmon	Burges Salmon
Approver Name and Sign	Burges Salmon	Burges Salmon	Burges Salmon	Burges Salmon	Burges Salmon	Burges Salmon
Document Owner	Burges Salmon	Burges Salmon	Burges Salmon	Burges Salmon	Burges Salmon	Burges Salmon

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Author Name and Sign	Burges Salmon	Burges Salmon	Burges Salmon	Burges Salmon	
Approver Name and Sign	Burges Salmon	Burges Salmon	Burges Salmon	Burges Salmon	
Document Owner	Burges Salmon	Burges Salmon	Burges Salmon	Burges Salmon	

202[ ] No.

**INFRASTRUCTURE PLANNING**

**The HyNet Carbon Dioxide Pipeline Order 202[●]**

*Made* - - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force* \*\*\*

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (“the 2008 Act”) for an Order granting development consent.

The application was examined by a panel of 2 members appointed by the Secretary of State (“the Panel”) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(b).

The panel, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 74(2) of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State has considered the [representations made and not withdrawn], and the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(c), and has had regard to the documents and matters referred to in section 105 of the 2008 Act.

[In accordance with section 131(5) of the 2008 Act the Secretary of State is satisfied that where this Order authorises the compulsory acquisition of land forming part of an open space special category land that land is less than 200 square metres in extent and the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.

[The Secretary of State is satisfied that open space within the Order land, when burdened with any new rights authorised for compulsory acquisition under the terms of this Order, will be no less advantageous than it was before such acquisition, to the persons whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that, accordingly, section 132(3) of the 2008 Act applies.]

The Secretary of State, having decided the application, has determined to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State, in exercise of the powers conferred by sections [114, 115, 117, 120, 122, 123, 131, 132 and schedule 5] of the 2008 Act, makes the following Order:

## PART 1

### Preliminary

#### **Citation and commencement**

- 1.—(1) This Order may be cited as the HyNet Carbon Dioxide Pipeline Order 202[•]
- (2) This Order comes into force on [•] 202[•].

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(a) 2008 c.29. Section 37 was amended by section 128(2) and Schedule 13, Part 1, paragraphs 1 to 5 of the Localism Act 2011 (c.20).

(b) S.I. 2010/103. This instrument was amended by S.I. 2012/635

(c) S.I. 2017/572.

## Interpretation

### 2.—(1) In this order—

“1961 Act” means the Land Compensation Act 1961(a);

“1965 Act” means the Compulsory Purchase Act 1965(b);

“1980 Act” means the Highways Act 1980(c);

“1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

“1984 Act” means the Road Traffic Regulation Act 1984(e);

“1990 Act” means the Town and Country Planning Act 1990(f);

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

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

“2008 Act” means the Planning Act 2008;

“address” includes any number or address used for the purposes of electronic transmission;

“access and rights of way plans” means the plans certified as such by the Secretary of State for the purposes of this Order;

“AGI” means above ground installation, being a secure compound above ground level containing equipment relating to the pipeline which is necessary for its operation and/or maintenance. The AGIs include PIG facilities, ancillary infrastructure (including lighting and parking provisions), and electrical and instrumentation kiosks;

“ancillary works” means the ancillary works described in Part 2 of Schedule 1 (ancillary works) and any other works authorised by this Order that are not development within the meaning of section 32 of the 2008 Act;

“apparatus” has the same meaning as in section 105(1) of the 1991 Act;

“authorised development” means the development described in Parts 1 and 2 of Schedule 1 (authorised development) and any other development authorised by this Order that is development within the meaning of section 32 of the 2008 Act;

“bank holiday” means a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(i);

“block valve” means an intermediate underground valve which can rapidly stem the flow of the carbon dioxide;

“book of reference” means the document certified as such by the Secretary of State as the book of reference for the purposes of the Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“business day” means a day other than a Saturday or Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971;

“BVS” means block valve station, being a secure compound above ground level containing equipment relating to the pipeline which is necessary for its operation and/or maintenance. The BVSs include a block valve, ancillary infrastructure (including lighting, parking provisions), and above ground electrical and instrumentation kiosks;

“carriageway” has the same meaning as in the 1980 Act;

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(a) 1961 c33.  
(b) 1965 c56.  
(c) 1980 c66.  
(d) 1981 c66.  
(e) 1984 c.27.  
(f) 1990 c.8.  
(g) 1991 c.22.  
(h) 2003 c21.  
(i) 1971 c80

“CEMP” means the construction environmental management plan, including all of its appendices, to be approved under the requirements;

“chief officer of police” means the chief officer of police of the police area in which a power under this Order is sought to be exercised;

“commence” means carry out a material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or for the purposes of the authorised development other than site preparation works, remediation works, environmental (including archaeological) surveys and investigation, site, utility or soil survey, erection of temporary fencing to site boundaries or marking out of site boundaries, installation of temporary amphibian and reptile fencing, the diversion or laying of services or environmental mitigation measures and any such temporary accesses that may be required in association with these, and “commencement”, “commenced” and cognate expressions are to be construed accordingly;

“crown land plans” means the document certified as the crown land plans by the Secretary of State for the purposes of this Order;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

and in this definition “electronic communications network” has the same meaning as in section 32(1) (meaning of electronic communications networks and services) of the 2003 Act;

“environmental statement” means the document certified by the Secretary of State as the environmental statement for the purposes of this Order;

“existing pipeline” means the existing natural gas pipeline, constructed in accordance with a pipeline construction authorisation and deemed planning permission issued by the Secretary of State on 16 December 1993 under the Pipelines Act 1962 for “a 24 inch natural gas cross-country pipeline from Point of Ayr to Connah’s Quay”, which pipeline is to be repurposed under this Order and along which Work Nos. 51, 53 and 55 are to be constructed;

“general arrangement plans” means the Block Valve Stations Planning Arrangement, Block Valve Stations Elevations, Above Ground Installation Planning Arrangement and Above Ground Installation Elevations certified by the Secretary of State as the general arrangement plans for the purposes of this Order;

“highway authority” means in any given provision of this Order (including the requirements), the highway authority for the highway to which the provision relates;

“land plans” means the document certified as such by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 6 (limits of deviation) and shown on the works plans;

“maintain” includes inspect, assess, repair, test, cleanse, adjust, landscape, preserve, make safe, divert or alter the authorised development, and remove, clear, reconstruct, re-new, re-lay, re-furbish, improve, replace, dismantle, demolish, abandon or decommission any part of the authorised development, but must not include the renewal, re-laying, reconstruction or replacement of the entirety of the new pipeline; and any derivative of “maintain” is to be construed accordingly;

“new pipeline” means the pipeline to be constructed and operated as part of the authorised development forming Work Nos. 1, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48 and 50;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference;

“Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“outline archaeological written scheme of investigation” means the document certified as such by the Secretary of State for the purposes of this Order;



“outline construction environment management plan” means the document certified as such by the Secretary of State for the purposes of this Order;

“outline construction traffic management plan” means the document certified as such by the Secretary of State for the purposes of this Order;

“outline landscape and ecology management plan” means the document certified as such by the Secretary of State for the purposes of this Order;

“outline operational and maintenance environmental management plan” means the document certified as such by the Secretary of State for the purposes of this Order

“outline surface water drainage strategy report and appendices” means the document certified as such by the Secretary of State for the purposes of this Order;

“PIG” means pipeline inspection gauge, a device used for internal maintenance, cleaning and monitoring of a pipeline;

“pipeline” means the existing pipeline and the new pipeline and includes all of the authorised development including all AGIs and BVSs;

“relevant planning authority” means in any given provision of this Order (including the requirements), the local planning authority—

(a) for the area of land to which the provision relates is situated; and

(b) with the relevant legislative competence under the 1990 Act for the matter to which that provision relates;

“requirements” means those matters set out in Schedule 2 (Requirements) to this Order and a reference to a numbered requirement is a reference to the requirement imposed by the corresponding numbered paragraph of that Schedule;

“special category land plans” means the document certified as such by the Secretary of State for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and a public communications provider as defined in section 151 of the 2003 Act;

“street” means a street within the meaning of section 48 of the 1991 Act(a), together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act(b);

“traffic authority” has the same meaning as in the 1984 Act;

“trenchless installation techniques” means the installation of the new pipeline and/or associated telecommunications cabling by means of boring techniques including horizontal directional drilling, auger boring and micro-tunnelling;

“tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means Liverpool Bay CCS limited, incorporated under company number 13194018 and having its registered office at Eni House, 10 Ebury Bridge Road, London SW1W 8PZ; and

“works plans” means the plan or plans certified as such by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

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(a) Section 48 was amended by section 124 (1) and (2) of the Local Transport Act 2008 (c.26).

(b) “Street authority” is defined in section 49, which was amended by section 1(6) and paragraphs 113 and 117 of Schedule 1 to the Infrastructure Act 2015.

(3) All distances, directions, areas and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the relevant plans.

(6) References in this Order to numbered works are references to the works as numbered in Part 1 of Schedule 1 (authorised development).

(7) References to any statutory body includes that body's successor bodies from time to time that have jurisdiction over the authorised development.

(8) In this Order, the expression "includes" is to be construed without limitation.

## PART 2

### Principal Powers

#### **Development consent etc. granted by the Order**

3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

#### **Operation and use of the authorised development**

4.—(1) The undertaker may at any time operate and use the authorised development and the existing pipeline except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) Subject to the provisions of this Order the undertaker is granted consent to use the existing pipeline for the conveyance of carbon dioxide.

(3) The consent granted under paragraphs (1) and (2) does not relieve the undertaker from compliance with any obligation under the Pipeline Safety Regulations 1996(a).

#### **Power to maintain the authorised development**

5.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) Paragraph (1) does not authorise diversion of the authorised development—

- (a) outside the limits of deviation; or
- (b) which would result in the authorised development varying from the description in Part 1 of Schedule 1 (authorised development).

#### **Limits of deviation**

6.—(1) In carrying out or maintaining the authorised development, the undertaker may—

- (a) deviate the works laterally within the extent of the limits of deviation for those works shown on the works plans;

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(a) S.I. 1996/825

- (b) deviate the pipeline works vertically upwards to a limit of not less than 1.2 metres below the surface of the ground (except where ground conditions make compliance with this upwards limit impracticable in which case the upwards limit is 0.452 metres below the surface of the ground);
- (c) in respect of those sections of the pipeline works which may be constructed and installed using trenchless installation techniques, deviate the pipeline works vertically downwards to such extent as may be found necessary or convenient subject to a maximum depth of 35m;
- (d) deviate works other than the pipeline vertically—
  - (i) upwards or above ground level to the height limits set for those works in Schedule 2 (requirements); and
  - (ii) downwards to any extent as may be found necessary or convenient.

(2) The maximum limits of vertical deviation specified in paragraph (1)(b) do not apply within Work No 43E.

(3) The maximum limits of vertical deviation specified in paragraphs (1)(b), (c) and (d) do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects to those identified in the environmental statement.

### **Benefit of the Order**

7.—(1) Subject to this article, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Subject to paragraph (3), the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; and
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

### **Application and modification of legislative provisions**

8.—(1) The following enactments do not apply in relation to the construction of any work or the carrying out of any operation for the purpose of or in connection with, the construction of the authorised development or any maintenance of any part of the authorised development —

- (a) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the authority) to the Water Resources Act 1991(a);

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(a) 1991 c. 57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraphs 40 and 49 of Schedule 25 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25), section 224 of, and paragraphs 20 and 24 of Schedule 16, and Part 5(B) of Schedule 22, to, the L.I. and Coastal Access Act 2009 and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

- (b) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991<sup>(a)</sup>;
- (c) sections 23 (prohibition on obstructions etc. in watercourses) and 30 (authorisation of drainage works in connection with a ditch) of the Land Drainage Act 1991<sup>(b)</sup>; and
- (d) the provisions of the Neighbourhood Planning Act 2017<sup>(c)</sup> in so far as they relate to the temporary possession of land under articles 35 (temporary use of land for carrying out the authorised development) and 36 (temporary use of land for maintaining the authorised development).

(2) Notwithstanding the provisions of section 208 of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010<sup>(b)</sup> any building comprised in the authorised development must be deemed to be—

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

### **Defence to proceedings in respect of statutory nuisance**

**9.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(a)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraphs (g) (noise emitted from premises so as to be prejudicial to health or a nuisance) and (ga) (noise that is prejudicial to health or nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road) of section 79(1) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974; or
  - (ii) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development;
  - (iii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
  - (iv) is a consequence of complying with a requirement of this Order and that it cannot reasonably be avoided; or
  - (v) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

(2) For the purposes of paragraph (1) above, compliance with the controls and measures relating to noise described in the CEMP will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.

(3) Where a relevant planning authority is acting in accordance with section 60(4) and section 61(4) of the Control of Pollution Act 1974 in relation to the construction of the authorised development then the local authority must also have regard to the controls and measures relating to noise referred to in the CEMP approved under Schedule 2 (Requirements).

(4) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of

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(a) 1991 c.59 Section 66 is as substituted by section 31 of, and paragraphs 25 and 38 of Schedule 2 to the Water Management Act 2010 (c.29) and section 86(1) and (3) of the Water Act 2014 (c.21).  
 (b) 1991 c. 59  
 (c) 2017 c.20

premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

(5) In this article “premises” has the same meaning as in section 79 of the Environmental Protection Act 1990(a).

## PART 3

### Streets

#### Street works

**10.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Part 1 (streets subject to permanent street works) and Part 2 (streets subject to temporary street works) of Schedule 3 as is within the Order limits and may without the consent of the street authority—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street or carry out works to strengthen or repair the carriageway;
- (c) remove or use all earth and materials in or under the street;
- (d) place apparatus under the street;
- (e) maintain, alter or renew apparatus under the street or change its position;
- (f) demolish, remove, replace and relocate any street furniture within the street;
- (g) execute any works to provide or improve sight lines;
- (h) execute and maintain any works to provide hard and soft landscaping;
- (i) carry out re-lining and placement of road markings;
- (j) remove and install temporary and permanent signage; and
- (k) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (j).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Without limiting the scope of the powers conferred by paragraph (1) but subject to paragraph (4), the undertaker may, for the purposes of the authorised development, or for purposes ancillary to it, enter on so much of any other street whether or not within the Order limits, for the purposes of carrying out the works set out in paragraph (1).

(4) The powers conferred by paragraph (3) must not be exercised without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld or delayed.

(5) If a street authority that receives an application for consent under paragraph (4) fails to notify the undertaker of its decision within 42 days beginning with the date on which the application was received by that street authority, that authority will be deemed to have granted consent.

(6) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act save that “apparatus” includes pipelines (and parts thereof), fibre optic or other telecommunication cables, aerial markers, cathodic protection test posts, field boundary markers, monitoring kiosks, and electricity cabinets.

#### Power to alter layout, etc. of streets

**11.**—(1) The undertaker may for the purposes of carrying out the authorised development temporarily alter the layout of, or carry out any works in, a street specified in column (2) of Part 2

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(a) 1990 c.43.

of Schedule 3 (streets subject to temporary street works) in the manner specified in relation to that street in column (3).

(2) Without limitation on the specific powers conferred by paragraph (1), but subject to paragraph (4), the undertaker may, for the purposes of constructing and maintaining the authorised development, permanently or temporarily alter the layout of any street (and carry out works ancillary to such alterations) whether or not within the Order limits and the layout of any street having a junction with such a street and, without limiting the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any footpath, footway, cycle track, central reservation or verge within the street;
- (b) alter the level or increase the width of any such street, footpath, footway, cycle track, central reservation or verge;
- (c) reduce the width of the carriageway of the street;
- (d) execute any works to widen or alter the alignment of pavements;
- (e) make and maintain crossovers and passing places;
- (f) execute any works of surfacing or resurfacing of the highway;
- (g) carry out works for the provision or alteration of parking places, loading bays and cycle tracks;
- (h) execute any works necessary to alter or provide facilities for the management and protection of pedestrians;
- (i) execute any works to provide or improve sight lines required by the highway authority;
- (j) execute and maintain any works to provide hard and soft landscaping;
- (k) carry out re-lining and placement of new temporary markings; and
- (l) remove and replace kerbs and flume ditches for the purposes of creating permanent and temporary accesses

(3) The undertaker must restore to the reasonable satisfaction of the street authority any street that has been temporarily altered under this article.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld or delayed.

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was received by that street authority, it is deemed to have granted consent.

### **Application of the 1991 Act**

**12.—**(1) The provisions of the 1991 Act mentioned in paragraph (2) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

- (a) the carrying out of works under articles 10 (street works) and 11 (power to alter layout etc. of streets);
- (b) the temporary restriction, temporary alteration or temporary diversion of a public right of way by the undertaker under article 13 (temporary restriction of public rights of way); and
- (c) the temporary restriction, temporary alteration or temporary diversion of a street by the undertaker under article 15 (temporary restriction of use of streets);

whether or not the carrying out of the works or the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act<sup>(a)</sup> are—

- (a) subject to paragraph (3), section 55 (notice of starting date of works);

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(a) Sections 55, 57, 60, 68 and 69 were amended by the Traffic Management Act 2004 (c.18)

- (b) section 57 (notice of emergency works);
- (c) section 60 (general duty of undertakers to co-operate);
- (d) section 68 (facilities to be afforded to street authority);
- (e) section 69 (works likely to affect other apparatus in the street);
- (f) section 76 (liability for cost of temporary traffic regulation);
- (g) section 77 (liability for cost of use of alternative route); and
- (h) all provisions of that Act that apply for the purposes of the provisions referred to in subparagraphs(a) to (g).

(3) Section 55 of the 1991 Act as applied by paragraph (2) has effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(4) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- (a) section 56(d) (power to give directions as to timing of street works);
- (b) section 56AI (power to give directions as to placing of apparatus);
- (c) section 58(f) (restriction on works following substantial road works);
- (d) section 58A(g) (restriction on works following substantial street works); and
- (e) schedule 3A(h) (restriction on works following substantial street works).

### **Temporary restriction of public rights of way**

**13.—**(1) The undertaker may, in connection with the carrying out of the authorised development, temporarily restrict, prevent use of or stop up each of the public rights of way specified in column (2) of Part 1 of Schedule 6 (public rights of way to be temporarily restricted) to the extent specified in column (3), by reference to the numbered points shown on the access and rights of way plans.

(2) The public rights of way specified in Part 1 of Schedule 6 (public rights of way to be temporarily restricted) may not be temporarily stopped up under this article unless an alternative public right of way is first provided by the undertaker to the reasonable satisfaction of the relevant local highway authority.

(3) The relevant diversion route provided under paragraph (2) will be subsequently maintained by the undertaker until the re-opening of the relevant public right of way specified in paragraph (1).

(4) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) If a street authority which receives an application for confirmation that an alternative public right of way is satisfactory under paragraph (2) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was received by that street authority, it is deemed to have granted consent.

### **Stopping up of public rights of way**

**14.**(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of public rights of way specified in columns (1) and (2) of Part 2 of Schedule 6 (public rights of way to be stopped up) to the extent specified in column (3).

(2) No public right of way may be stopped up under this article until a temporary alternative route for the passage of such traffic as could have used the public right of way has been provided and subsequently maintained by the undertaker until a permanent alternative has been provided and open to public use, which temporary alternative route must be provided to the reasonable satisfaction of the local highway authority, between the points specified in column (4) of Part 2 of schedule 6.

(3) No later than 3 months from the completion of the authorised development, the undertaker must provide a permanent alternative route for any route stopped up under this article, which permanent alternative route must be provided between the points specified in column (4) of Part 2 of schedule 6 to the reasonable satisfaction of the local highway authority.

### **Temporary restriction of use of streets**

**15.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limiting paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limiting paragraph (1), the undertaker may temporarily stop up, alter or divert the streets set out in column (2) of Schedule 5 (streets to be temporarily stopped up or restricted) to the extent specified, by reference to the letters and numbers shown on the access and rights of way plans, in column (3) of that Schedule.

(5) The undertaker must not temporarily stop up, alter, divert or use as a temporary working site, any street other than those referred to in Schedules 5 (streets to be temporarily stopped up or restricted); and 6 (public rights of way to be temporarily restricted) without the consent of the street authority, which may attach reasonable conditions to the consent but such consent is not to be unreasonably withheld or delayed.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) If a street authority which receives an application for consent under paragraph (5) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was received by that street authority, it is deemed to have granted consent.

### **Access to works**

**16.**—(1) The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) Subject to paragraph (3), the power set out in paragraph (1) may not be exercised without the undertaker having first obtained the consent of the street authority which may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld or delayed, following consultation by the street authority with the relevant planning authority. If the street authority which has received an application for consent under this paragraph fails to notify the undertaker of its decision before the end of the 42 day period beginning with the date on which the application was received by that street authority, it is deemed to have granted consent.

(3) The consent of the street authority is not required for the formulation, laying out or improvement of a new or existing means of access as described in Part 1 of Schedule 1 (authorised development) and Schedule 4 (new means of access).

### **Agreements with street authorities**

**17.**—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;



- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
  - (c) any stopping up, alteration or diversion of a street authorised by this Order; or
  - (d) the carrying out in the street of any of the works referred to in article 10 (street works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and street authority specifying a reasonable time for completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Use of private roads**

**18.**—(1) Subject to paragraphs (2), (3) and (4), the undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction and maintenance of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may only use a private road under paragraph (1) for such time as the power to take temporary possession of the land upon which it is located under either article 35 (temporary use of land for carrying out the authorised development) and article 36 (temporary use of land for maintaining the authorised development) is capable of being exercised under those articles in relation to that land.

### **Traffic regulation**

**19.**—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which may attach reasonable conditions to any consent but which consent must not be unreasonably withheld or delayed, the undertaker may at any time, for the purposes of, or in connection with, the construction of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,  
either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (3).

(3) The undertaker must not exercise the powers conferred by paragraph (1) unless it has—

- (a) given not less than 42 days' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and

- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention as provided for in sub-paragraph (a).
- (4) Any prohibition, restriction or other provision made by the undertaker under paragraph (1)—
- (a) has effect as if duly made by, as the case may be—
    - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
    - (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces) of the 1984 Act, and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
  - (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(a).
- (5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (1) within a period of 24 months from the commencement of operation of the authorised development.
- (6) Before exercising the powers conferred by paragraph (1), the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.
- (7) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.
- (8) If the traffic authority fails to notify the undertaker of its decision within 42 days of receiving an application for consent under paragraph (1) the traffic authority is deemed to have granted consent.
- (9) The power conferred by paragraph (1) may be exercised at any time prior to the expiry of 12 months from the commencement of operation of the authorised development but subject to paragraph (5) any prohibition, restriction or other provision made under paragraph (1) may have effect both before and after the expiry of that period.

## PART 4

### Supplemental powers

#### **Discharge of water**

**20.**—(1) Subject to paragraphs (3) and (4) below the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may inspect, lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or by the undertaker pursuant to paragraph (1) is determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(b).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld or delayed.

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(a) 2004 c.18.

(b) 1991 c.56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b), (5)(c) and 36(2) of the Water Act 2003 (c.37) and section 32, Schedule 3, paragraph 16(1) of the Flood and Water Management Act 2010 c.29.

(4) The undertaker must not carry out any works to any public sewer or drain pursuant to paragraph (1) except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of, or construct any works within any watercourse forming part of a main river, or within 16 metres of a tidally influenced main river without the prior written consent of the Environment Agency or Natural Resources Wales as appropriate.

(6) The undertaker must, unless otherwise authorised under the provisions of this Order or any environmental permit relating to the discharge of water in connection with the authorised development, take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, Natural Resources Wales, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 have the same meaning as in those Regulations.

(9) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

### **Maintenance of drainage works**

**21.**—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(b).

### **Authority to survey and investigate the land**

**22.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes or pits in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out environmental, utility or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

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(a) S.I. 2016/1154.

(b) 1991 c.59.

(2) The power conferred by sub-paragraph (1)(c) includes without prejudice to the generality of that sub-paragraph the power to take, and process, samples of or from any of the following found on, in or over the land—

- (a) water;
- (b) air;
- (c) soil or rock;
- (d) its flora;
- (e) bodily excretions, or dead bodies, of non-human creatures; or
- (f) any non-living thing present as a result of human action.

(3) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(4) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes or pits.

(5) No trial holes or pits are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,  
which authority may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld or delayed

(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, as if it were a dispute under Part 1 (determination of question of disputed compensation) of the 1961 Act.

(7) If either a highway authority or a street authority which receives an application for consent under paragraph (5) fails to notify the undertaker of its decision within 28 days of receiving the application for consent, that authority is deemed to have granted consent.

(8) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

### **Protective work to buildings**

**23.—**(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development first becomes operational.

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage, and place on, leave on and remove from building any apparatus and equipment for use in connected with the survey.

(4) For the purpose of carrying out protective works to a building under this article, the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land that is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works to a building;
- (b) a power under paragraph (3) to enter a building and land within its curtilage;
- (c) a power under sub-paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a power under sub-paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise the power and, in a case falling within sub-paragraph (a), (c) or (d), specifying the protective works proposed to be carried out.

(6) Where a notice is served under sub-paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 49 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of the powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building first becomes operational it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies in respect of the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “protective works”, in relation to a building, means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage that has been caused to the building by the carrying out, maintenance or use of the authorised development.

## Removal of human remains

24.—(1) Before the undertaker carries out any development or works which will or may disturb any human remains in the Order land it must remove those human remains from the Order land, or cause them to be removed, in accordance with the following provisions of this article.

(2) Before any such remains are removed from the Order land the undertaker must give notice of the intended removal, describing the Order land, the location where the remains were found and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of 2 successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the Order land and in the vicinity of the location where the remains were found.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the specific land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be;

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land; or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who has received the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice under paragraph (4) relates cannot be identified,

subject to paragraph (9), the undertaker must remove the remains and cause them to be re-interred in such burial ground, or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any

reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

(11) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) of the Burial Act 1857(a) is not to apply to a removal carried out in accordance with this article.

## PART 5

### Powers of Acquisition

#### Compulsory acquisition of land

**25.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required to carry out or to facilitate, or is incidental to, the authorised development.

(2) This article is subject to paragraph (2) of article 27 (compulsory acquisition of rights and restrictive covenants) and paragraph (8) of article 35 (temporary use of land for carrying out the authorised development).

#### Time limit for exercise of authority to acquire land compulsorily

**26.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act(b) as applied by article 31 (application of the 1981 Act).

(2) The authority conferred by article 35 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

#### Compulsory acquisition of rights and restrictive covenants

**27.**—(1) The undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 25 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

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(a) 1857 c.81.

(b) Section 4 was amended by sections 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c.22).

(2) Subject to articles 30 (private rights) and 37 (statutory undertakers) in the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of new rights in the land or the imposition of restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 4(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the undertaker acquires a right over land or the benefit of a restrictive covenant, the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights or the imposition of restrictive covenants under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

#### **Statutory authority to override easements and other rights**

**28.**—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), despite it involving—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract, caused by the carrying out or use of the authorised development and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) Subsection (2) of section 10 of the 1965 Act (further provision as to compensation for injurious affection) applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) with any necessary modifications

#### **Compulsory acquisition of land: minerals**

**29.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 are incorporated in this Order, subject to the following modifications—

- (a) paragraph 8(3) is not incorporated;
- (b) for “acquiring authority” substitute “undertaker”;
- (c) for “undertaking” substitute “authorised development”; and
- (d) for “compulsory purchase order” substitute “this Order”.



## Private rights

**30.**—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 25 (compulsory acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 25 —

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act (a)

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 27 (compulsory acquisition of rights and restrictive covenants) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 37 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's appropriation of the land,
  - (iii) the undertaker's entry onto the land, or
  - (iv) the undertaker taking temporary possession of the land,that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If an agreement referred to in sub-paragraph (6)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and

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(a) Section 11(1) was amended by sections 186 to 188 of the Housing and Planning Act 2016 (c.22), Schedule 4 to the Acquisition of Land Act 1981 (c.67) a

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

the agreement is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

### **Application of the 1981 Act**

**31.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied, has effect with the following modifications.

(3) In section 1 (application of Act) for subsection (2) substitute—

“This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

(4) Omit section 5 (earliest date for execution of declaration).

(5) Omit section 5A (time limit for general vesting declaration).

(6) In section 5B(1) (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the HyNet Carbon Dioxide Pipeline Order 202[•]”.

(7) In section 6 (notices after execution of declaration) for subsection (1)(b) substitute—

“(1) (b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008,”.

(8) In section 7 (constructive notice to treat) in subsection (1)(a) omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(10) References to the 1965 Act in the 1981 Act are to be constructed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and as modified by article 33 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of the land under this Order.

### **Acquisition of subsoil or airspace only**

**32.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil or airspace of the land referred to in paragraph (1) of article 25 (compulsory acquisition of land) and paragraph (1) of article 27 (compulsory acquisition of rights and restrictive covenants) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in the subsoil or airspace of land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 33 or paragraph 4(8) of Schedule 9 as the case may be) from applying where the undertaker acquires any part of, or rights in a cellar, vault, arch or other construction forming part of a house, building or manufactory.

(4) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A to the 1965 Act (as modified by article 33 (modification of Part 1 of the 1965 Act));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

**Modification of Part 1 of the 1965 Act**

**33.**—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 (application to High Court in respect of compulsory purchase order) of the Acquisition of Land Act 1981, the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the 5 year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of The HyNet Carbon Dioxide Pipeline Order 202[●]”.

(3) In section 11A (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 26 (time limit for exercise of authority to acquire land compulsorily) of The HyNet Carbon Dioxide Pipeline Order 202[●]”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) —

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 32(3) (acquisition of subsoil or airspace only) of The HyNet Carbon Dioxide Pipeline Order 202[●] which excludes the acquisition of subsoil only from this Schedule”; and

(b) at the end insert—

**“Part 4**

**INTERPRETATION**

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 23 (protective work to buildings), article 35 (temporary use of land for carrying out the authorised development) or article 36 (temporary use of land for maintaining the authorised development) of The HyNet Carbon Dioxide Pipeline Order 202[●]”.

**Rights under or over streets**

**34.**—(1) The undertaker may enter on and appropriate so much of the subsoil of or air-space over any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to

- (a) any subway or underground building; or

- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing of cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land for carrying out the authorised development**

**35.**—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 26 (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take temporary possession of—
  - (i) the land specified in columns (1) and (2) of Part 1 of Schedule 7 (land of which only temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule;
  - (ii) the land specified in columns (1) and (2) of Part 2 Schedule 7 (land of which only temporary possession for access may be taken) for the purposes of taking access to and from the authorised development only; and
  - (iii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), structures and buildings on that land;
- (d) use the land for the purposes of a working site with access to the working site in connection with the authorised development;
- (e) construct any permanent works specified in relation to that land in column (4) of Part 1 of Schedule 7 (land of which only temporary possession may be taken), or any other mitigation works in connection with the authorised development;
- (f) construct any works, or use the land, as specified in relation to that land in column 3 of Parts 1 and 2 of Schedule 7, or any mitigation works;
- (g) construct such works on that land as are mentioned in Part 1 of Schedule 1 (authorised development); and
- (h) carry out mitigation works required pursuant to the requirements in Schedule 2.

(2) Not less than 3 months before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(iii).

(3) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i) and (ii), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Parts 1 and 2 of Schedule 7 (land of which only temporary possession may be taken); or

- (b) in the case of any land referred to in paragraph (1)(a)(iii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building, or structure removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 3 (streets subject to streets works)
- (d) restore the land on which any permanent works (including ground strengthening works) have been constructed under paragraph (1)I; or
- (e) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) and (ii) except that the undertaker is not to be precluded from acquiring new rights over any part of that land under article 27 (compulsory acquisition of rights and restrictive covenants).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13(a) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) Paragraph (1) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 25 (compulsory acquisition of land) or article 27 (compulsory acquisition of rights and restrictive covenants).

### **Temporary use of land for maintaining the authorised development**

**36.—**(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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(a) Section 13 was amended by Tribunals Courts and Enforcement Act 2007 (c.15)

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article “the maintenance period”, in relation to any part of the authorised development means the period following completion of that part of the authorised development until the commencement of decommissioning.

(12) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practicable in the circumstances.

### **Statutory undertakers**

**37.—**(1) Subject to the provisions of Schedule 10 (protective provisions), the undertaker may acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the Order land and described in the book of reference.

(2) Subject to the provisions of Schedule 10 (protective provisions), the undertaker may extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

### **Recovery of costs of new connections**

**38.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 37 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 37 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,  
is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the 2003 Act<sup>(a)</sup>; and

“public utility undertaker” has the same meaning as in the 1980 Act.

## **PART 6**

### **Miscellaneous and general**

#### **Application of landlord and tenant law**

**39.**—(1) This article applies to any agreement entered into by the undertaker under article 7 (benefit of the Order) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

#### **Felling or lopping of trees and removal of hedgerows**

**40.**—(1) Subject to paragraph (3) the undertaker may fell, lop or prune any tree or shrub, or cut back its roots, within or overhanging land within the Order limits if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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(a) 2003 c.21.

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must—

- (a) do no unnecessary damage to any tree or shrub; and
- (b) pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits including those specified in Schedule 11.

In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997(a).

### **Trees subject to Tree Preservation Orders**

**41.**—(1) The undertaker may fell, lop or prune any part of any tree which is within, over or under land within the Order limits or cut back its roots, if it reasonably believes it to be necessary in order to prevent the tree—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any damage arising from such activity; and
- (b) the duty in section 206(1) of the 1990 Act (replacement of trees) must not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined as if it were a dispute under Part 1 of the 1961 Act.

### **Crown rights**

**42.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

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(a) S.I 1997/1160



(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

### **Protective provisions**

**43.** Schedule 10 (protective provisions) has effect.

### **Operational land for the purposes of the 1990 Act**

**44.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is not to be treated as operational land) of the 1990 Act.

### **Certification of plans, etc.**

**45.—**(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the access and rights of way plans (consisting of a key plan and sheets 1 to 37 inclusive) (document number D.2.5)
- (b) the land plans (consisting of a key plan and sheets 1 to 37 inclusive) (document number D.2.2);
- (c) the crown land plans (consisting of a key plan and 8 sheets) (document number D.2.3);
- (d) the special category land plans (consisting of a key plan and 10 sheets) (document number D.2.6);
- (e) the works plans (consisting of a key plan and sheets 1 to 37 inclusive) (document number D.2.4);
- (f) the general arrangement plans comprising the Block Valve Stations Planning Arrangement, (document number D 2.9); Block Valve Stations Elevations (document number D.2.8); Above Ground Installation Planning Arrangement (document number D.2.12), and Above Ground Installation Elevations (document number D.2.11);
- (g) the book of reference (document number D.4.3);
- (h) the environmental statement (consisting of 4 volumes) (document numbers D.6.1 to D.6.4.19.1);
- (i) the outline construction environment management plan (document number D.6.5.2);
- (j) the outline landscape and ecology mitigation plan (document number D.6.5.10) (Annex D.6.5.10.1 Environmental Report – Appendix A – Landscape and Ecological Mitigation Plan);
- (k) the outline construction traffic management plan (document number D.6.5.3);
- (l) the outline surface water drainage strategy report and appendices (document number D.6.5.13);
- (m) the outline archaeological written scheme of investigation, (document number D.6.5.2);
- (n) outline operational and maintenance environment management plan (document number D.7.15); and

any other plans or documents referred to in this Order as requiring certification, for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of notices**

**46.—**(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (2) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

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(a) 1978 c. 30.

### **No double recovery**

47. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

### **Requirements, appeals, etc.**

48.—(1) Sub-section (1) of section 78 (right to appeal against planning decisions and failure to take such decision) of the 1990 Act applies to the development consent granted by this Order and to the requirements except that it is modified so as to read for the purposes of this Order only as follows—

(a) after “local planning authority” insert “or Secretary of State”

(b) after subsection (b) insert the following—

“refuse or fails to determine an application for any consent, agreement or approval of that authority required by a requirement imposed on a grant of development consent or contained in a development consent order, or grant it subject to conditions; or”

(c) after Sub-section (1), insert the following—

“(1A) Where the appeal under sub-section (1) relates to a decision by the Secretary of State, the appeal will be decided by a Secretary of State who would not be responsible for determining an application for development consent with the subject matter of The HyNet Carbon Dioxide Pipeline Order 202[ ] section 103(1) of the 2008 Act applied.”

(2) Sections 78 (right to appeal against planning decisions and failure to take such decision) and 79 (determination of appeals) of the 1990 Act have effect in relation to any appeal under the terms of this article except that the Secretary of State in question is the Secretary of State who would be responsible for determining an application for development consent with the subject matter of this Order if section 103(1) (Secretary of State is to decide applications) of the 2008 Act applied

### **Arbitration**

49.—(1) Any difference under any provision of this Order, unless otherwise provided for, is referred to and settled in arbitration in accordance with the rules at Schedule 12 (arbitration rules) 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) For the avoidance of doubt, any matter for which the consent or approval of the Secretary of State is required under any provision of this Order is not subject to arbitration.

Signed by authority of the Secretary of State for Energy Security and Net Zero

Date

*Signed*  
Head of Energy Infrastructure Planning  
Department for Energy Security and Net Zero

## PART 1

## Authorised development

A nationally significant infrastructure project as defined in sections 14 and 21 of the 2008 Act, comprising:

**In the Borough of Cheshire West and Chester**

*Work No. 1:* Construction of an AGI at Ince within the location shown on Sheet 1 of the Works Plans, including—

- (a) a fenced compound area containing:
  - (i) security lighting;
  - (ii) electrical transformer;
  - (iii) parking;
  - (iv) cathodic protection measures;
  - (v) CCTV cameras, intrusion detection systems and access control systems;
  - (vi) PIG launcher and receiver facilities;
  - (vii) connection points;
  - (viii) analyser house;
  - (ix) control mechanisms and electrical and instrumentation kiosk;
  - (x) hard standing;
  - (xi) above ground pipework, valves and instrumentation;
- (b) above ground control boxes;
- (c) below ground pipework;
- (d) below ground cables and cable ducts;
- (e) hard standing;
- (f) drainage works, including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s); and
- (g) landscaping.

*Work No. 1A:* The creation and use of a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 1 of the Works Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) plant and materials storage;
- (d) waste processing and management areas; and
- (e) fencing and gating.

*Work No. 2:* The creation and use of a permanent vehicular access to the authorised development, from Elton Lane (private road), within the location shown on Sheet 1 of the Works Plans, including—

- (a) improvement of road surfacing and provision of new hard surfacing;
- (b) creation of a new bellmouth junction and visibility splays; and
- (c) installation of utilities.

*Work No. 3:* The creation and use of a permanent vehicular access to the authorised development, from the Pool Lane/Oil Sites Road roundabout via the unnamed road (private road and via the unnamed road (private road) from Ash Road, within the locations shown on Sheets 1 and 1a of the Works Plans, including—

- (a) improvement of road surfacing and provision of new hard surfacing;
- (b) creation of a new bellmouth junction and visibility splays; and
- (c) installation of utilities.

*Work No. 3A:* The creation and use of a temporary vehicular access to the authorised development, from Work No. 3 on the unnamed road, within the location shown on Sheets 1 of the Works Plans, including improvement of road surfacing and provision of new hard surfacing.

*Work No. 3B:* The creation and use of a permanent vehicular access to the authorised development, from Ash Road within the location shown on Sheets 1 of the Works Plans, including improvement of road surfacing and provision of new hard surfacing.

*Work No. 4:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 994metres in length and with an external diameter of 20 inches (508 millimetres) between Work No. 1 and Work No. 5 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems.

As shown on Sheets 1 and 2 of the Works Plans.

*Work No. 5:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 893metres in length and with an external diameter of 20 inches (508 millimetres) between Work No. 4 and Work No. 6 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems.

As shown on Sheets 2 and 3 of the Works Plans.

*Work No. 5A:* Creation and use of a temporary construction access from Chester Services, within the location shown on Sheet 2 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and

- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 5B:* Creation and use of a temporary construction access from A5117, within the location shown on Sheet 2 of the Work Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No 5C:* The creation and use of a temporary working area for the use during the construction of the authorised development, within the location shown on Sheets 1 and 2 of the Works Plans, including construction of a haul road, temporary construction accesses and working areas and laydown areas.

*Work No. 6:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 1.6km in length and with an external diameter of 20 inches (508 millimetres) between Work No. 5 and Work No. 7 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems.

As shown on Sheets 2, 3 and 4 of the Works Plans.

*Work No. 6A:* The creation and use of a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 2, 3 and 4 of the Works Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) plant and materials storage;
- (d) waste processing and management areas; and
- (e) fencing and gating.

*Work No. 6B:* The creation and use of a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 2, 3 and 4 of the Work Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) power supplies and temporary lighting;
- (d) pipe equipment and fittings storage;
- (e) plant storage;
- (f) a fabrication area;
- (g) a plant wheel wash area;
- (h) waste processing and management areas; and
- (i) fencing and gating.

*Work No. 6C:* Creation and use of a temporary construction access from Old Cryers Lane, within the location shown on Sheets 3 and 4 of the Work Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 6D:* Creation and use of a temporary construction access from Cryers Lane, within the location shown on Sheets 3 and 4 of the Work Plans, including—

- (a) improvement of an existing junction with the public highway;
- (b) improvement of road surfacing and provision of new hard surfacing; and
- (c) creation of visibility splays.

*Work No. 6E:* Creation and use of a temporary construction access from Cryers Lane, within the location shown on Sheets 3 and 4 of the Work Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing;

*Work No. 7:* Construction of two underground Carbon Dioxide (CO<sub>2</sub>) pipelines with respective external diameters of 20 inches (508 millimetres) and 36 inches (914.4 millimetres), and respective approximate lengths of 266 metres and 251 metres, from Work No. 6 to Work No. 9 and from Work No.9 to Work No.11, including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems.

As shown on Sheets 3 and 4 of the Works Plans.

*Work No. 8:* The creation and use of a temporary vehicular access to the authorised development, from A5117 within the location shown on Sheet 1 of the Works Plans, including—

- (a) improvement of road surfacing and provision of new hard surfacing.

*Work No. 9:* Construction of an AGI at Stanlow within the location shown on Sheet 3 of the Works Plans, including—

- (a) a fenced compound area containing
  - (i) security lighting;
  - (ii) electrical transformer;
  - (iii) parking;
  - (iv) cathodic protection measures;
  - (v) CCTV cameras, intrusion detection systems and access control systems;
  - (vi) PIG launcher and receiver facilities;
  - (vii) isolation valves;
  - (viii) above ground pipework, valves and instrumentation;
  - (ix) connection points;
  - (x) analyser house;

- (xi) control mechanisms and electrical and instrumentation kiosk;
- (xii) hard standing.
- (b) below ground pipework;
- (c) above ground control boxes;
- (d) below ground cables and cable ducts;
- (e) hard standing;
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s); and
- (g) landscaping.

*Work No. 9A:* The creation and use of a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 3 of the Works Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) plant and materials storage;
- (d) waste processing and management areas; and
- (e) fencing and gating.

*Work No. 10:* The creation and use of a permanent vehicular access to the authorised development, from Pool Lane within the location shown on Sheet 3 of the Works Plans, including—

- (a) improvement of road surfacing and provision of new hard surfacing;
- (b) creation of a new bellmouth junction and visibility splays; and
- (c) installation of utilities.

*Work No. 11:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 1.1km in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 7 and Work No. 12 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems.

As shown on Sheets 3, 4 and 5 of the Works Plans.

*Work No. 12:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 341 metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 11 and Work No. 13 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;



- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems.

As shown on Sheets 4 and 5 of the Works Plans.

*Work No. 12A:* Creation and use of a permanent access from Cryers Lane, within the location shown on Sheet 5 of the Work Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing;

*Work No. 13:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 1.3km in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 12 and Work No. 14 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems.

As shown on Sheets 5 and 6 of the Works Plans.

*Work No. 13A:* The creation and use of a temporary working area for the use during the construction of the authorised development, within the location shown on Sheets 5 and 6 of the Works Plans, including construction of a haul road, temporary construction accesses and working areas and laydown areas.

*Work No. 14:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 419 metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 13 and Work No. 15 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems.

As shown on Sheets 5 and 6 of the Works Plans.

*Work No. 14A:* Creation and use of permanent access from Picton Lane, within the location shown on Sheets 5 and 6 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 15:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 1.5km in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 14 and Work No. 16 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems.

As shown on Sheets 6 and 7 of the Works Plans.

*Work No. 15A:* The creation and use of a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 6 of the Works Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) power supplies and temporary lighting;
- (d) pipe equipment and fittings storage;
- (e) plant storage;
- (f) a fabrication area;
- (g) a plant wheel wash area;
- (h) waste processing and management areas; and
- (i) fencing and gating.

*Work No. 15B:* Creation and use of a temporary construction access from Picton Lane, within the location shown on Sheet 6 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway;
- (b) improvement of road surfacing and provision of new hard surfacing; and
- (c) creation of visibility splays.

*Work No. 15C:* Creation and use of a permanent access from Picton Lane, within the location shown on Sheet 6 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 16:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 386metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 15 and Work No. 17 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheet 7 of the Works Plans.

*Work No. 16A:* Creation and use of a permanent access from Picton Lane, within the location shown on Sheet 7 of the Work Plans, including improvement of road surfacing and provision of new hard surfacing (excluding on the Bridleway).

*Work No. 16B:* Creation and use of a temporary construction access from Picton Lane, within the location shown on Sheet 7 of the Works Plans, including—

- (a) creation of a new bellmouth junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 17:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 807 metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 16 and Work No. 18 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s);

as shown on sheets 7 and 8 of the Works Plans.

*Work No. 17A:* Creation and use of a permanent access from Wervin Road, within the location shown on Sheet 7 of the Works Plans, including—

- (a) creation of a new bellmouth junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 17B:* Creation and use of a permanent access from Wervin Road, within the location shown on Sheet 7 of the Works Plans, including—

- (a) creation of a new bellmouth junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 18:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 352 metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 17 and Work No. 19 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;

- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheet 8 of the Works Plans.

*Work No. 18A:* Creation and use of a temporary construction access from Caughall Road, within the location shown on Sheet 8 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 19:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 1.4km in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 18 and Work No. 22 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheets 8 and 9 of the Works Plans.

*Work No. 19A:* The creation and use of a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 8 of the Work Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) power supplies and temporary lighting;
- (d) pipe equipment and fittings storage;
- (e) plant storage;
- (f) a fabrication area;
- (g) a plant wheel wash area;
- (h) waste processing and management areas; and
- (i) fencing and gating.

*Work No. 19B:* Creation and use of a temporary construction access from Croughton Road, within the location shown on Sheet 8 of the Works Plans, including—

- (a) creation of a junction with the public highway; and
- (b) construction of road surfacing and provision of new hard surfacing.

*Work No. 19C:* Creation and use of a temporary access from Chorlton Lane, within the location shown on Sheet 8 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and

- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 20:* Construction of a BVS at Rock Bank, at the location shown on Sheet 8 of the Works Plans, including—

- (a) a fenced compound area containing
  - (i) security lighting;
  - (ii) block valve;
  - (iii) parking;
  - (iv) cathodic protection measures;
  - (v) CCTV cameras, intrusion detection systems and access control systems;
  - (vi) above ground pipework, valves and instrumentation;
  - (vii) connection points;
  - (viii) control mechanisms and electrical and instrumentation kiosk;
  - (ix) hard standing;
- (b) below ground pipework;
- (c) above ground control boxes;
- (d) hard standing;
- (e) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s); and
- (f) landscaping.

*Work No. 20A:* The creation and use of a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 8 of the Work Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) plant and materials storage;
- (d) waste processing and management areas; and
- (e) fencing and gating.

*Work No. 21:* The creation and use of a permanent vehicular access to the authorised development, from Chorlton Lane within the location shown on Sheet 8 of the Works Plans, including—

- (a) improvement of road surfacing and provision of new hard surfacing;
- (b) creation of a new bellmouth junction and visibility splays; and
- (c) installation of utilities.

*Work No. 22:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 291 metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 19 and Work No. 23 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and

- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheet 9 of the Works Plans.

*Work No. 23:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 545 metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 22 and Work No. 24 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheet 9 of the Works Plans.

*Work No. 23A:* Creation and use of a temporary construction access from Station Road, within the location shown on Sheet 9 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 23B:* The creation and use of a temporary working area for the use during the construction of the authorised development, within the location shown on Sheet 9 of the Works Plans, including construction of a haul road, temporary construction accesses and working areas and laydown areas.

*Work No. 24:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 286 metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 23 and Work No. 25 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheet 9 of the Works Plans.

*Work No. 24A:* Creation and use of a temporary construction access from Station Road, within the location shown on Sheets 9 and 10 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 25:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 1.9km in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 24 and Work No. 28 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheets 9, 10 and 11 of the Works Plans.

*Work No. 25A:* Creation and use of a permanent access from Station Road, within the location shown on Sheet 10 of the Works Plans, including—

- (a) creation of a new bellmouth junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 26:* Construction of a BVS at Mollington, at the location shown on Sheet 10 and 11 of the Works Plans, including—

- (a) a fenced compound area containing
  - (i) security lighting;
  - (ii) block valve;
  - (iii) parking;
  - (iv) cathodic protection measures;
  - (v) CCTV cameras, intrusion detection systems and access control systems;
  - (vi) above ground pipework, valves and instrumentation;
  - (vii) connection points;
  - (viii) control mechanisms and electrical and instrumentation kiosk;
  - (ix) hard standing;
- (b) below ground pipework;
- (c) above ground control boxes;
- (d) hard standing;
- (e) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s); and
- (f) landscaping.

*Work No. 26A:* The creation and use of a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 10 and 11 of the Works Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) plant and materials storage;
- (d) waste processing and management areas; and
- (e) fencing and gating.

*Work No. 27:* The creation and use of a permanent vehicular access to the authorised development, from Overwood Lane within the location shown on Sheet 11 of the Works Plans, including—

- (a) improvement of road surfacing and provision of new hard surfacing;
- (b) creation of a new bellmouth junction and visibility splays; and
- (c) installation of utilities.

*Work No. 28:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 2.4km in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 25 and Work No. 29 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheets 10, 11 and 12 of the Works Plans.

*Work No. 28A:* Creation and use of a temporary construction access from Overwood Lane, within the location shown on Sheets 10 and 11 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 28B:* Creation and use of a permanent access from the A540, within the location shown on Sheet 11 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 28C:* Creation and use of a permanent access from Hermitage Road, within the location shown on Sheet 12 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

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*Work No. 29:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 625 metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 28 and Work No. 30 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and



- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheet 12 of the Works Plans.

*Work No. 29A:* The creation and use of a temporary working area for the use during the construction of the authorised development, within the location shown on Sheet 12 of the Works Plans, including construction of a haul road, temporary construction accesses and working areas and laydown areas.

*Work No. 30:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 1.2km in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 28 and Work No. 31 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheets 12 and 13 of the Works Plans.

*Work No. 30A:* The creation and use of a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 12 and 13 of the Works Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) power supplies and temporary lighting;
- (d) pipe equipment and fittings storage;
- (e) plant storage;
- (f) a fabrication area;
- (g) a plant wheel wash area;
- (h) waste processing and management areas; and
- (i) fencing and gating.

*Work No. 30B:* Creation and use of a permanent access from the A548, within the location shown on Sheet 12 of the Works Plans, including—

- (a) creation of a new bellmouth junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 30C:* Creation and use of a permanent access from the A548, within the location shown on Sheets 12 and 13 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of bridge and road surfacing and provision of new hard surfacing.

*Work No. 30D:* The creation and use of a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 13 and 14 of the Works Plans, including—

- (a) office, welfare and security facilities;

- (b) a parking area;
- (c) power supplies and temporary lighting;
- (d) pipe equipment and fittings storage;
- (e) plant storage;
- (f) a fabrication area;
- (g) waste processing and management areas; and
- (h) fencing and gating.

*Work No. 30E:* Creation and use of a temporary construction access from the A548, within the location shown on Sheets 13 and 14 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway;
- (b) improvement of road surfacing and provision of new hard surfacing; and
- (c) creation of visibility splays.

*Work No. 31:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 873 metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 30 and Work No. 32 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts, cathodic protection cabinet and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheets 13 and 14 of the Works Plans.

*Work No. 31A:* The creation and use of a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 14 of the Works Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) power supplies and temporary lighting;
- (d) pipe equipment and fittings storage;
- (e) plant storage;
- (f) a fabrication area;
- (g) a plant wheel wash area;
- (h) waste processing and management areas; and
- (i) fencing and gating.

*Work No. 31B:* Creation and use of a permanent access from the B5129, within the location shown on Sheet 14 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway;
- (b) improvement of road surfacing and provision of new hard surfacing; and
- (c) creation of visibility splays.

*Work No. 31C:* The creation and use of a temporary working area for the use during the construction of the authorised development, within the location shown on Sheet 14 of the Works Plans, including construction of a haul road, temporary construction accesses and working areas and laydown areas.

*Work No. 32:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 595 metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 31 and Work No. 33 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheets 14 and 15 of the Works Plans.

*Work No. 32A:* Creation and use of a temporary construction access from the B5129, within the location shown on Sheets 14 and 15 of the Work Plans, including improvement of road surfacing and provision of new hard surfacing.

*Work No. 33:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 2.5km in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 32 and Work No. 34 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheets 14, 15 and 16 of the Works Plans.

*Work No. 33A:* Creation and use of a permanent access from Chester Road East, within the location shown on Sheet 15 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 33B:* Creation and use of a permanent access from Moor Lane, within the location shown on Sheet 15 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 33C:* Creation and use of a permanent access from Chester Road East, within the location shown on Sheets 15 and 16 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and

- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 34:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 524 metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 33 and Work No. 35 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works including removal and reinstatement of the bund along Chester Road; and
- (f) works including diversion or alteration of existing watercourse, creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheet 16 of the Works Plans.

*Work No. 34A:* Creation and use of a temporary construction access from Glendale Avenue, within the location shown on Sheet 16 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway;
- (b) provision of temporary public right of way diversion, including fencing and signage; and
- (c) improvement of road surfacing and provision of new hard surfacing.

*Work No. 35:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 1.9km in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 34 and Work No. 38 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheets 16 and 17 of the Works Plans.

*Work No. 35A:* Creation and use of a permanent access from Gladstone Way, within the location shown on Sheet 16 and 17 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 36 –* Construction of a BVS at Aston Hill, at the location shown on Sheet 16 and 17 of the Works Plans, including—

- (a) a fenced compound area containing;
  - (i) security lighting;

- (ii) block valve;
- (iii) parking;
- (iv) cathodic protection measures;
- (v) CCTV cameras, intrusion detection systems and access control systems;
- (vi) above ground pipework, valves and instrumentation;
- (vii) connection points;
- (viii) control mechanisms and electrical and instrumentation kiosk;
- (ix) hard standing;
- (b) below ground pipework;
- (c) above ground control boxes;
- (d) hard standing;
- (e) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s); and
- (f) landscaping.

*Work No. 36A:* The creation and use of a temporary logistics and construction compound for use during the construction of the authorised development, within the location shown on Sheet 17 of the Works Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) plant and materials storage;
- (d) waste processing and management areas; and
- (e) fencing and gating.

*Work No. 37:* The creation and use of a permanent vehicular access to the authorised development, from Lower Aston Hall Lane within the location shown on Sheet 17 of the Works Plans, including—

- (a) improvement of road surfacing and provision of new hard surfacing;
- (b) creation of a new bellmouth junction and visibility splays; and
- (c) installation of utilities.

*Work No. 38:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 377 metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 35 and Work No. 39 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheet 17 of the Works Plans.

*Work No. 38A:* Creation and use of a temporary construction access from Lower Aston Hall Lane, within the location shown on Sheet 17 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and

- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 38B:* Creation and use of a permanent construction access from Lower Aston Hall Lane, within the location shown on Sheet 17 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 39:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 402 metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 38 and Work No. 40 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheet 17 of the Works Plans.

*Work No. 39A:* Creation and use of a temporary construction access from Old Aston Hill, within the location shown on Sheet 17 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing

*Work No. 39B:* The creation and use of a temporary working area for the use during the construction of the authorised development, within the location shown on Sheet 17 of the Works Plans, including construction of a haul road, temporary construction accesses and working areas and laydown areas.

*Work No. 40:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 561 metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 39 and Work No. 41 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheets 17 and 18 of the Works Plans.

*Work No. 40A:* Creation and use of a temporary construction access from Old Aston Hill, within the location shown on Sheets 17 and 18 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 40B:* The creation and use of a temporary working area for the use during the construction of the authorised development, within the location shown on Sheets 17 and 18 the Work Plans, including construction of a haul road, temporary construction accesses and working areas and laydown areas.

*Work No. 40C:* Creation and use of a permanent access from Church Lane, within the location shown on Sheet 17 of the Works Plans, including—

- (a) creation of new bellmouth junction; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 41:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 1.1km in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 40 and Work No. 42 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheets 17 and 18 of the Works Plans.

*Work No. 41A:* Number not used

*Work No. 41B:* Creation and use of a temporary construction access from the B5125, within the location shown on Sheet 18 of the Works Plans, including—

- (a) construction of a temporary construction access and working area;
- (b) improvement of an existing junction with the public highway;
- (c) improvement of road surfacing and provision of new hard surfacing; and
- (d) creation of visibility splays.

*Work No. 41C:* Creation and use of a permanent access from the B5125, within the location shown on Sheet 18 of the Works Plans, including—

- (a) creation of a new bellmouth junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 41D:* Number not used

*Work No. 42:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 1.8km in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 41 and Work No. 43 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;

- (e) landscaping, ecological and environmental works;
- (f) alteration or removal of existing structures; and
- (g) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheets 18 and 19 of the Works Plans.

*Work No. 42A:* Creation and use of a permanent access from Green Lane, within the location shown on Sheet 18 of the Works Plans, including—

- (a) creation of a new bellmouth junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 43:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 611 metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work Nos. 42 and 43E and between Work Nos, 43E and 44 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheet 19 of the Works Plans.

*Work No. 43A:* The creation and use of a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 19 of the Works Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) plant and materials storage;
- (d) waste processing and management areas; and
- (e) fencing and gating.

*Work No. 43B:* Creation and use of a permanent access from Pinfold Lane, within the location shown on Sheet 19 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 43C:* Creation and use of a temporary construction access from unnamed road, within the location shown on Sheet 19 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 43D:* The creation and use of a temporary working area for the use during the construction of the authorised development, within the location shown on Sheet 19 of the Works Plans, including construction of a haul road, temporary construction accesses and working areas and laydown areas.



*Work No 43E*: Construction of a concrete, embedded pipe bridge structure to carry the pipeline across the Alltami Brook, being formed of a concrete span and abutments, with the pipeline buried within the structure of the bridge under a removable concrete slab, and including;

- a) Ground works including alteration of ground levels, ground stabilisation;
- b) Piling for abutments if required;
- c) Fencing, gating, handrails and/or fall protection and other security measures;
- d) Surface water drainage within the pipe bridge structure; and
- e) Creation of a diverted public right of way route (including where required, alteration of ground levels and ground stabilisation).

*Work No. 44*: Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 2.5km in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 43 and Work No. 47 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheets 19 and 20 of the Works Plans.

*Work No. 44A*: The creation and use of a permanent access to the authorised development including creation and/or improvement of road surfacing and provision of new hard surfacing; and a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 19 and 20 of the Work Plans, including as temporary works—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) plant and materials storage;
- (d) waste processing and management areas; and
- (e) fencing and gating.

*Work No. 44B*: Creation and use of a temporary construction access from the B5125, within the location shown on Sheet 20 of the Works Plans, including—

- (a) creation of a new bellmouth junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 44C*: The creation and use of a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 20 of the Works Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) power supplies and temporary lighting;
- (d) pipe equipment and fittings storage;
- (e) plant storage;
- (f) a fabrication area;

- (g) a plant wheel wash area;
- (h) waste processing and management areas; and
- (i) fencing and gating.

*Work No. 45:* Construction of an AGI at Northop Hall, within the location shown on Sheet 20 of the Works Plans, including—

- (a) a fenced compound area containing;
  - (i) security lighting;
  - (ii) electrical transformer;
  - (iii) parking;
  - (iv) CCTV cameras, intrusion detection systems and access control systems;
  - (v) PIG launcher and receiver facilities;
  - (vi) isolation valves;
  - (vii) connection points;
  - (viii) analyser house;
  - (ix) control mechanisms and electrical and instrumentation kiosk;
  - (x) hard standing;
- (b) below ground pipework;
- (c) above ground control boxes;
- (d) below ground cables and cable ducts;
- (e) hard standing;
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s); and
- (g) landscaping.

*Work No 45A:* The creation and use of a temporary working area for the use during the construction of the authorised development, within the location shown on Sheet 20 of the Works Plans, including construction of a haul road, temporary construction accesses and working areas and laydown areas.

*Work No. 45B:* The creation and use of a permanent vehicular access to the authorised development, from B5125 within the location shown on Sheet 20 of the Works Plans, including—

- (a) improvement of road surfacing and provision of new hard surfacing;
- (b) creation of a new bellmouth junction and visibility splays; and
- (c) installation of utilities.

*Work No. 46:* The creation and use of a temporary vehicular construction access to the authorised development, from B5125 within the location shown on Sheet 20 of the Works Plans, including—

- (a) improvement of road surfacing and provision of new hard surfacing; and
- (b) creation of a new bellmouth junction and visibility splays.

*Work No. 47:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 2.4km in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 44 and Work No. 50 including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;

- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works; and
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheets 20, 21 and 22 of the Works Plans.

*Work No. 47A:* Creation and use of a temporary construction access from Starkey Lane, within the location shown on Sheet 21 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 47B:* Creation and use of a temporary construction access from Starkey Lane, within the location shown on Sheet 21 and 22 of the Works Plans, including—

- (a) improvement of an existing junction with the public highway; and
- (b) improvement of road surfacing and provision of new hard surfacing.

*Work No. 48:* Construction of an AGI at Flint, within the location shown on Sheet 22 of the Works Plans, including—

- (a) a fenced compound area containing;
  - (i) security lighting;
  - (ii) electrical transformer;
  - (iii) parking;
  - (iv) cathodic protection measures;
  - (v) CCTV cameras, intrusion detection systems and access control systems;
  - (vi) PIG launcher and receiver facilities;
  - (vii) isolation valves;
  - (viii) connection points;
  - (ix) analyser house;
  - (x) control mechanisms and electrical and instrumentation kiosk
  - (xi) hard standing;
- (b) below ground pipework;
- (c) above ground control boxes;
- (d) below ground cables and cable ducts;
- (e) hard standing;
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s); and
- (g) landscaping.

*Work No. 48A:* The creation and use of a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 22 of the Works Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) plant and materials storage;
- (d) waste processing and management areas; and
- (e) fencing and gating.

*Work No. 49:* The creation and use of a permanent vehicular access to the authorised development, from Allt-Goch Lane (east) within the location shown on Sheet 22 of the Works Plans, including—

- (a) improvement of road surfacing and provision of new hard surfacing;
- (b) creation of a new bellmouth junction and visibility splays; and
- (c) installation of utilities.

*Work No. 50:* Construction of an underground Carbon Dioxide (CO<sub>2</sub>) pipeline approximately 422 metres in length and with an external diameter of 24 inches (609.6 millimetres) between Work No. 47 and the existing pipeline including—

- (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels;
- (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route;
- (c) installation of underground telecommunications cable;
- (d) construction of a haul road, temporary construction accesses and working areas and laydown area;
- (e) landscaping, ecological and environmental works;
- (f) works to connect to the existing pipeline and
- (g) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s).

as shown on Sheets 22 and 23 of the Works Plans.

*Work No. 51 –* Construction of a BVS at Cornist Lane, at the location shown on Sheet 25 of the Works Plans, including—

- (a) a fenced compound area containing;
  - (i) security lighting;
  - (ii) block valve;
  - (iii) parking;
  - (iv) cathodic protection measures;
  - (v) CCTV cameras, intrusion detection systems and access control systems;
  - (vi) above ground pipework, valves and instrumentation;
  - (vii) connection points;
  - (viii) control mechanisms and electrical and instrumentation kiosk;
  - (ix) hard standing;
- (b) below ground pipework;
- (c) works to connect to the existing pipeline;
- (d) above ground control boxes;
- (e) hard standing;
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s); and
- (g) landscaping.

*Work No. 51A:* The creation and use of a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 25 of the Works Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;

- (c) plant and materials storage;
- (d) waste processing and management areas; and
- (e) fencing and gating.

*Work No. 51B:* The creation and use of a temporary working area for the use during the construction of Work No. 51, within the location shown on Sheets 24 and 25 of the Works Plans, including construction of a haul road, temporary construction accesses and working areas and laydown areas.

*Work No. 52:* The creation and use of a permanent vehicular access to the authorised development, from Cornist Lane within the location shown on Sheet 25 of the Works Plans, including—

- (a) improvement of road surfacing and provision of new hard surfacing;
- (b) creation of a new bellmouth junction and visibility splays; and
- (c) installation of utilities.

*Work No. 53:* – Construction of a BVS at Pentre Halkyn at the location shown on Sheet 27 and 28 of the Works Plans, including—

- (a) a fenced compound area containing;
  - (i) security lighting;
  - (ii) block valve;
  - (iii) parking;
  - (iv) cathodic protection measures;
  - (v) CCTV cameras, intrusion detection systems and access control systems;
  - (vi) above ground pipework, valves and instrumentation;
  - (vii) connection points;
  - (viii) control mechanisms and electrical and instrumentation kiosk;
  - (ix) hard standing;
  - (x) .
- (b) below ground pipework;
- (c) works to connect to the existing pipeline;
- (d) above ground control boxes;
- (e) hard standing;
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s); and
- (g) landscaping.

*Work No. 53A:* The creation and use of a temporary logistics and construction compound for use during the construction of the authorised development, within the location shown on Sheets 27 and 28 of the Works Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) power supplies and temporary lighting;
- (d) plant storage;
- (e) waste processing and management areas; and
- (f) fencing and gating.

*Work No. 53B:* The creation and use of a temporary working area for the use during the construction of Work No. 53, within the location shown on Sheets 27 and 28 the Work Plans including construction of a haul road, temporary construction accesses and working areas and laydown areas.

*Work No. 54:* The creation and use of a permanent vehicular access to the authorised development, from B5121 within the location shown on Sheet 27 and 28 of the Works Plans, including—

- (a) improvement of road surfacing and provision of new hard surfacing;
- (b) creation of a new bellmouth junction and visibility splays; and
- (c) installation of utilities.

*Work No. 55:* Construction of a BVS at Babell, at the location shown on Sheet 29 of the Works Plans, including—

- (a) a fenced compound area containing;
  - (i) security lighting;
  - (ii) block valve;
  - (iii) parking;
  - (iv) cathodic protection measures;
  - (v) CCTV cameras, intrusion detection systems and access control systems;
  - (vi) above ground pipework, valves and instrumentation;
  - (vii) connection points;
  - (viii) control mechanisms and electrical and instrumentation kiosk;
  - (ix) hard standing;
- (b) below ground pipework;
- (c) works to connect to the existing pipeline;
- (d) above ground control boxes;
- (e) hard standing;
- (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s); and
- (g) landscaping.

*Work No. 55A:* The creation and use of a temporary logistics and construction compound for the use during the construction of the authorised development, within the location shown on Sheet 29 and 30 of the Works Plans, including—

- (a) office, welfare and security facilities;
- (b) a parking area;
- (c) plant and materials storage;
- (d) waste processing and management areas; and
- (e) fencing and gating.

*Work No. 55B:* The creation and use of a temporary working area for the use during the construction of Work No.55, within the location shown on Sheets 29 and 30 the Works Plans, including construction of a haul road, temporary construction accesses and working areas and laydown areas.

*Work No. 56:* The creation and use of a permanent vehicular access to the authorised development, from Racecourse Lane within the location shown on Sheet 29 and 30 of the Works Plans, including—

- (a) improvement of road surfacing and provision of new hard surfacing;
- (b) creation of a new bellmouth junction and visibility splays; and
- (c) installation of utilities.

*Work No 57:* the provision of environmental and ecological mitigation for the authorised development including landscaping, woodland and hedgerow planting, scrub planting, riparian planting, habitat creation, fencing and gating, comprising:

### **In the Borough of Cheshire West and Chester**

*Work No. 57A:* Creation of environmental mitigation, east of Cryers Lane, at the location shown on Sheets 2, 3 and 4 of the Works Plans, including woodland planting.

*Work No. 57B:* Creation of environmental mitigation south-west of Stanlow AGI, at the location shown on Sheets 3 and 4 of the Works Plans, including woodland planting.

*Work No. 57C:* Creation of environmental mitigation north of the M56 at the location shown on Sheets 4 and 5 of the Works Plans, including woodland planting.

*Work No. 57D:* Creation of environmental mitigation south of the M56 at the location shown on Sheets 4 and 5 of the Works Plans, including woodland planting.

*Work No. 57E:* Creation of environmental mitigation east of River Gowy / south of M56 at the location shown on Sheets 5 and 6 of the Works Plans, including woodland planting.

*Work No. 57F:* Creation of environmental mitigation west of River Gowy / south of M56 at the location shown on Sheets 5 and 6 of the Works Plans, including –

- (a) woodland planting to create new woodland block west of River Gowy; and
- (b) riparian planting along western bank of River Gowy and connected ditch.

*Work No. 57G:* Creation of environmental mitigation north of the Shropshire Union Canal / west of Liverpool Road at the location shown on Sheet 9 of the Works Plans, including woodland planting.

### **In the County of Flintshire**

*Work No. 57H:* Creation of environmental mitigation east of the A494 at the location shown on Sheet 17 of the Works Plans, including—

- (a) woodland planting; and
- (b) scrub planting over the pipeline.

*Work No. 57I:* Creation of environmental mitigation west of Aston Hill/east of Shotton Lane at the location shown on Sheet 17 and 18 of the Works Plans, including—

- (a) woodland planting; and
- (b) scrub planting over the easement, where the pipeline is laid, and over known utilities locations.

*Work No 57J:* Creation of environmental mitigation on land east of Alltami Brook at the location shown on Sheet 19 of the Works Plans, including—

- (a) creation of new woodland block; and
- (b) scrub planting over the pipeline.

*Work No 57K:* Creation of environmental mitigation at Alltami Brook at the location shown on Sheet 19 of the Works Plans, including—

- (a) woodland planting either side of the pipeline;
- (b) scrub planting over the pipeline; and
- (c) riparian planting along the edge of the brook.

*Work No 57L:* Creation of environmental mitigation east of Brookside at the location shown on Sheets 19 and 20 of the Works Plans, including—

- (a) woodland planting;
- (b) scrub planting over known utilities' locations; and
- (c) riparian planting buffer along the southern edge of the order limits adjacent to ditch, should trees along the boundary be removed. Else, continuation of woodland planting only.

*Work No 57M:* Creation of environmental mitigation west of Work No.44 at the location shown on Sheet 20 of the Works Plans, including –

- (a) woodland planting; and
- (b) scrub planting over the pipeline.

*Work No 57N:* Creation of environmental mitigation west of Work No. 57M at the location shown on Sheet 20 of the Works Plans, including –

- (a) woodland planting; and
- (b) scrub planting over the pipeline.

And in connection with Work Nos. 1 to 57N, and to the extent that they do not otherwise form part of any such work, development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

- (a) temporary works for the benefit or protection of land, watercourses or structures affected by the authorised development;
- (b) site clearance (including fencing and demolition of existing structures);
- (c) earthworks (including soil stripping and storage, site levelling and alteration of ground levels), and remediation of contamination if present;
- (d) works to alter the position of apparatus at or below ground level including mains, sewers, drains and cables and also including below ground structures associated with that apparatus;
- (e) watercourse and other temporary crossings;
- (f) means of access and other vehicular and/or pedestrian means of access, including creation of new tracks and footpaths, and/or widening, upgrades, alterations and improvements of existing roads, tracks and footpaths / alteration of layout of streets to form temporary and permanent accesses, altering the level of any kerb, footway or verge within a street and surface treatments; diversions during construction of existing access routes and subsequent reinstatement of existing routes;
- (g) surface water management systems, temporary drainage during installations;
- (h) landscaping works/ landscaping, planting, vegetation removal, trimming and lopping of trees, tree planting and erection of permanent means of enclosure and boundary facilities including fences and gates, alteration of drains and ditches; / bunds, embankments, swales, landscaping, fencing and boundary treatments;
- (i) manholes, marker posts, underground markers, tiles and tape;
- (j) works for the provision or relocation of apparatus including cabling, water and electricity supply works, foul drainage provision;
- (k) creation, use and reinstatement of crane pads; and
- (l) works of restoration.

## PART 2

### Ancillary works

Works within the Order limits which fall within the scope of the work assessed by the environmental statement comprising works for the benefit or protection of land affected by the authorised development.



## Requirements

## PART 1

## Requirements

**Interpretation****1. In this Schedule—**

“AOD” means above Ordnance Datum;

“commissioning” means the process during which plant components and systems forming part of the authorised development, having been constructed or modified, are made operational and are tested and verified to be in accordance with design assumptions and to have met the appropriate safety criteria;

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990(a);

“CTMP” means construction traffic management plan;

“DEMP” means decommissioning environmental management plan;

“discharging authority” means any body responsible for giving any consent, agreement or approval required by a requirement included in Part 1 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement;

“LEMP” means the landscape and ecology management plan; and

“requirement consultee” means any body named in a requirement as a body to be consulted by the discharging authority in discharging that requirement.

“stage” means the works and ancillary works, or parts thereof, to be carried out together as a phase of, or in a defined order within, the construction of the authorised development.

**Time limits**

**2.—**(1) The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

(2) Notice of commencement of the authorised development must be given to the relevant planning authorities no later than 14 days before the date on which the authorised development is intended to be commenced.

**Stages of authorised development**

**3. –** (1) The authorised development may not commence until a written scheme setting out all stages of the authorised development and including a plan indicating when each stage will be implemented, has been submitted to each relevant planning authority.

(2) The description of each stage in the written scheme to be submitted under sub-paragraph (1) must include the Work No(s) of the works within that stage.

(3) More than one stage may be planned to be undertaken concurrently.

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(a) 1990 c.43.

## Scheme design

4.—(1) The authorised development must be carried out in general accordance with the general arrangement plans. The authorised development will not be in general accordance with the general arrangement plans if any departure from the general arrangement plans would give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(2) The authorised development must be designed in accordance with the parameters specified in Table 1 below and the works plans and implemented in accordance with approved plans and any other approvals given by the relevant planning authority pursuant to these requirements.

**Table 1**

<i>Work Type</i>	<i>Parameter</i>	<i>Part(s) of the authorised development</i>	<i>Maximum value(s) and unit</i>
AGI	Maximum fenced area of Ince AGI	Work No. 1	1,800m <sup>2</sup>
AGI	Maximum fenced area of Stanlow AGI	Work No. 9	2,656m <sup>2</sup>
AGI	Maximum fenced area of Northop Hall AGI	Work No.45	1,155m <sup>2</sup>
AGI	Maximum fenced area of Flint AGI	Work No.48	5,600m <sup>2</sup>
AGI	Maximum height of buildings and structures	Work Nos. 1, 9, 45 and 48	5m from ground level
AGI	Maximum width of new permanent accesses	Work Nos. 2, 8, 10, 46 and 49	6m
AGI	Maximum height of fencing and gating	Work No. 1, 9, 45, 48	3m from ground level
BVS	Maximum fenced area of BVS	Work No. 20, 26, 36, 51, 53, 55	1,050m <sup>2</sup>
BVS	Maximum height of buildings and structures	Work Nos. 20, 26, 36, 51, 53 and 55	5m from ground level
BVS	Maximum height of fencing and gating	Work Nos. 20, 26, 36, 51, 53 and 55	3m from ground level
BVS	Maximum width of new permanent accesses	Work No. 21, 27, 37, 52, 54 and 56	3m
Construction compound	Maximum height of fencing and gating	Work No. 6B, 15A, 19A, 30A, 30D, 31A, 41A and 44C	2.4m from ground level
Construction Compound	Maximum fenced area of Stanlow Compound	Work No. 6B	66,000m <sup>2</sup>
Construction Compound	Maximum fenced area of Picton Lane Compound	Work No. 15A	32,000m <sup>2</sup>
Construction Compound	Maximum fenced area of Chorlton Lane Compound	Work No. 19A	41,000m <sup>2</sup>
Construction Compound	Maximum fenced area of Wood Farm Compound	Work No. 30D	90,000m <sup>2</sup>

Construction Compound	Maximum fenced area of Sealand Road Compound	Work No. 30A	48,000m <sup>2</sup>
Construction Compound	Maximum fenced area of River Dee Compound	Work No. 31A	43,000m <sup>2</sup>
Construction Compound	Maximum fenced area of Shotton Lane Compound	Work No. 41A	37,000m <sup>2</sup>
Construction Compound	Maximum fenced area of Northop Hall Compound	Work No. 44C	35,000m <sup>2</sup>

(3) The buildings and structures identified in Table 1 must only be constructed within the area for the Work No. of which they form part as shown in the works plans.

(4) Each of Work Nos. 1, 9, 20, 26, 36, 45, 48, 51, 53 and 55 may not be commenced until, for that Work No. the following details have been submitted to and approved by the relevant planning authority:

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (b) details of permanent accesses to the public highway;
- (c) details of any external lighting; and
- (d) details of the noise ratings of any external machinery or potentially noisy installations (such as fans).

(5) No part of Work No. 43E may be commenced until details of the design and construction methodology of any works have been submitted to and approved by the relevant planning authority following consultation with Natural Resources Wales.

(6) The details submitted under sub-paragraph (5) must be accompanied by flood risk assessment showing the maximum water level reached in a 1 in 100 year event plus 40% climate change scenario. The soffit level of the embedded pipe bridge over the Alltami brook must be set no less than 300 millimetres above that maximum water level. The flood consequences assessment must also demonstrate that the impacts of the proposal on flood risk elsewhere can be managed to an acceptable level.

(7) Where the position of the abutments of Work No. 43E require the stopping up of part of the current route of Footpath 414/39A, the details submitted under sub-paragraph (5) must include a scheme setting out the alternative route and specification for the permanent diversion of the part of public right of way Footpath 414/39A to be stopped up, and setting out how that alternative is to be legally created.

(8) The works listed in sub-paragraph (4) and (5) must be implemented in accordance with the details approved under this paragraph.

### **Construction environmental management plan**

**5.—**(1) No stage of the authorised development can commence until a CEMP which includes that stage has been submitted to and approved by the relevant planning authority.

(2) The CEMP must be in accordance with the outline construction environment management plan and include management plans, working methods and mitigation measures including—

- (a) details of lighting during construction;
- (b) noise and vibration management plan;
- (c) dust management plan;
- (d) material management plan;
- (e) soil management plan;

- (f) peat management plan;
- (g) waste management plan;
- (h) groundwater management and monitoring plan;
- (i) bio-security management plan;
- (j) surface water management and monitoring plan;
- (k) dewatering management plan;
- (l) stakeholder communications plan; and
- (m) public rights of way management plan.

(3) Each stage of the authorised development must be implemented in accordance with the approved CEMP for that stage.

### **Construction traffic**

6.—(1) Save in respect of matters approved in accordance with articles 13 (temporary restriction of public rights of way) and 15 (temporary restriction of use of streets) no stage of the authorised development must commence until a CTMP for that stage, in accordance with the outline construction traffic management plan, has been submitted to and approved by the relevant planning authority following consultation with the relevant highway authority.

(2) The CTMP for each stage must include a construction logistics plan to manage delivery of goods and materials.

(3) The CTMP for each stage must include a construction worker travel plan in accordance with the interim worker travel plan and include measures to be taken to promote sustainable travel options and minimise use of private vehicles.

(4) Each stage of the authorised development must be implemented in accordance with the approved CTMP for that stage.

### **Highway accesses**

7.—(1) Construction of any new permanent or temporary means of access to a highway, or alteration, or use of an existing means of access to a highway, must not commence until an access plan for that access has been submitted to and approved by the relevant highway authority.

(2) The access plan must include details of the siting, design, layout, visibility splays, access management measures and a maintenance programme relevant to the access it relates to.

(3) The relevant highway authority must be consulted on the access plan before it is submitted for approval.

(4) The highway accesses (including visibility splays) must be implemented in accordance with the approved details.

### **Surface water drainage**

8.—(1) No development of Work Nos. 1, 9, 20, 26, 36, 45, 48, 51, 53 and 55 may commence until, for that Work No, a surface water drainage plan for permanent works relevant to that stage, in accordance with the relevant part of the outline surface water drainage strategy has been submitted to and approved by the relevant planning authority or, where applicable, the Environment Agency and/or Natural Resources Wales and/or the Lead Local Flood Authority.

(2) The surface water drainage system for each stage must be implemented in accordance with the approved details

(3) No discharge of water under article 20 (discharge of water) must be made until details of the location and rate of discharge have been submitted to the relevant planning authority or, where applicable, the Environment Agency and/or Natural Resources Wales and/or the Lead Local Flood Authority.

## Contaminated land and groundwater

### 9.

#### 10. Part A - Stanlow

(1) No intrusive works or any works which are likely to cause significant harm to persons or pollution of controlled waters or the environment, other than those necessary to undertake ground investigation for the purposes of identifying any contamination which may be present, can be carried out within plots 3-11, 3-12, 3-13, 3-14 and 3-15, unless and until either sub-paragraph (2) or sub-paragraph (3) has been complied with.

(2) The Environment Agency has confirmed in writing that any contamination of the plots listed in sub-paragraph (1) has been remediated to a standard which renders those plots fit for the use consented under this Order.

(3) The undertaker must:

- (a) carry out further ground investigations within plots 3-11, 3-12, 3-13, and within the highway verges within plots 3-14 and 3-15, to identify any contamination present. The investigations must include testing for Per- and polyfluoroalkyl substances.
- (b) Where no contamination is identified under paragraph (a), the undertaker must submit a report of the investigations undertaken and the results thereof to the relevant planning authority; no works set out in sub-paragraph (1) may be undertaken unless and until the relevant planning authority, following consultation with the Environment Agency, has approved the report submitted.
- (c) Where contamination is identified under paragraph (a), a written risk assessment must be completed by the undertaker in order to assess the nature and extent of any contamination. Where having regard to that risk assessment;
  - (i) the undertaker considers that remediation is required, a detailed remediation scheme must be prepared and submitted by the undertaker for the approval of the relevant planning authority in consultation with the Environment Agency; or
  - (ii) the undertaker considers that remediation is not required, the risk assessment must be submitted to the relevant planning authority; and
  - (iii) remediation is determined by the relevant planning authority, following consultation with the Environment Agency, not to be required, the relevant planning authority must approve the risk assessment and Work Nos. 5 and 7 may commence; or
  - (iv) remediation is determined by the relevant planning authority, following consultation with the Environment Agency, to be required, a detailed remediation scheme must be prepared and submitted by the undertaker for the approval of the relevant planning authority in consultation with the Environment Agency.
- (d) Where a remediation scheme is required under paragraph (c), the remediation must be implemented by the undertaker in accordance with the approved detailed remediation scheme, and a verification report following completion of those remediation works must be submitted to the relevant planning authority before Work Nos 5 and 7 may be commenced.

#### *Part B – other sites identified as requiring further investigation*

(4) No intrusive works or any works which are likely to cause significant harm to persons or pollution of controlled waters or the environment, other than those necessary to undertake ground investigation for the purposes of identifying any contamination which may be present, can be carried out within plots 1-25, 4-12, 4-20, 8-10 and 8-12 unless and until sub-paragraph (5) has been complied with.

(5) The undertaker must:

- (a) carry out further ground investigations within plots 1-25 (adjacent to Ince railway), plot 4-12 (in the former gateway), plots 8-10 and 8-12, and groundwater testing in plot 4-20 (to the north of the M56 motorway)] to identify any contamination present.

- (b) Where no contamination is identified under paragraph (a), the undertaker must submit a report of the investigations undertaken and the results thereof to the relevant planning authority; no works in the plots set out in sub-paragraph (4) may be undertaken unless and until the relevant planning authority, following consultation with the Environment Agency, has approved the report submitted.
- (c) Where contamination is identified under paragraph (a), a written risk assessment must be completed by the undertaker in order to assess the nature and extent of any contamination. Where having regard to that risk assessment;
  - (i) the undertaker considers that remediation is required, a detailed remediation scheme must be prepared and submitted by the undertaker for the approval of the relevant planning authority in consultation with the Environment Agency; or
  - (ii) the undertaker considers that remediation is not required, the risk assessment must be submitted to the relevant planning authority; and
  - (iii) remediation is determined by the relevant planning authority, following consultation with the Environment Agency, not to be required, the relevant planning authority must approve the risk assessment and Works in the plots listed in sub-paragraph (4) may commence; or
  - (iv) remediation is determined by the relevant planning authority, following consultation with the Environment Agency, to be required, a detailed remediation scheme must be prepared and submitted by the undertaker for the approval of the relevant planning authority in consultation with the Environment Agency.
- (d) Where a remediation scheme is required under paragraph (c), the remediation must be implemented by the undertaker in accordance with the approved detailed remediation scheme under sub-paragraph (5), and a verification report following completion of those remediation works must be submitted to the relevant planning authority.

(6) Approval of the requirements of sub-paragraphs (4) and (5) may be sought and granted in stages provided that plots 1-19; 1-20; 1-21; 1-22; 1-23; 1-24 and 1-25 must all be contained within a single stage, plots 3-18; 4-19; 4-20; 5-02; 5-01; 5-03; 5-04 and 5-05 must all be contained within a single stage and plots 3+1; 4-11; 4-12; 4-13; 4-14; 4-15; 4-16; 4-17; and 4-18; must all be contained within a single stage. Nothing in this part of this requirement will prevent the commencement of works in any stage which does not contain any of the plots listed in sub-paragraph (4).

*Part C – unexpected contamination*

(7) In the event that contamination is found at any time when carrying out the authorised development it must be reported in writing to the relevant planning authority as soon as reasonably practicable.

(8) Where contamination has been reported to the relevant planning authority in accordance with sub-paragraph (7), an investigation and risk assessment must be completed by the undertaker in accordance with a contamination scheme to assess the nature and extent of any contamination on the part of the Order limits within which works are being carried out, whether or not that contamination originates on that part of the Order limits; and—

- (a) the contents of that contamination scheme are subject to the approval of the relevant planning authority; and
- (b) that investigation and risk assessment must be undertaken by the undertaker within timescales agreed with the relevant planning authority and in accordance with the approved contamination scheme, and a written report of the findings must be submitted to the relevant planning authority.

(9) Where remediation is determined by the relevant planning authority to be required having had regard to the results of an investigation and risk assessment carried out under sub-paragraph (8), a detailed remediation scheme must be prepared and submitted by the undertaker for the approval of the relevant planning authority.

(10) Unless otherwise agreed by the relevant planning authority, no intrusive works or other works which would disturb the contaminated land or groundwater can be carried out in the part of the

Order limits in which the contamination is identified under sub-paragraph (7) until the investigation and risk assessment in accordance with sub-paragraph (8), and if required, a remediation scheme in accordance with sub-paragraph (9) has been submitted to and approved by the relevant planning authority.

(11) The remediation must be implemented by the undertaker in accordance with the approved detailed remediation scheme under sub-paragraph (9), and a verification report following completion of those remediation works must be submitted to the relevant planning authority.

### **Part C – unexpected contamination**

(12) In the event that contamination is found at any time when carrying out the authorised development it must be reported in writing to the relevant planning authority as soon as reasonably practicable.

(13) Where contamination has been reported to the relevant planning authority in accordance with sub-paragraph (7), an investigation and risk assessment must be completed by the undertaker in accordance with a contamination scheme to assess the nature and extent of any contamination on the part of the Order limits within which works are being carried out, whether or not that contamination originates on that part of the Order limits; and—

- (a) the contents of that contamination scheme are subject to the approval of the relevant planning authority; and
- (b) that investigation and risk assessment must be undertaken by the undertaker within timescales agreed with the relevant planning authority and in accordance with the approved contamination scheme, and a written report of the findings must be submitted to the relevant planning authority.

(14) Where remediation is determined by the relevant planning authority to be required having had regard to the results of an investigation and risk assessment carried out under sub-paragraph (8), a detailed remediation scheme must be prepared and submitted by the undertaker for the approval of the relevant planning authority.

(15) Unless otherwise agreed by the relevant planning authority, no intrusive works or other works which would disturb the contaminated land or groundwater can be carried out in the part of the Order limits in which the contamination is identified under sub-paragraph (7) until the investigation and risk assessment in accordance with sub-paragraph (8), and if required, a remediation scheme in accordance with sub-paragraph (9) has been submitted to and approved by the relevant planning authority.

(16) The remediation must be implemented by the undertaker in accordance with the approved detailed remediation scheme under sub-paragraph (9), and a verification report following completion of those remediation works must be submitted to the relevant planning authority.

### **Archaeology**

**11.—**(1) The authorised development must be implemented in accordance with the outline archaeological written scheme of investigation.

(2) No stage of the authorised development with the potential to affect buried archaeological assets must commence until a written scheme for the investigation of areas of archaeological interest relevant to that stage (if any) as identified in the outline archaeological written scheme of investigation has been submitted to and approved by the relevant planning authority following consultation with Historic England or Cadw as appropriate.

(3) The scheme approved under sub-paragraph (1) must be in accordance with the outline archaeological written scheme of investigation, and identify the measures to be taken to investigate, protect, record or preserve any significant archaeological remains that may be found.

(4) Any archaeological works carried out under the approved scheme must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(5) Any archaeological works must be implemented in accordance with the approved scheme.

## **Landscape and ecological management plan**

**12.**—(1) Subject to sub-paragraph (3), no stage of the authorised development must commence until a LEMP, for that stage, in accordance with the outline landscape and ecological management plan, has been submitted to and approved by the relevant planning authority.

(2) The LEMP must include:

- (a) an implementation timetable;
- (b) measures for the protection of ancient woodland areas detailed within an arboricultural method statement and shown on a tree protection plan; and
- (c) measures for the protection of existing features adjacent to the Works as detailed in the Environmental Statement.

(3) Each stage of the authorised development must be implemented in accordance with the approved LEMP for that stage.

(4) Sub-paragraph (1) only applies to those stages of the authorised development in respect of which any landscape and ecological management measures are to be implemented by the undertaker, as identified in the outline LEMP.

## **Ecological surveys**

**13.** No stage of the authorised development may commence until it has been established by survey work whether any European protected species are present within the Order limits or may be affected by that stage of the authorised development.

## **Construction hours**

**14.**—(1) Subject to sub-paragraphs (2), (3) and (4), construction works must only take place between 0800 and 1800 on weekdays and 0800 to 1300 on Saturdays (except public and bank holidays), except in the event of an emergency unless a scheme for the carrying of those works specifying the hours in which they may be carried out has been submitted to and approved by the relevant planning authority. Where such a scheme is approved under this requirement, the works set out in that scheme must be carried out in accordance with the approved scheme.

(2) In the event of an emergency, notification of that emergency must be given to the relevant planning authority and the relevant highway authority as soon as reasonably practicable.

(3) The following operations may where necessary continue or take place outside the working hours referred to in sub-paragraph (1)—

- (a) trenchless construction techniques which cannot be interrupted;
- (b) filling, testing, dewatering and drying; and
- (c) commissioning of the pipeline works.

(4) Nothing in sub-paragraph (1) precludes—

- (a) the receipt of oversize deliveries to site and the undertaking of non-intrusive activities;
- (b) start-up and shut-down activities up to an hour either side of the stated working hours and undertaken in compliance with the CEMP;
- (c) works on a traffic sensitive street where so directed by the relevant highway authority; and
- (d) works to make construction sites safe in the event of extreme weather.

(5) In this Requirement—

“emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action;

“non-intrusive activities” means activities which would not create any discernible light, noise or vibration outside the Order limits; and



“start-up and shut-down activities” includes personnel briefings, inspections, tool-box talks, inductions, health and safety works, deliveries, movement to place of work, unloading, maintenance and general preparation work; but does not include operation of heavy machinery for construction, or operation of generators or flood lights at work-fronts.

### **Operational noise**

**15.**—(1) Between 23.00 and 07.00 hours, noise arising from normal operation of the AGIs and BVSs may not exceed the rating levels identified in Table 15-23 of the environmental statement. Rating levels are applicable as a free field noise level at 1m from any residential property which is lawfully inhabited at the date of the making of this Order at the locations shown in Table 15-23

(2) The level set out in sub-paragraph (1) is to be as measured in accordance with British Standard 4142:2014+A1:2019 (Methods for rating and assessing industrial and commercial sound) and British Standard 7445-3:1991 (Description and measurement of environmental noise. Guide to application to noise limits) or any standards replacing those.

(3) Prior to the commencement of the authorised development, the undertaker must submit a plan to the relevant planning authorities for approval detailing how noise monitoring will be undertaken within a six month period beginning with the date of first operation of the authorised development. That plan must specify a monitoring location point for each AGI and BVS, which must be in as close proximity as the undertaker can lawfully access, or at the points representative of noise sensitive receptors, as shown in Table 15-23 of the environmental statement.

(4) Noise monitoring must be undertaken by the undertaker in accordance with the plan approved under sub-paragraph (3); and the results of this monitoring must be submitted by the undertaker to the relevant planning authority at the intervals set out in the plan.

(5) Where the results of the monitoring undertaken in accordance with sub-paragraphs (3) and (4), show any exceedance of the level set out in sub-paragraph (1), the undertaker must, within 10 working days, submit to the relevant planning authority for approval a mitigation plan detailing how the exceedance will be mitigated and including a timetable for implementing any works required to deliver such mitigation.

(6) The undertaker must comply with any plan approved under sub-paragraph (5).

### **Provision of ‘as built’ details**

**16.** The undertaker must, within 3 months of the completion of the authorised development, provide to the relevant planning authorities details of:

- (a) the location and depth of each part of the Pipeline as it has been constructed;
- (b) any protective measures in place over any part of the Pipeline; and
- (c) the locations of pipeline markers.

### **Restoration of land**

**17.** Subject to article 35 (temporary use of land for carrying out the authorised development), any land within the Order limits which is used temporarily for or in connection with construction must be reinstated to a condition fit for its former use, or such other condition as the relevant planning authority may approve, within 12 months of completion of the authorised development.

### **Operational and maintenance environmental management plan**

**18.**—(1) The undertaker must, no later than three months prior to the planned completion of commissioning of the authorised development, submit to the relevant planning authorities the operational and maintenance environment management plan (or plans) which details the monitoring and management requirements of the authorised development, including post-construction monitoring.

(2) The operational and maintenance environment management plans submitted under sub-paragraph (1) must be in accordance with the outline operational and maintenance environment management plan, and developed having regard to the approved CEMP(s) and the LEMP(s).

(3) Operation of the authorised development must be implemented in accordance with the submitted operational and maintenance environment management plan(s).

#### **Decommissioning environmental management plan**

**19.** – (1) The undertaker must, no later than six months prior to the planned permanent cessation of operation of the authorised development, submit to the relevant planning authorities for approval a DEMP.

(2) The DEMP submitted under sub-paragraph (3) must include- the details required by the demolition management plan and specifically including:

- (a) details of any below ground apparatus to be left in situ
- (b) method statements for the decommissioning and dismantlement of above ground infrastructure;
- (c) traffic management plan for the decommissioning works; and
- (d) waste management plan for the decommissioning works;

(1) Decommissioning of the authorised development must be implemented in accordance with the approved DEMP.

#### **Written approval.**

**20.** Where under any of the Requirements the approval or agreement of the relevant planning authority or another person or authority is required, that approval or agreement must be given in writing.

#### **Amendments to approved details**

**21.**—(1) With respect to any Requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority or another discharging authority, the approved details must be carried out as approved unless an application for an amendment or variation is previously agreed, by the relevant planning authority or that other discharging authority as specified in the relevant Requirement, in accordance with sub-paragraph (2) and in consultation with any body specified in the relevant Requirement.

(2) No amendments to or variations from the approved details may be approved if their likely significant effects on the environment are not assessed in the environmental statement, or have not been subject to such further assessment as the relevant planning authority or that other discharging authority may require; provided that such approval must not be given except where it has been demonstrated that the subject-matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

(3) The approved details must be taken to include any amendments that may subsequently be approved by the relevant planning authority or that other discharging authority.

(4) Subject to sub-paragraph (2), if a relevant planning authority which receives an application for approval of any amendments to approved details under sub-paragraph (1) fails to notify the undertaker of its decision before the end of the period of 56 days beginning with the date on which the application was made, such longer period as may be agreed in writing by the undertaker and the relevant authority, it is deemed to have granted consent.

#### **Anticipatory steps towards compliance with any requirement**

**22.** If, before the coming into force of this Order, the undertaker or any other person has taken any steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken

into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

## PART 2

### Applications made under requirements

**23.**—(1) Where an application has been made to a discharging authority for any consent, agreement or approval under a requirement, the discharging authority must give notice to the undertaker of its decision on the application within a period of 56 days beginning with—

- (a) where no further information is requested under requirement 24, the day immediately following that on which the application is received by the authority;
- (b) where further information is requested under requirement 24, the day immediately following that on which further information has been supplied by the undertaker; or
- (c) such longer period as may be agreed in writing by the undertaker and the relevant authority.

(2) In the event that the discharging authority does not determine an application within the period set out in sub-paragraph (1), the discharging authority is taken to have granted all parts of the application (without any condition or qualification) at the end of that period unless otherwise agreed in writing.

### Multiple discharging authorities

**24.** Where an application is required to be made to more than one discharging authority for any single consent, agreement or approval under a requirement, the undertaker may submit a request for comments in respect of its proposed application to each discharging authority and, where it does so, each discharging authority must provide its comments in writing on the proposed application within a period of 20 days beginning with the day immediately following that on which the request is received by the authority, or such longer period as may be agreed in writing by the undertaker and the relevant authority or authorities, so as to enable the undertaker to prepare a consolidated application to each discharging authority in respect of the consent, agreement or approval required by the requirement.

### Further information

**25.**—(1) Where an application has been made under requirement 22 the discharging authority may, subject to complying with the requirements of this paragraph, request such reasonable further information from the undertaker as it considers is necessary to enable it to consider the application.

(2) If the discharging authority considers further information is necessary and the requirement does not specify that consultation with a requirement consultee is required, the discharging authority must, within 21 days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement specifies that consultation with a requirement consultee is required, the discharging authority must issue the consultation to the requirement consultee within 10 days of receipt of the application and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 10 days of receipt of such a request and in any event within 21 days of receipt of the application.

(4) If the discharging authority does not give the notification mentioned in sub-paragraphs (2) or (3) or such longer period as may be agreed in writing by the undertaker and the relevant authority, or otherwise fails to request any further information within the timescales provided for in this paragraph, it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

## Fees

26.—(1) Where an application or a request for comments is made to a relevant planning authority for any consent, agreement or approval required by a requirement, a fee must be paid to the relevant planning authority as follows—

- (a) such fee as may be prescribed (under sections 303 and 333(2A) of the 1990 Act for the discharge of conditions attached to a planning permission); or
- (b) a fee of £117 per application or request.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 35 days of—

- (a) the application or request being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application or to provide written comments within 56 days from the date on which the application is received, or such longer period as may be agreed in writing under requirement 22, unless within that period the undertaker agrees in writing that the fee may be retained by the relevant planning authority and credited in respect of a future application or a future request for comments.

## Appeals

27.—(1) The undertaker may appeal if—

- (a) the discharging authority refuses an application for—
  - (i) any consent, agreement or approval required by a requirement or any document referred to in any requirement; or
  - (ii) any other consent, agreement or approval required under this Order, or grants it subject to conditions to which the undertaker objects;
- (b) having received a request for further information under requirement 24 the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (c) having received any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The procedure for appeals is as follows—

- (a) the undertaker must submit to the Secretary of State, a copy of the application submitted to the relevant authority and any supporting documents which the undertaker may wish to provide (“the appeal documents”);
- (b) the undertaker must on the same day provide copies of the appeal documents to the relevant authority and the requirement consultee (if applicable);
- (c) within 28 days of receiving the appeals documents the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person must be sent;
- (d) the discharging authority and the requirement consultee (if applicable) may submit any written representations in respect of the appeal to the appointed person within 10 business days beginning with the first day immediately following the date on which the appeal parties are notified of the appointment of the appointed person and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties may make any counter-submissions to the appointed person within 10 business days beginning with the first day immediately following the date of receipt of written representations pursuant to sub-paragraph (d) above; and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) If the appointed person considers that further information is necessary to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information must be submitted.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person.

(5) The appeal parties may submit written representations to the appointed person concerning matters contained in the further information.

(6) Any such representations must be submitted to the appointed person and made available to all appeal parties within 10 business days of the date mentioned in sub-paragraph (3).

### **Outcome of appeals**

**28.**—(1) On an appeal under requirement 26, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to the appointed person in the first instance.

(2) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person under requirement 26. Been made within those time limits if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(3) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review within 6 weeks of the date of the appointed person's decision.

(4) Any consent, agreement or approval given by the appointed person pursuant to this Schedule is deemed to be an approval for the purpose of Part 1 of Schedule 2 (Requirements) as if it had been given by the discharging authority.

(5) The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(6) Except where a direction is given pursuant to sub-paragraph (7) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(7) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction as to the costs of the appeal parties and the terms on which it is made, the appointed person must have regard to the Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

### **Interpretation**

**29.** In this part;

“the appeal parties” means the discharging authority, the requirement consultee and the undertaker.

“discharging authority” means the body responsible for giving a consent, agreement or approval under this schedule; and

“requirement consultee” means any body named in a Requirement which is the subject of an appeal as a body to be consulted by the relevant authority in discharging that Requirement.

## SCHEDULE 3

### Streets subject to street works

#### PART 1

Articles 10 and 11

#### Streets subject to permanent street works

<i>(1) Area</i>	<i>(2) Streets subject to street works</i>	<i>(3) Description of the street works</i>
In the Borough of Cheshire West and Chester	Private roads being Grinsome Road, Perimeter Road and Elton Lane, Ash Road and unnamed road off Ash Road	Works for the installation and maintenance of access for Work No. 3 between the points marked 1AA, 1-A and 1-B and 1-C, 1-CC and 1-D on sheet 1 of the access rights of way plans
In the Borough of Cheshire West and Chester	Ince Lane	Works for the installation and maintenance of access for Work No. 5 between the points marked 2-G and 2-H on sheet 2 of the access rights of way plans
In the Borough of Cheshire West and Chester	Private roads being unnamed road off Pool Lane	Works for the installation and maintenance of access for Work No. 10 between points marked 3-D and 3-E on sheet 3 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Wervin Road	Works for the installation and maintenance of access for Work No. 17 between points marked 7-D and 7-E on sheet 7 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Station Road	Works for the installation and maintenance of access for Work Nos. 25 and 25A between points marked 10-AA and 10-BB on sheet 10 of the access and rights of way plans
In the County of Flintshire	Sealand Road	Works for the installation and maintenance of access for Work Nos. 30 and 30B between points marked 12-E and 12-F on sheet 12 of the access and rights of way plans
In the County of Flintshire	Deeside Lane	Works for the installation and maintenance of access for Work Nos. 30C and 31 between points marked 12-DD on sheet 12 and 13-AA on sheet 13 of the access and rights of way plans
In the County of Flintshire	Private road off B5129 (Flint Road)	Works for the installation and maintenance of access for

		Work No. 31B between points marked 14-I and 14-J on sheet 14 of the access and rights of way plans
In the County of Flintshire	Private road off Gladstone Way	Works for the installation and maintenance of access for Work Nos. 35 and 35A between points marked 16-M and 16-N on sheet 16 of the access and rights of way plans
In the County of Flintshire	Holywell Road	Works for the installation and maintenance of access for Work Nos. 41 and 41C between points marked 18-KK and 18-JJ on sheet 18 of the access and rights of way plans
In the County of Flintshire	Alt-Goch Lane	Works for the installation and maintenance of access for Work Nos. 48 and 49 between points marked 22-K and 22-L on sheet 22 of the access and rights of way plans

## PART 2

Article 10

### Streets subject to temporary street works

<i>(1) Area</i>	<i>(2) Streets subject to street works</i>	<i>(3) Description of the street works</i>
In the Borough of Cheshire West and Chester	A5117	Works for the installation, use, maintenance and restoration of temporary access and any required visibility splays between points marked 2-I and 2-J on sheet 2 of the access and rights of way plans
In the Borough of Cheshire West and Chester	B5132 (Cryers Lane)	Works for the installation, use, maintenance and restoration of temporary access and any required visibility splays between points marked 3-G and 3-H on sheet 3 of the access and rights of way plans
In the Borough of Cheshire West and Chester	B5132 (Cryers Lane)	Works for the installation, use, maintenance and restoration of temporary access and any required visibility splays between points marked 4-A and 4-B on sheet 4 of the access and rights of way plans
In the Borough of Cheshire West and Chester	B5132 (Cryers Lane)	Works for the installation, use, maintenance and restoration of temporary access between points marked 4-E and 4-F on sheet 4 of the access and rights of way plans

In the Borough of Cheshire West and Chester	Thornton Green Lane	Works for the installation, use, maintenance and restoration of temporary access between points marked 5-B and 5-C on sheet 5 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Unnamed private track off Halls Green Lane	Works for the installation, use, maintenance and restoration of temporary access between points marked 5-I and 5-J on sheet 5 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Unnamed private track off Ince Lane	Works for the installation, use, maintenance and restoration of temporary access between points marked 5-K and 5-L on sheet 5 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Picton Lane	Works for the installation, use, maintenance and restoration of temporary access and any required visibility splays between points marked 6-F and 6-G on sheet 6 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Picton Lane	Works for the installation, use, maintenance and restoration of temporary access and any required visibility splays between points marked 7-F and 7-G on sheet 7 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Caughall Road and Croughton Road	Works for the installation, use, maintenance and restoration of temporary access between points marked 8-B and 8-C on sheet 8 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Chorlton Lane	Works for the installation, use, maintenance and restoration of temporary access between points marked 8-G and 8-H on sheet 8 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Unnamed private track off Stanney Lane	Works for the installation, use, maintenance and restoration of temporary access between points marked 8-L and 8-M on sheet 8 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Chorlton Road	Works for the installation, use, maintenance and restoration of permanent access between points marked 8-N and 8-O on sheet 8 of the access and rights of way plans



In the Borough of Cheshire West and Chester	A41 (Liverpool Road)	Works for the installation, use, maintenance and restoration of temporary access between points marked 9-AA and 9-BB on sheet 9 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Grove Road	Works for the installation, use, maintenance and restoration of temporary access between points marked 10-C and 10-D on sheet 10 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Overwood Lane	Works for the installation, use, maintenance and restoration of temporary access between points marked 10-K and 10-L on sheet 10 of the access and rights of way plans
In the County of Cheshire West and Chester	Kingswood Lane (Byway Open to all Traffic 263/BY11/1)	Works for the installation, use, maintenance and restoration of temporary access between points marked 11-E and 11-F on sheet 11 of the access and rights of way plans
In the County of Flintshire	Sealand Road	Works for the installation, use, maintenance and restoration of temporary access and any required visibility splays between points marked 13-E and 13-F on sheet 13 of the access and rights of way plans
In the County of Flintshire	Flint Road	Works for the installation, use, maintenance and restoration of temporary access and any required visibility splays between points marked 14-A and 14-B on sheet 14 of the access rights of way plans
In the County of Flintshire	Unnamed private tracks off Flint Road	Works for the installation, use, maintenance and restoration of temporary access between points marked 14-F, 14-G and 14-H on sheet 14 of the access and rights of way plans
In the County of Flintshire	Unnamed private tracks off Flint Road	Works for the installation, use, maintenance and restoration of temporary access between points marked 14-HH on sheet 14 and 15-CC on sheet 15 of the access and rights of way plans
In the County of Flintshire	Unnamed private tracks off Chester Road	Works for the installation, use, maintenance and restoration of temporary access between points marked 15-A, 15-B, 15-

		C and 15-D on sheet 15 of the access and rights of way plans
In the County of Flintshire	Moor Lane	Works for the installation, use, maintenance and restoration of temporary access between points marked 15-I and 15-J on sheet 15 of the access and rights of way plans
In the County of Flintshire	Unnamed private road off Chester Road	Works for the installation, use, maintenance and restoration of temporary access between points marked 15-K and 15-L on sheet 15 of the access rights of way plans
In the County of Flintshire	Chester Road	Works for the installation, use, maintenance and restoration of temporary access between points marked 16-AA and 16-BB on sheet 16 of the access rights of way plans
In the County of Flintshire	Chester Road	Works for the installation, use, maintenance and restoration of temporary access between points marked 16-CC and 16-DD on sheet 16 of the access rights of way plans
In the County of Flintshire	Unnamed private track off Colliery Lane	Works for the installation, use, maintenance and restoration of temporary access between points marked 16-H and 16-I on sheet 16 of the access rights of way plans
In the County of Flintshire	Colliery Lane	Works for the installation, use, maintenance and restoration of temporary access between points marked 16-J and 16-K on sheet 16 of the access rights of way plans
In the County of Flintshire	Lower Aston Hall Lane	Works for the installation, use, maintenance and restoration of temporary access between points marked 17-C and 17-D on sheet 17 of the access rights of way plans
In the County of Flintshire	Lower Aston Hall Lane	Works for the installation, use, maintenance and restoration of temporary access between points marked 17-EE and 17-FF on sheet 17 of the access rights of way plans
In the County of Flintshire	Unnamed private track off Old Aston Hill	Works for the installation, use, maintenance and restoration of temporary access between

		points marked 17-S on sheet 17 and 18-A on sheet 18 of the access rights of way plans
In the County of Flintshire	Shotton Lane	Works for the installation, use, maintenance and restoration of temporary access between points marked 18-B and 18-C on sheet 18 of the access rights of way plans
In the County of Flintshire	B5125 (Holywell Road)	Works for the installation, use, maintenance and restoration of temporary access and any required visibility splays between points marked 18-G and 18-H on sheet 18 of the access and rights of way plans
In the County of Flintshire	Green Lane	Works for the installation, use, maintenance and restoration of temporary access and any required visibility splays between points marked 18-R and 18-Q on sheet 18 of the access and rights of way plans
In the County of Flintshire	Pinfold Lane	Works for the installation, use, maintenance and restoration of temporary access between points marked 19-A and 19-B on sheet 19 of the access rights of way plans
In the County of Flintshire	Brookside Junction to B5125 Mini Roundabout	Works for the installation, use, maintenance and restoration of temporary access between points marked 19-FF and 19-GG on sheet 19 of the access and rights of way plans
In the County of Flintshire	Brookside Junction to B5125 Mini Roundabout	Works for the installation, use, maintenance and restoration of temporary access between points marked 19-H and 19-I on sheet 19 of the access and rights of way plans
In the County of Flintshire	Brookside and Brookside Terrace	Works for the installation, use, maintenance and restoration of temporary access between points marked 20-B, 20-C and 20-CC on sheet 20 of the access and rights of way plans
In the County of Flintshire	B5125 (Village Road)	Works for the installation, use, maintenance and restoration of temporary access between points marked 20-DD and 20-EE on sheet 20 of the access and rights of way plans
In the County of Flintshire	B5125 (Village Road)	Works for the installation, use, maintenance and restoration of temporary access between

		points marked 20-I and 20-J on sheet 20 of the access and rights of way plans
In the County of Flintshire	B5125 (Village Road)	Works for the installation, use, maintenance and restoration of temporary access between points marked 20-N and 20-O on sheet 20 of the access and rights of way plans
In the County of Flintshire	B5125 (Village Road)	Works for the installation, use, maintenance and restoration of temporary access between points marked 20-R and 20-S on sheet 20 of the access and rights of way plans
In the County of Flintshire	Starkey Lane	Works for the installation, use, maintenance and restoration of temporary access between points marked 21-D and 21-E on sheet 21 of the access and rights of way plans
In the County of Flintshire	Cornist Lane	Works for the installation, use, maintenance and restoration of temporary access between points marked 25-E and 25-F on sheet 25 of the access rights of way plans
In the County of Flintshire	B5121	Works for the installation, use, maintenance and restoration of temporary access between points marked 28-C and 28-D on sheet 28 of the access rights of way plans
In the County of Flintshire	Racecourse Lane	Works for the installation, use, maintenance and restoration of temporary access between points marked 29-C and 29-D on sheet 29 of the access rights of way plans

## SCHEDULE 4

### New means of access

#### PART 1

##### New permanent means of access from the public highway

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of relevant part of access</i>
In the Borough of Cheshire West and Chester	Wervin Road	Works for the installation, use and maintenance of a new access at a point marked 7-B

		on sheet 7 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Wervin Road	Works for the installation, use and maintenance of a new access at a point marked 7-C on sheet 7 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Station Road	Works for the installation, use and maintenance of a new access at the point marked 10-A on sheet 10 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Overwood Lane	Works for the installation, use and maintenance of a new access between points marked 11-A and 11-B on sheet 11 of the access and rights of way plans
In the County of Flintshire	Station Road	Works for the installation, use and maintenance of a new access at a point marked 12-C on sheet 12 of the access and rights of way plans
In the County of Flintshire	Lower Aston Hall Lane	Works for the installation, use and maintenance of a new access between points marked 17-A and 17-B on sheet 17 of the access and rights of way plans
In the County of Flintshire	Church Lane	Works for the installation, use and maintenance of a new access at a point marked 17-NN on sheet 17 of the access and rights of way plans
In the County of Flintshire	Station Road	Works for the installation, use and maintenance of a new access at a point marked 18-K on sheet 18 of the access and rights of way plans
In the County of Flintshire	Green Lane	Works for the installation, use and maintenance of a new access at a point marked 18-S on sheet 18 of the access and rights of way plans
In the County of Flintshire	Pinfold Lane	Works for the installation, use and maintenance of a new access at a point marked 19-C on sheet 19 of the access and rights of way plans
In the County of Flintshire	B5125 (Village Road)	Works for the installation, use and maintenance of a new access between points marked 20-T and 20-Q on sheet 20 of the access and rights of way plans

In the County of Flintshire	Alt-Goch Lane	Works for the installation, use and maintenance of a new access between points marked 22-G and 22-H on sheet 22 of the access and rights of way plans
In the County of Flintshire	Cornist Lane	Works for the installation, use and maintenance of a new access between points marked 25-G and 25-H on sheet 25 of the access rights of way plans
In the County of Flintshire	B5121	Works for the installation, use and maintenance of a new access between points marked 28-A and 28-B on sheet 28 of the access rights of way plans
In the County of Flintshire	Racecourse Lane	Works for the installation, use and maintenance of a new access between points marked 29-A and 29-B on sheet 29 of the access rights of way plans

## PART 2

Article 16

### New temporary means of access from the public highway

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of relevant part of access</i>
In the Borough of Cheshire West and Chester	Picton Lane	Works for the installation, use, maintenance and restoration of temporary access at the point marked 7-AA on sheet 7 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Croughton Road	Works for the installation, use, maintenance and restoration of temporary access at the point marked 8-K on sheet 8 of the access rights of way plans
In the County of Flintshire	Holywell Road	Works for the installation and maintenance of a new access at a point marked 18-J on sheet 18 of the access and rights of way plans
In the County of Flintshire	B5125 (Village Road)	Works for the installation and maintenance of a new access at a point marked 20-E on sheet 20 of the access and rights of way plans

## PART 3

Article 16 and 18

### New private means of access

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of relevant part of access</i>
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In the Borough of Cheshire West and Chester	Private roads being Grinsome Road, Perimeter Road and Elton Lane	Access over existing private roads between the points marked 1-AA, 1-A and 1-B on sheet 1 of the access rights of way plans
In the Borough of Cheshire West and Chester	Private roads being Ash Road and unnamed road off Ash Road	Access over existing private roads between the points marked 1-C, 1-CC and 1-D on sheet 1 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Private roads being unnamed road off Ash Road	Access over existing field access at the point marked 1-E on sheet 1 of the access rights of way plans
In the Borough of Cheshire West and Chester	Private roads being unnamed road off Ash Road	Access over a new access between the points marked 1-G to 1-H on sheet 1 of the access rights of way plans
In the Borough of Cheshire West and Chester	Ince Lane	Access over existing field access at the point marked 2-A on sheet 2 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Pool Lane	Access over existing private road between the points marked 3-D and 3-E on sheet 3 of the access rights of way plans
In the Borough of Cheshire West and Chester	A5117	Access over existing field access at the point marked 3-F on sheet 3 of the access rights of way plans
In the Borough of Cheshire West and Chester	B5132 (Cryers Lane)	Access over existing field access at the point marked 4-G on sheet 4 of the access rights of way plans
In the Borough of Cheshire West and Chester	Thornton Green Lane	Access over existing field access at the point marked 5-A on sheet 5 of the access rights of way plans
In the Borough of Cheshire West and Chester	Thornton Green Lane	Access over existing field access at the point marked 5-D on sheet 5 of the access rights of way plans
In the Borough of Cheshire West and Chester	B5132 (Cryers Lane)	Access over existing field access at the point marked 5-E on sheet 5 of the access rights of way plans
In the Borough of Cheshire West and Chester	Unnamed private track off Halls Green Lane	Access over existing field access at the point marked 5-F on sheet 5 of the access rights of way plans
In the Borough of Cheshire West and Chester	Picton Lane	Access over existing field access at the point marked 6-H on sheet 6 of the access rights of way plans

In the Borough of Cheshire West and Chester	Unnamed private track off Picton Lane	Access over existing private road between the points marked 6-I and 6-J on sheet 6 of the access rights of way plans
In the Borough of Cheshire West and Chester	Picton Lane	Access over existing track and field access at the point marked 7-A on sheet 7 of the access rights of way plans
In the County of Cheshire West and Chester	Wervin Road	Access over new field access at the point marked 7-B on sheet 7 of the access rights of way plans
In the Borough of Cheshire West and Chester	Wervin Road	Access over new field access at the point marked 7-C on sheet 7 of the access rights of way plans
In the Borough of Cheshire West and Chester	Caughall Road and Croughton Road	Access over existing field access at the point marked 8-D on sheet 8 of the access rights of way plans
In the Borough of Cheshire West and Chester	Chorlton Lane	Access over existing field access at the point marked 8-E on sheet 8 of the access rights of way plans
In the Borough of Cheshire West and Chester	Chorlton Lane	Access over existing field access at the point marked 8-F on sheet 8 of the access rights of way plans
In the Borough of Cheshire West and Chester	Chorlton Lane	Access over existing field access between the points marked 8-I and 8-J on sheet 8 of the access rights of way plans
In the Borough of Cheshire West and Chester	A41 (Liverpool Road)	Access over existing field access at the point marked 9-B on sheet 9 of the access rights of way plans
In the Borough of Cheshire West and Chester	Station Road	Access over a new access at a point marked 10-A on sheet 10 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Station Road	Access over existing field access at the point marked 10-B on sheet 10 of the access rights of way plans
In the Borough of Cheshire West and Chester	A41 (Liverpool Road)	Access over existing field access at the point marked 10-E on sheet 10 of the access rights of way plans
In the Borough of Cheshire West and Chester	Townfield Lane	Access over existing field access at the point marked 10-H on sheet 10 of the access rights of way plans



In the Borough of Cheshire West and Chester	Townfield Lane	Access over existing field access at the point marked 10-I on sheet 10 of the access rights of way plans
In the County of Cheshire West and Chester	Overwood Lane	Access over existing field access at the point marked 10-J on sheet 10 of the access rights of way plans
In the County of Cheshire West and Chester	Overwood Lane	Access over a new access between points marked 11-A and 11-B on sheet 11 of the access and rights of way plans
In the Borough of Cheshire West and Chester	A540 (Parkgate Road)	Access over existing field access at the point marked 11-D on sheet 11 of the access rights of way plans
In the Borough of Cheshire West and Chester	Hermitage Road	Access over existing field access at the point marked 12-A on sheet 12 of the access rights of way plans
In the Borough of Cheshire West and Chester	Hermitage Road	Access over existing field access at the point marked 12-B on sheet 12 of the access rights of way plans
In the County of Flintshire	Station Road	Access over a new access at a point marked 12-C on sheet 12 of the access and rights of way plans
In the County of Flintshire	Deeside Lane	Access over existing private road between the point marked 12-D on sheet 12 and point 13-AA on sheet 13 of the access rights of way plans
In the County of Flintshire	Deeside Lane	Access over existing field access at the point marked 13-B on sheet 13 of the access rights of way plans
In the County of Flintshire	Deeside Lane	Access over existing field access at the point marked 13-C on sheet 13 of the access rights of way plans
In the County of Flintshire	Private road off B5129 (Flint Road)	Access over existing private road between the points marked 14-C and 14-D on sheet 14 of the access rights of way plans
In the County of Flintshire	Private road off B5129 (Flint Road)	Access over new field access between the points marked 14-D and 14-DD on sheet 14 of the access rights of way plans
In the County of Flintshire	Chester Road	Access over existing field access at the point marked 15-C on sheet 15 of the access rights of way plans

In the County of Flintshire	Moor Lane	Access over existing field access at the point marked 15-H on sheet 15 of the access rights of way plans
In the County of Flintshire	Unnamed private road off Chester Road	Access over existing private road and field access between the points marked 15-K and 15-M on sheet 15 of the access rights of way plans
In the County of Flintshire	Unnamed private road off Chester Road	Access over existing private road and field access between the points marked 15-K and 15-N on sheet 15 of the access rights of way plans
In the County of Flintshire	Chester Road	Access over existing field access at the point marked 16-B on sheet 16 of the access rights of way plans
In the County of Flintshire	Chester Road	Access over existing field access at the point marked 16-C on sheet 16 of the access rights of way plans
In the County of Flintshire	Willow Lane	Access over existing field access at the point marked 16-E on sheet 16 of the access rights of way plans
In the County of Flintshire	Colliery Lane	Access over existing field access at the point marked 16-KK on sheet 16 of the access rights of way plans
In the County of Flintshire	Gladstone Way	Access over new field access at the point marked 16-L on sheet 16 of the access rights of way plans
In the County of Flintshire	Lower Aston Hall Lane	Access over a new access between points marked 17-A and 17-B on sheet 17 of the access and rights of way plans
In the County of Flintshire	Lower Aston Hall Lane	Access over existing field access at the point marked 17-E on sheet 17 of the access rights of way plans
In the County of Flintshire	Church Lane	Access over private road between the points marked 17-N and 17-NN, and over new field access at the point marked 17-NN on sheet 17 of the access rights of way plans
In the County of Flintshire	Aston Hill	Access over a new access at a point marked 17-R on sheet 17 of the access and rights of way plans
In the County of Flintshire	Shotton Lane	Access over existing field access at the point marked 18-

		D on sheet 18 of the access rights of way plans
In the County of Flintshire	Shotton Lane	Access over existing field access at the point marked 18-E on sheet 18 of the access rights of way plans
In the County of Flintshire	B5125 (Holywell Road)	Access over a new field access at the point marked 18-K on sheet 18 of the access rights of way plans
In the County of Flintshire	Green Lane	Access over existing field access at the point marked 18-L on sheet 18 of the access rights of way plans
In the County of Flintshire	Green Lane	Access over existing field access at the point marked 18-P on sheet 18 of the access rights of way plans
In the County of Flintshire	Green Lane	Access over new field access at the point marked 18-S on sheet 18 of the access rights of way plans
In the County of Flintshire	Pinfold Lane	Access over a new access at a point marked 19-C on sheet 19 of the access and rights of way plans
In the County of Flintshire	Pinfold Lane	Access over an existing access at a point marked 19-CC on sheet 19 of the access and rights of way plans
In the County of Flintshire	Brookside Junction to B5125 Mini Roundabout	Access over existing access at a point marked 19-G on sheet 19 of the access and rights of way plans
In the County of Flintshire	Brookside	Access over existing access at a point marked 20-A on sheet 20 of the access and rights of way plans
In the County of Flintshire	Brookside Terrace	Access over existing access at a point marked 20-D on sheet 20 of the access and rights of way plans
In the County of Flintshire	B5125 (Village Road)	Access over a new access between points marked 20-T and 20-Q on sheet 20 of the access and rights of way plans
In the County of Flintshire	B5125 (Village Road)	Access over existing field access at the point marked 20-K on sheet 20 of the access rights of way plans
In the County of Flintshire	Connah's Quay Road	Access over existing field access at the point marked 20-L on sheet 20 of the access rights of way plans

In the County of Flintshire	Connah's Quay Road	Access over existing field access at the point marked 20-M on sheet 20 of the access rights of way plans
In the County of Flintshire	Starkey Lane	Access over existing field access at the point marked 21-F on sheet 21 of the access rights of way plans
In the County of Flintshire	Alt-Goch Lane	Access over existing field access at the point marked 22-E on sheet 22 of the access rights of way plans
In the County of Flintshire	Alt-Goch Lane	Access over existing field access at the point marked 22-F on sheet 22 of the access rights of way plans
In the County of Flintshire	Alt-Goch Lane	Access over a new access between points marked 22-G and 22-H on sheet 22 of the access and rights of way plans
In the County of Flintshire	Alt-Goch Lane	Access over existing field access at the point marked 22-M on sheet 22 of the access rights of way plans
In the County of Flintshire	Cornist Lane	Access over new field access between points marked 25-G and 25-H on sheet 25 of the access rights of way plans
In the County of Flintshire	B5121	Access over new field access between points marked 28-A and 28-B on sheet 28 of the access rights of way plans
In the County of Flintshire	Racecourse Lane	Access over new field access between points marked 29-A and 29-B on sheet 29 of the access rights of way plans

## SCHEDULE 5

Article 15

### Streets to be temporarily stopped up or restricted

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of temporary stopping up etc.</i>
In the Borough of Cheshire West and Chester	Private roads being Grinsome Road, Perimeter Road and Elton Lane, Ash Road and unnamed road off Ash Road	Temporary full width closure to all traffic between the points marked 1-AA, 1-A and 1-B and 1-C, 1-CC and 1-D on sheet 1 of the access rights of way plans
In the Borough of Cheshire West and Chester	Ince Lane	Temporary closure of the verge and reduction in carriageway width with traffic management measures between the points marked 2-

		G and 2-H on sheet 2 of the access rights of way plans
In the Borough of Cheshire West and Chester	A5117	Temporary closure of the verge and reduction in carriageway width with traffic management measures between points marked 2-I and 2-J on sheet 2 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Private roads being unnamed road off Pool Lane	Temporary full width closure to all traffic between points marked 3-D and 3-E on sheet 3 of the access and rights of way plans
In the Borough of Cheshire West and Chester	B5132 (Cryers Lane)	Temporary partial width closure to all traffic with traffic management measures between points marked 3-G and 3-H on sheet 3 of the access and rights of way plans
In the Borough of Cheshire West and Chester	B5132 (Cryers Lane)	Partial width closure to all traffic with traffic management measures between points marked 4-A and 4-B on sheet 4 of the access and rights of way plans
In the Borough of Cheshire West and Chester	B5132 (Cryers Lane)	Temporary full width closure to all traffic between points marked 4-E and 4-F on sheet 4 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Thornton Green Lane	Temporary full width closure to all traffic between points marked 5-B and 5-C on sheet 5 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Unnamed private track off Halls Green Lane	Temporary full width closure to all traffic between points marked 5-I and 5-J on sheet 5 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Unnamed private track off Ince Lane	Temporary full width closure to all traffic between points marked 5-K and 5-L on sheet 5 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Picton Lane	Temporary full width closure to all traffic between points marked 6-F and 6-G on sheet 4 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Wervin Road	Temporary partial width closure to all traffic with traffic management measures between points marked 7-D

		and 7-E on sheet 7 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Picton Lane	Temporary full width closure to all traffic between points marked 7-F and 7-G on sheet 7 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Caughall Road and Croughton Road	Temporary full width closure to all traffic between points marked 8-B and 8-C on sheet 8 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Chorlton Lane	Temporary full width closure to all traffic between points marked 8-G and 8-H on sheet 8 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Unnamed farm track off Stanney Lane	Temporary full width closure to all traffic between points marked 8-L and 8-M on sheet 8 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Chorlton Road	Temporary full width closure to all traffic between points marked 8-N and 8-O on sheet 8 of the access and rights of way plans
In the Borough of Cheshire West and Chester	A41	Temporary partial width closure to all traffic with traffic management measures between points marked 9-AA and 9-BB on sheet 9 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Station Road	Temporary partial width closure to all traffic with traffic management measures between points marked 10-AA and 10-BB on sheet 10 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Grove Road	Temporary full width closure to all traffic between points marked 10-C and 10-D on sheet 10 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Overwood Lane	Temporary partial width closure to all traffic with traffic management measures between points marked 10-K and 10-L on sheet 10 of the access and rights of way plans
In the Borough of Cheshire West and Chester	Kingswood Lane (Byway Open to all Traffic 263/BY11/1)	Temporary full width closure to all traffic between points marked 11-E and 11-F on sheet 11 of the access and rights of way plans

In the County of Flintshire	Sealand Road	Temporary partial width closure to all traffic with traffic management measures between points marked 12-E and 12-F on sheet 12 of the access and rights of way plans
In the County of Flintshire	Deeside Lane	Temporary partial width closure to all traffic with traffic management measures between points marked 12-DD on sheet 12 and 13-AA on sheet 13 of the access and rights of way plans
In the County of Flintshire	Deeside Lane	Temporary full width closure to all traffic between points marked 13-A and 13-AA on sheet 13 of the access and rights of way plans
In the County of Flintshire	Sealand Road	Temporary partial width closure to all traffic with traffic management measures between points marked 13-E and 13-F on sheet 13 of the access and rights of way plans
In the County of Flintshire	Flint Road	Temporary closure of the verge and reduction in carriageway width with traffic management measures between points marked 14-A and 14-B on sheet 14 of the access rights of way plans
In the County of Flintshire	Unnamed private tracks off Flint Road	Temporary full width closure to all traffic between points marked 14-F, 14-G and 14-H on sheet 14 of the access and rights of way plans
In the County of Flintshire	Private road off B5129 (Flint Road)	Temporary full width closure to all traffic between points marked 14-I and 14-J on sheet 14 of the access and rights of way plans
In the County of Flintshire	Unnamed private tracks off Chester Road	Temporary full width closure to all traffic between points marked 14-HH on sheet 14 and 15-CC on sheet 15 of the access and rights of way plans
In the County of Flintshire	Unnamed private tracks off Chester Road	Temporary full width closure to all traffic between points marked 15-A, 15-B and 15-C and 15-D on sheet 15 of the access and rights of way plans
In the County of Flintshire	Moor Lane	Temporary full width closure to all traffic between points marked 15-I and 15-J on sheet

		15 of the access and rights of way plans
In the County of Flintshire	Unnamed private road off Chester Road	Temporary full width closure to all traffic between points marked 15-K and 15-L on sheet 15 of the access rights of way plans
In the County of Flintshire	Chester Road	Temporary partial width closure to all traffic with traffic management measures between points marked 16-AA and 16-BB on sheet 16 of the access rights of way plans
In the County of Flintshire	Chester Road	Temporary partial width closure to all traffic with traffic management measures between points marked 16-CC and 16-DD on sheet 16 of the access rights of way plans
In the County of Flintshire	Unnamed private track off Colliery Lane	Temporary full width closure to all traffic between points marked 16-H and 16-I on sheet 16 of the access rights of way plans
In the County of Flintshire	Colliery Lane	Temporary full width closure to all traffic between points marked 16-J and 16-K on sheet 16 of the access rights of way plans
In the County of Flintshire	Private road off Gladstone Way	Temporary full width closure to all traffic between points marked 16-M and 16-N on sheet 16 of the access and rights of way plans
In the County of Flintshire	Lower Aston Hall Lane	Temporary full width closure to all traffic between points marked 17-C and 17-D on sheet 17 of the access rights of way plans
In the County of Flintshire	Lower Aston Hall Lane	Temporary closure of the verge and reduction in carriageway width with traffic management measures between points marked 17-EE and 17-FF on sheet 17 of the access rights of way plans
In the County of Flintshire	Church Lane	Temporary suspension of parking between the points marked 17-N and 17-NN, on sheet 17 of the access rights of way plans
In the County of Flintshire	Unnamed private track off Old Aston Hill	Temporary full width closure to all traffic between points marked 17-S on sheet 17 and 18-A on sheet 18 of the access rights of way plans



In the County of Flintshire	Shotton Lane	Temporary full width closure to all traffic between points marked 18-B and 18-C on sheet 18 of the access rights of way plans
In the County of Flintshire	B5125 (Holywell Road)	Temporary partial width closure to all traffic with traffic management measures between points marked 18-G and 18-H on sheet 18 of the access and rights of way plans
In the County of Flintshire	Holywell Road	Temporary partial width closure to all traffic with traffic management measures between points marked 18-KK and 18-JJ on sheet 18 of the access and rights of way plans
In the County of Flintshire	Green Lane	Temporary full width closure to all traffic between points marked 18-R and 18-Q on sheet 18 of the access and rights of way plans
In the County of Flintshire	Pinfold Lane	Temporary full width closure to all traffic between points marked 19-A and 19-B on sheet 19 of the access and rights of way plans
In the County of Flintshire	Brookside Junction to B5125 Mini Roundabout	Temporary full width closure to all traffic between points marked 19-FF and 19-GG on sheet 19 of the access and rights of way plans
In the County of Flintshire	Brookside Junction to B5125 Mini Roundabout	Temporary full width closure to all traffic between points marked 19-H and 19-I on sheet 19 of the access and rights of way plans
In the County of Flintshire	Brookside and Brookside Terrace	Temporary full width closure to all traffic between points marked 20-B, and 20-C and 20-CC on sheet 20 of the access and rights of way plans
In the County of Flintshire	B5125 (Village Road)	Temporary full width closure to all traffic between points marked 20-DD and 20-EE on sheet 20 of the access and rights of way plans
In the County of Flintshire	B5125 (Village Road)	Temporary full width closure to all traffic] between points marked 20-I and 20-J on sheet 20 of the access and rights of way plans
In the County of Flintshire	B5125 (Village Road)	Temporary partial width closure to all traffic with traffic management measures

		between points marked 20-N and 20-O on sheet 20 of the access and rights of way plans
In the County of Flintshire	B5125 (Village Road)	Temporary full width closure to all traffic between points marked 20-R and 20-S on sheet 20 of the access and rights of way plans
In the County of Flintshire	Starkey Lane	Temporary full width closure to all traffic between points marked 21-D and 21-E on sheet 21 of the access and rights of way plans
In the County of Flintshire	Alt-Goch Lane	Temporary partial width closure to all traffic with traffic management measures between points marked 22-K and 22-L on sheet 22 of the access and rights of way plans
In the County of Flintshire	Cornist Lane	Temporary partial width closure to all traffic with traffic management measures between points marked 25-E and 25-F on sheet 25 of the access rights of way plans
In the County of Flintshire	B5121	Temporary partial width closure to all traffic with traffic management measures between points marked 28-C and 28-D on sheet 28 of the access rights of way plans
In the County of Flintshire	Racecourse Lane	Temporary full width closure to all traffic between points marked 29-C and 29-D on sheet 29 of the access rights of way plans

## SCHEDULE 6

Articles 13 and 14

### Public rights of way to be temporarily restricted and stopped up

#### PART 1

#### Public rights of way to be temporarily restricted

<i>(1) Area</i>	<i>(2) Public right of way</i>	<i>(3) Extent of restriction (being closure to all use)</i>
In the Borough of Cheshire West and Chester	123/FP3/1	Between the points marked 2-E and 2-F on sheet 2 of the access and rights of way plans shown with a dashed orange line

In the Borough of Cheshire West and Chester	294/FP2/1 and 123/FPS/1	Between the points marked 4-H and 4-I, and 4-K and 4-J on sheet 4 of the access and rights of way plans shown with a dashed orange line
In the Borough of Cheshire West and Chester	318/FP1/1	Between the points marked 5-G and 5-H on sheet 5 of the access and rights of way plans shown with a dashed orange line
In the Borough of Cheshire West and Chester	309/FP1/2	Between the points marked 6-A and 6-B on sheet 6 of the access and rights of way plans shown with a dashed orange line
In the Borough of Cheshire West and Chester	309/FP3/1 and 241/FP6/2	Between the points marked 6-C and 6-D on sheet 6 of the access and rights of way plans shown with a dashed orange line
In the Borough of Cheshire West and Chester	211/FP4/1	Between the points marked 10-F and 10-G on sheet 10 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Footpath 308/1 and Footpath 307/3	Between the points marked 15-E and 15-F on sheet 15 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Footpath 308/1/10	Between the points marked 15-E and 15-G on sheet 15 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Footpath 308/4 and Footpath 303/44	Between the points marked 15-O and 15-P on sheet 15 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Chester Road	Between the points marked 16-AA and 16-DD on sheet 16 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Footpath 303/32	Between the points marked 16-F and 16-G on sheet 16 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Footpath 303/30	Between the points marked 17-AA and 17-BB on sheet 17 of the access and rights of way plans shown with a dashed orange line

In the County of Flintshire	Footpath 303/34	Between the points marked 17-G and 17-H on sheet 17 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Footpath 303/26	Between the points marked 17-J and 17-K on sheet 17 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Footpath 303/25	Between the points marked 17-M and 17-MM on sheet 17 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Footpath 303/22 and Footpath 303/24	Between the points marked 17-P and 17-Q on sheet 17 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Footpath 303/20	Between the points marked 18-I and 18-II on sheet 18 of the access and rights of way plans shown
In the County of Flintshire	Footpath 303/143 and Footpath 303/21	Between the points marked 18-J and 18-T, 18-K and 18-L on sheet 18 of the access and rights of way plans shown
In the County of Flintshire	Footpath 303/141	Between the points marked 18-M and 18-N on sheet 18 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Footpath 414/39	Between the points marked 19-DD and 19-E on sheet 19 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Footpath 414/4	Between the points marked 20-F and 20-FF on sheet 20 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Footpath 414/2	Between the points marked 20-P on sheet 20 and 21-AA on sheet 21 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Footpath 414/1	Between the points marked 21-A and 21-B on sheet 21 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Footpath 404/70	Between the points marked 22-A and 22-B on sheet 22 of the access and rights of way plans

		shown with a dashed orange line
In the County of Flintshire	Footpath 404/68	Between the points marked 22-B and 22-C on sheet 22 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Footpath 404/66	Between the points marked 22-I and 22-J on sheet 22 of the access and rights of way plans shown with a dashed orange line
In the County of Flintshire	Footpath 404/39	Between the points marked 25-I and 25-J on sheet 25 of the access and rights of way plans shown with a dashed orange

## PART 2

### Public rights of way to be stopped up

<i>Area</i>	<i>(2) Public right of way</i>	<i>(3) Extent of Stopping up</i>	<i>(4) Alternative route</i>
In the County of Flintshire	Footpath 414/39A	Between the points marked 19-D and 19-DD on sheet 19 of the access and rights of way plans shown with a dashed purple line	Between the points marked 19-D and 19-DD on sheet 19 of the access and rights of way plans

## SCHEDULE 7

Article 35

### Land of which only temporary possession may be taken

## PART 1

### Land of which only temporary possession may be taken

<i>(1) Area</i>	<i>(2) Number of plot shown on land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of authorised development</i>
Cheshire and Chester West	1-05	Temporary use as a construction working area and for access (as part of Work No.3)	Work Nos 1, 2, 3, 3A, 3B 4 and 5
Cheshire and Chester West	1-06d	Temporary use as a construction access (Work No.3A)	Work Nos 1, 2, 3, 3A, 3B, 4 and 5
Cheshire and Chester West	1-08	Temporary use as a construction compound and working area (as part of Work No.1A)	Work Nos 1, 2, 3, 4 and 5
Cheshire and Chester West	1-16, 1-17	Temporary use as construction access (as part of Work No.3)	Work Nos 1, 2, 3, 4 and 5

Cheshire and Chester West	2-02	Temporary use as a construction working area and for access to facilitate construction (as part of Work No.5C)	Work Nos 2, 3, 4 and 5
Cheshire and Chester West	2-04	Temporary use as a construction access (as part of Work No.5C)	Work Nos 2, 3, 4, 5 and 6
Cheshire and Chester West	2-07	Temporary use as a construction access (as part of Work No.5A)	Work Nos 2, 3, 4, 5 and 6
Cheshire and Chester West	2-11, 2-12	Temporary use a construction access (as part of Work No.5B)	Work Nos 2, 3, 4, 5 and 6
Cheshire and Chester West	3-01	Temporary use as a construction access (Work No. 6C)	Work Nos 4, 5, 6, 7 and 11
Cheshire and Chester West	3-02	Temporary use as a construction compound and working area (as part of Work No. 6B)	Work Nos 4, 5, 6, 7, 11, 57A and 57B
Cheshire and Chester West	4-01, 4-02	Temporary use as a construction compound and working area (as part of Work No. 6B)	Work Nos 4, 5, 6, 7, 11, 57A and 57B
Cheshire and Chester West	4-03, 4-04	Temporary use for a construction access including visibility splay (as part of Work No. 6D)	Work Nos 4, 5, 6, 7, 11, 57A and 57B
Cheshire and Chester West	4-11	Temporary use as a construction access (Work No. 6E)	Work Nos 4, 5, 6, 7, 11, 57A and 57B
Cheshire and Chester West	5-03, 5-04	Temporary use as a construction access (as part of Work No 12)	Work Nos 11, 12, 13, 14, 57C and 57D
Cheshire and Chester West	5-19, 5-21, 5-24, 5-25, 5-26, 6-11, 6-13	Temporary use for access and peat storage	Work Nos 13, 13A, 14, 57E and 57F
Cheshire and Chester West	6-20	Temporary use as a construction compound and working area (as part of Work No. 15A)	Work Nos 14, 15 and 16
Cheshire and Chester West	6-21	Temporary use as a construction access (Work No.15B)	Work Nos 14, 15 and 16
Cheshire and Chester West	7-02, 7-02a, 7-03b	Temporary use as a construction access (Work No.16B)	Work No. 16A
Cheshire and Chester West	7-10	Temporary use as a working area (as part of Work No. 17)	Work No. 17
Cheshire and Chester West	8-02	Temporary use as a construction working are and access (Work No. 18A)	Work Nos. 17, 18, 19, 19A, 20 and 21
Cheshire and Chester West	8-06, 8-08	Temporary use as a construction working area (Work No. 18)	Work Nos. 18, 19, 19A, 20 and 21
Cheshire and Chester West	8-09	Temporary use as a construction access, compound and working area (Work Nos.19A and 19B)	Work Nos. 17, 18, 19, 19A, 20 and 21
Cheshire and Chester West	8-14	Temporary use as a construction access (Work No. 19C)	Work Nos. 20 and 21
Cheshire and Chester West	9-02, 9-05, 9-06, 9-08, 9-11, 9-13	Temporary use as a construction access and working area (as part of Work No. 22)	Work Nos. 19, 22, 23, 24 and 57G
Cheshire and Chester West	9-18	Temporary use as a construction access (Work No. 23A)	Work Nos. 19, 22, 23 and 24

Cheshire and Chester West	9-20	Temporary use as a construction access and working area (as part of Work No. 23B)	Work Nos. 22, 23 and 24
Cheshire and Chester West	9-23	Temporary use as a construction access (as part of Work No.24A)	Work Nos. 24 and 25
Cheshire and Chester West	10-04a	Temporary possession for traffic management	Work No. 25
Cheshire and Chester West	10-14 10-15	Temporary use as a construction access (as part of Work No.25)	Work Nos. 25, 26, 27, 28
Cheshire and Chester West	10-17	Temporary use as a construction access (Work No.28A)	Work Nos. 25, 26, 26A, 27, 28, 28A, 28B
Cheshire and Chester West	10-19	Temporary use as a construction access and working area (as part of Work Nos.25, 26, 26A and 27)	Work Nos. 25, 26, 26A, 27 and 28
Cheshire and Chester West	11-01, 11-02	Temporary use as a construction access (Work No.28A)	Work Nos. 25, 26, 26A, 27, 28, 28A, 28B
Flintshire	12-12a, 12-13	Temporary use as a construction compound and working area (as part of Work Nos. 29A and 30A)	Work Nos. 28, 29, 29A, 30 and 30A
Flintshire	12-15, 12-16, 12-17	Temporary use as a construction access (Works No.30 and 30A)	Work Nos. 28, 29, 29A, 30 and 30A
Flintshire	13-14, 13-16	Temporary use as a construction compound and working area (as part of Work No. 30D)	Work Nos. 30 and 31
Flintshire	13-19	Temporary use as a construction access (as part of Work No.30E)	Work Nos. 30 and 31
Flintshire	14-01	Temporary use as a construction compound and working area (as part of Work No. 30D)	Work Nos. 30 and 31
Flintshire	14-14	Temporary use as a construction compound and working area (as part of Work Nos. 31A and 31B)	Work Nos. 30, 31, 32 and 33
Flintshire	14-23, 14-24, 14-25, 14-26, 14-27	Temporary use as a construction access and working area (as part of Work No. 31B)	Work Nos. 30, 31, 31A, 32 and 33
Flintshire	14-30a, 15-01a	Temporary use as a construction access (as part of Work No.33)	Work No. 33
Flintshire	15-02	Temporary use as a construction access and working area (as part of Work No.33)	Work Nos.32, 33 and 33A
Flintshire	16-01, 16-06, 16-06a, 16-07, 16-08, 16-09, 16-11	Temporary use as a construction access and working area, and for diversion of public right of way and watercourse (as part of Work No. 34)	Work Nos. 33 and 34
Flintshire	16-17	Temporary use as a working area (as part of Work No. 34)	Work Nos. 34 and 35
Flintshire	16-28	Temporary use as a construction working area and access (Work No.35)	Work Nos. 35, 36, 36A and 37
Flintshire	17-05	Temporary use as a construction access and working area (as part of Work Nos. 35 and 36A)	Work Nos. 35, 36, 36A and 37

Flintshire	17-09, 17-10	Temporary use as a construction access (Work No.38A)	Work Nos. 35, 36, 36A and 37
Flintshire	17-11	Temporary use as a working area (as part of Work No. 38)	Work Nos. 37 and 38
Flintshire	17-16	Temporary use as a construction working area and access (as part of Work No.39B)	Work Nos. 38, 39, 40 and 57H
Flintshire	17-31	Temporary use as a construction access (Work No.39A)	Work Nos. 39, 40 and 57H
Flintshire	17-35, 17-37, 17-38	Temporary use as a construction access and working area (Work No. 40A)	Work Nos. 39, 40 and 57H
Flintshire	18-01	Temporary use as a working area, access and public right of way diversion (as part of Work No. 40B)	Work Nos.40, 41 and 57I
Flintshire	18-13	Temporary use as a construction compound, working area and access (as part of Work Nos. 41A and 41B)	Work Nos. 40, 41, 42 and 57I
Flintshire	18-16, 18-17	Temporary use as a construction access and visibility splay (as part of Work No.41B)	Work Nos. 40, 41, 42 and 57I
Flintshire	19-04c	Temporary use as a working area (as part of Work No. 43D)	Work Nos. 42, 43, 57J and 57K
Flintshire	20-07	Temporary use as a working area (as part of Work No. 44)	Work Nos. 44 and 57L
Flintshire	20-10, 20-10a	Temporary use as a construction access (as part of Work No.44B)	Work Nos. 44, 44A, 45, 46, 57L and 57M
Flintshire	20-16, 20-17	Temporary use as a construction access (as part of Work No.46)	Work Nos. 44, 44A, 45 and 46
Flintshire	20-19b	Temporary use as a construction access (as part of Work No.45)	Work Nos. 44, 45 and 45B
Flintshire	20-20	Temporary use as a construction compound and working area (as part of Work Nos. 44C and 45A)	Work Nos. 44, 44A, 45, 46, 57L and 57M
Flintshire	21-03	Temporary use as a construction access (Work No.47A)	Work No. 47
Flintshire	21-07	Temporary use as a construction access (Work No.47B)	Work No. 47 and 48
Flintshire	22-02	Temporary use as a working area and access (as part of Work No. 47)	Work Nos. 47 and 48
Flintshire	22-04	Temporary use for and to construct an access (Work No.49)	Work No. 47, 48 and 49
Flintshire	25-03, 25-07, 25-08, 25-09	Temporary use as a working area (as part of Work Nos. 51a, 51B and 52)	Work Nos. 51, 51A and 52
Flintshire	27-02, 28-01	Temporary use as a working area (as part of Work Nos. 53A and 53B)	Work Nos. 53, 53A and 54



Flintshire	28-02	Temporary use for and to construct an access (Work No.54)	Work Nos. 53, 53A and 54
Flintshire	29-01	Temporary use for and to construct an access (Work No.56)	Work Nos. 55, 55A and 56
Flintshire	29-02	Temporary use as a working area (as part of Work No. 55B)	Work Nos. 55, 55A and 56
Flintshire	29-06	Temporary use as a working area (as part of Work Nos. 55A and 55B)	Work Nos. 55, 55A and 56

## PART 2

### Land of which only temporary possession for access may be taken

<i>(1) Area</i>	<i>(2) Number of plot shown on land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of authorised development</i>
Cheshire and Chester West	2-06	Temporary use for access (as part of Work No.5A)	Work Nos 2, 3, 4, 5 and 6
Cheshire and Chester West	9-24, 9-25	Temporary use as a construction access (as part of Work No.24A)	Work Nos. 24 and 25
Flintshire	13-13, 13-15, 13-17, 13-18, 14-02, 14-03	Temporary use as a construction access (as part of Work No.30E)	Work Nos. 30, 30D 31, 31A, 32 and 33
Flintshire	17-34	Temporary use for access (as part of Work No.40)	Work Nos. 39, 39A, 40, 40A, 41, 57H and 57I
Flintshire	19-06	Temporary use as a construction access (as Work No.43C)	Work Nos. 42, 43, 44, 57J and 57K

## SCHEDULE 8

Article 27

### Land in which only new rights etc., may be acquired

<i>(1) Number of plot shown on land plans</i>	<i>(2) Purpose for which rights may be acquired</i>
1-01	Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—
1-01a	
1-02	(a) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the authorised development, the inspection, testing, maintenance, renewal, upgrading, replacement and removal of the pipeline and connection into any adjacent pipeline and associated works, to take plant and equipment on to adjoining land;
1-03	
1-04	
1-06	
1-06a	
1-06b	
1-06c	

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1a-01	(b) make such investigations in or on the Land which is ancillary for the purposes of exercise of the rights;
1a-02	
1a-03	
1a-04	
12-21	(c) use, maintain and improve a means of access including visibility splays, and retain, maintain, repair, alter, upgrade and use existing access routes for the purposes of accessing the Land, adjoining land and highway;
13-01	
13-02	
13-03	
13-04	
13-05	(d) install, alter, re-lay, maintain, protect, adjust, operate or remove pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus, public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers and pipes, cables or conduits or apparatus to serve the authorised development);
13-06	
13-10	
13-11	
14-21	
14-22	(e) construct, lay down, use and remove temporary access roads or road surfacing including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal of any drainage work is being carried out;
	(f) install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, remediation works for environmental or ecological mitigation or enhancement works, including temporary barriers for the protection of fauna; and
	(g) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the Land in accordance with any necessary licences relating to protected species and/or wildlife.

A restrictive covenant over the Land for the benefit of the remainder of the Order land to prevent anything being done which may interfere with free flow and passage of carbon dioxide along the pipeline or telecommunications through the cables ancillary to the pipeline, or support for the authorised development.

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3-04	Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—
3-05	
3-06	
3-07	
3-08	
3-09	
3-10	(a) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the authorised development, the inspection, testing, maintenance, renewal, upgrading, replacement and removal of the pipeline and connection into any adjacent pipeline and associated works, to take plant and equipment on to adjoining land;
	(b) make such investigations in or on the Land which is ancillary for the purposes of exercise of the rights;
	(c) maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing the Land, adjoining land and highway;
	(d) install, alter, re-lay, maintain, protect, adjust, operate or remove pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus, public and private drains, connections to watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers and pipes, cables or conduits or apparatus to serve the authorised development);

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- (e) remove and discharge water from the Land and to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, flues and to drain into and manage waterflows in any drains, watercourses and culverts, to lay down, install, adjust, alter, construct, create, use, maintain, repair, renew, upgrade, inspect, remove and replace a drainage scheme on the Land (the “drainage works”);
  - (f) inspect, use mechanical excavation (including directional drilling and/or digging), reinstate, remove, move or alter such part or parts of any drainage system on the Land for the purposes of the drainage works (including connecting the drainage works to any land drain as at the date of the drainage works);
  - (g) place and use plant, machinery, structures and temporary structures within the Land, and to erect temporary signage and provide measures for the benefit of public and personnel safety for the purposes of the drainage works;
  - (h) make such investigations in or on the Land as required for the purposes of the drainage works;
  - (i) use or resort to trenchless installation techniques including (but not limited to) directional drilling in connection with the drainage works;
  - (j) erect fencing, gates, walls, barriers or other means of enclosure, and create secure works areas or compounds including temporary trenchless installation technique compounds and working areas for the purposes of the drainage works;
  - (k) construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal of any drainage work is being carried out;
  - (l) fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the Land or other land which would if not felled, lopped, cut or removed obstruct or interfere with the drainage works;
  - (m) retain, repair, improve, renew, remove, relocate and plant trees, shrubs, and hedgerows, to effect landscaping works and other environmental and ecological measures together with the right to maintain, inspect and replant such trees, shrubs and landscaping;
  - (n) install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, remediation works for environmental or ecological mitigation or enhancement works, including temporary works for noise alleviation measures and the installation of temporary barriers for the protection of fauna; and
  - (o) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the Land in accordance with any necessary licences relating to protected species and/or wildlife.

A restrictive covenant over the Land for the benefit of the remainder of the Order land to:

- (p) prevent any activity being undertaken on the Land which would interfere with the vertical or lateral support of the Pipeline;
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	(q) prevent anything being done which may interfere with free flow and passage of carbon dioxide along the pipeline or telecommunications through the cables ancillary to the pipeline, or support for the authorised development;	
	(r) prevent, without the written consent of the undertaker, the carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised development; and	
	(s) prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of the drainage works, ecological mitigation areas or areas of habitat creation including any ploughing or grazing without the prior written consent of the undertaker.	
1-21	Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—	
2-02a		
2-04a	(a) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the authorised development, the inspection, testing, maintenance, renewal, upgrading, replacement and removal of the pipeline and connection into any adjacent pipeline and associated works, to take plant and equipment on to adjoining land;	
5-08		
6-27		
7-02b		
7-03		
7-03a		
11-07		
12-04		(b) make such investigations in or on the Land which is ancillary for the purposes of exercise of the rights;
12-06		
14-11		(c) maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing the Land, adjoining land and highway; effect access to the highway including to construct, use, maintain and improve a permanent means of access including visibility splays, and retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing the Land, adjoining land and highway;
14-14a		
14-20		
15-02a		
15-09		
15-10		
15-14	(d) install, alter, re-lay, maintain, protect, adjust, operate or remove pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers and pipes, cables or conduits or apparatus to serve the authorised development);	
16-28a		
16-29		
16-30		
17-17		
17-18		
17-19	(e) remove and discharge water from the Land and to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, flues and to drain into and manage waterflows in any drains, watercourses and culverts, to lay down, install, adjust, alter, construct, create, use, maintain, repair, renew, upgrade, inspect, remove and replace a drainage scheme on the Land (the “drainage works”);	
20-09		
	(f) inspect, use mechanical excavation (including directional drilling and/or digging), reinstate, remove, move or alter such part or parts of any drainage system on the Land for the purposes of the drainage works (including connecting the drainage works to any land drain as at the date of the drainage works);	
	(g) place and use plant, machinery, structures and temporary structures within the Land, and to erect temporary signage and provide measures for the benefit of public and personnel safety for the purposes of the drainage works;	

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- (h) make such investigations in or on the Land as required for the purposes of the drainage works;
  - (i) use or resort to trenchless installation techniques including (but not limited to) directional drilling in connection with the drainage works;
  - (j) erect fencing, gates, walls, barriers or other means of enclosure, and create secure works areas or compounds including temporary trenchless installation technique compounds and working areas for the purposes of the drainage works;
  - (k) construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal of any drainage work is being carried out;
  - (l) fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the Land or other land which would if not felled, lopped, cut or removed obstruct or interfere with the drainage works;
  - (m) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodland, shrubs, hedgerows, seeding, to effect landscaping works and other environmental and ecological measures together with the right to maintain, inspect and replant such trees, shrubs and landscaping;
  - (n) install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, remediation works for environmental or ecological mitigation or enhancement works, including temporary works for noise alleviation measures and the installation of temporary barriers for the protection of fauna; and
  - (o) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the Land in accordance with any necessary licences relating to protected species and/or wildlife.

A restrictive covenant over the Land for the benefit of the remainder of the Order land to:

- (p) prevent any activity being undertaken on the Land which would interfere with the vertical or lateral support of the Pipeline;
- (q) prevent anything being done which may interfere with free flow and passage of carbon dioxide along the pipeline or telecommunications through the cables ancillary to the pipeline, or support for the authorised development;
- (r) prevent carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised development; and
- (s) prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of the drainage works, ecological mitigation areas or areas of habitat creation including any ploughing or grazing without the prior written consent of the undertaker.

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6-07	Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—
6-08	
6-09	
	(a) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing,

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inspecting, removing and replacing the authorised development, the inspection, testing, maintenance, renewal, upgrading, replacement and removal of the pipeline and connection into any adjacent pipeline and associated works, to take plant and equipment on to adjoining land;

- (b) make such investigations in or on the Land which is ancillary for the purposes of exercise of the rights;
- (c) maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing the Land, adjoining land and highway; effect access to the highway including to construct, use, maintain and improve a permanent means of access including visibility splays, and retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing the Land, adjoining land and highway;
- (d) place and use plant, machinery, structures and temporary structures within the Land, and to erect temporary signage and provide measures for the benefit of public and personnel safety for the purposes of the drainage works;
- (e) erect fencing, gates, walls, barriers or other means of enclosure, and create secure works areas or compounds including temporary trenchless installation technique compounds and working areas for the purposes of the drainage works;
- (f) construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal of any drainage work is being carried out;
- (g) fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the Land or other land which would if not felled, lopped, cut or removed obstruct or interfere with the drainage works;
- (h) remove and relocate trees, shrubs, hedgerows,;
- (i) install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, remediation works for environmental or ecological mitigation or enhancement works, including temporary works for noise alleviation measures and the installation of temporary barriers for the protection of fauna; and
- (j) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the Land in accordance with any necessary licences relating to protected species and/or wildlife.

A restrictive covenant over the Land for the benefit of the remainder of the Order land to prevent anything being done which may interfere with free flow and passage of carbon dioxide along the pipeline or telecommunications through the cables ancillary to the pipeline, or support for the authorised development.

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28-03

Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to—

- (a) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the authorised development, the inspection, testing, maintenance, renewal, upgrading, replacement and
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removal of the pipeline and connection into any adjacent pipeline and associated works, to take plant and equipment on to adjoining land;

- (b) make such investigations in or on the Land which is ancillary for the purposes of exercise of the rights;
- (c) place and use plant, machinery, structures and temporary structures within the Land, and to erect temporary signage and provide measures for the benefit of public and personnel safety for the purposes of the drainage works;
- (d) erect fencing, gates, walls, barriers or other means of enclosure, and create secure works areas or compounds including temporary trenchless installation technique compounds and working areas for the purposes of the drainage works;
- (e) install, alter, re-lay, maintain, protect, adjust, operate or remove pipes, cables or conduits or apparatus including but not limited to electricity poles, electricity pylons, electricity masts, overhead electricity lines, telecommunications cables and any ancillary equipment and apparatus public and private drains, watercourses, sewers, ponds or culverts, service media (including the pipes, cables or conduits or apparatus of statutory undertakers and pipes, cables or conduits or apparatus to serve the authorised development);
- (f) construct, lay down, use and remove temporary access roads including any necessary hard standing and other surface materials including (but not limited to) matting, aggregate, trackway, stone, tarmacadam, terram, temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal of any drainage work is being carried out;
- (g) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodland, shrubs, hedgerows, seeding, to effect landscaping works and other environmental and ecological measures together with the right to maintain, inspect and replant such trees, shrubs and landscaping;
- (h) install, execute, implement, retain, repair, improve, renew, relocate, maintain and carry out mitigation, maintenance, remediation works for environmental or ecological mitigation or enhancement works, including temporary works for noise alleviation measures and the installation of temporary barriers for the protection of fauna; and
- (i) carry out such works (together with associated fencing) required by a planning permission and/or consent now or to be granted over the Land in accordance with any necessary licences relating to protected species and/or wildlife.

A restrictive covenant over the Land for the benefit of the remainder of the Order land to:

- (j) prevent any activity being undertaken on the Land which would interfere with the vertical or lateral support of the Pipeline;
  - (k) prevent anything being done which may interfere with free flow and passage of carbon dioxide along the pipeline or telecommunications through the cables ancillary to the pipeline, or support for the authorised development;
  - (l) prevent carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised development; and
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- (m) prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of the ecological or environmental mitigation areas without the prior written consent of the undertaker.

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9-04  
16-03a Rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development to pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of surveying or investigating the land.

A restrictive covenant over the Land for the benefit of the remainder of the Order land to:

- (a) prevent any activity being undertaken on the Land which would interfere with the vertical or lateral support of the Pipeline;
  - (b) prevent anything being done which may interfere with free flow and passage of carbon dioxide along the pipeline or telecommunications through the cables ancillary to the pipeline, or support for the authorised development; and
  - (c) prevent carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised development.
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## SCHEDULE 9

Article 27

### Modification of compensation and compulsory purchase enactments for creation of new rights

#### Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or imposition of a restrictive covenant as they apply as respects compensation for the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the following modification—

(2) For section (5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the Compulsory Purchase Act 1965 (as modified by paragraph 5(5) of Schedule 9 to the HyNet Carbon Dioxide Pipeline Order 202[•]).
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the Compulsory Purchase Act 1965 (as substituted by paragraph 4(8) of Schedule 9 to the HyNet Carbon Dioxide Pipeline Order 202[•]) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of sub-section (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.



(2) Without limitation on the scope of paragraph (1), the Land Compensation Act 1973<sup>(a)</sup> has effect subject to the modifications set out in sub-paragraph (2).

**3.—**(1) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3) of this Schedule—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable.”

### **Application of Part 1 of the 1965 Act**

**3.—**(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 33 (modification of Part 1 of the 1965 Act) to the acquisition of land under article 25 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 27 (compulsory acquisition of rights and restrictive covenants)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

**4.—**(1) The modifications referred to in sub-paragraph (1) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land);

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by sub-section (1) of that section (as it applies to a compulsory acquisition), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter

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(a) 1973 c.26

for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 33(4) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

## “SCHEDULE 2A

Section 8

### Counter-notice requiring purchase of land not in notice to treat

#### **Introduction**

**1.**—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act) of the HyNet Carbon Dioxide Pipeline Order 202[•] in respect of the land to which the notice to treat relates.

(2) But see article 32 (acquisition of subsoil or airspace only) of the HyNet Carbon Dioxide Pipeline Order 202[•] which excludes the acquisition of subsoil only from this Schedule.

(3) In this Schedule, “house” includes any park or garden belonging to a house.

#### **Counter-notice requiring purchase of land**

**2.** A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

**3.** A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

#### **Response to counter-notice**

**4.** On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat;
- (b) accept the counter-notice; or
- (c) refer the counter-notice to the Upper Tribunal.

**5.** The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

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(a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).  
(b) Section 11B was inserted by section 187(2) of the above Act.

6. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

7. If the authority do not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

8. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

### **Determination by the Upper Tribunal**

9. On a referral under paragraph (6), the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

10. In making the determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant;
- (b) the use to be made of the right or covenant proposed to be acquired or imposed; and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

11. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 9, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

12. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

13.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawing of the notice.

14. Any dispute as to the compensation is to be determined by the Upper Tribunal.”

## **SCHEDULE 10**

Article 43

### **Protective provisions**

#### **PART 1**

##### **Protection for electricity, gas, water and sewerage undertakers**

1. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and the utility undertaker in question.

**2. In this Part—**

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

“apparatus” means—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989<sup>(a)</sup>), belonging to or maintained by that licence holder;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by that gas transporter within the meaning of Part 1 of the Gas Act 1986<sup>(b)</sup> for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term, mains, pipes or other apparatus belonging to or maintained by that water undertaker for the purposes of water supply; and
- (d) in the case of a utility undertaker within paragraph (d) of the definition of that term—
  - (i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991<sup>(c)</sup>; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewerage disposal works, at future date) of that Act<sup>(d)</sup>,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

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

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

**On street apparatus**

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

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(a) 1989 c.29.

(b) 1986 c.44.

(c) 1991 c.56.

(d) Section 104 was amended by section 42(3) of the Flood and Water Management Act 2010 (c.29).

## **Acquisition of land**

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

## **Removal of apparatus**

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question.

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 49 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

## **Facilities and rights for alternative apparatus**

6.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility

undertaker in question or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along the authorised development, the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus that may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised project for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

7.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

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

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, the provisions of this Part apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

### **Expenses and costs**

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses agreed with the undertaker in advance and reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) The value of any apparatus removed under the provisions of this Part must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be necessary then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

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

**9.—**(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any such works referred to in paragraph 5(2) any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

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

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

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

## **Miscellaneous**

**10.** Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

## PART 2

### Protection for operators of electronic communications code networks

**11.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and the operator in question.

**12.** In this Part—

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

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

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

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 (infrastructure system) of that code; and

“operator” means the operator of an electronic communications code network.

**13.** The exercise of the powers conferred by article 37 (statutory undertakers) are subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

**14.—**(1) Subject to sub-paragraphs (2) to (4), if as a result of the authorised development or its construction, or of any subsidence resulting from the authorised development—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost agreed by the undertaker in advance and reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it by reason, or in consequence of, any such damage or interruption.

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

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

(4) Any difference arising between the undertaker and the operator under this Part must be referred to and settled by arbitration under article 49 (arbitration).

(5) This Part does not apply to—

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(a) 2003 c.21.

(b) Section 106 was amended by section 4 of the Digital Economy Act 2017.



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

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

## PART 3

For the protection of National Grid as electricity undertaker

### Application

**15.**—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 7 (benefit of Order) -

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but without prejudice to paragraph 25(3)(b) of this Part of this Schedule).

### Interpretation

**16.** In this Part of this Schedule—

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

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the duration of the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):

- (a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid;
- (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one 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 National Grid to cover the undertaker’s liability to National Grid to a total liability cap of £50,000,000.00 (fifty million

pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, 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 National Grid to cover the undertaker's liability to National Grid for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid);

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

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any ancillary works as defined in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

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

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

“functions” includes powers and duties;

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

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid's approval a ground mitigation scheme;

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

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

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid: construct, use, repair, alter, inspect, renew or remove the apparatus;

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

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(a) 1989 c.29.

“NGESO” means as defined in the STC;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

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

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 21(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 21(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in National Grid’s document “Development near overhead lines” EN43-8 and the Health and Safety Executive’s (HSE) Guidance Note GS6 “Avoiding Danger from Overhead Power Lines”;

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

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

“Transmission Owner” means as defined in the STC;

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

## **On Street Apparatus**

17. Except for paragraphs 18 (Apparatus of statutory undertakers in temporarily restricted streets), 23 (retained apparatus: protection of electricity undertaker) and 24 (expenses) of this Part of this Schedule, which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of statutory undertakers in temporarily restricted streets**

18. Despite the temporary stopping up or diversion of any highway under article 15 (temporary restriction of use of streets), National Grid may at all times take all necessary access across any such highway and execute and do all such works and things in, on or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the restriction or diversion was in that highway.

### **Protective works to buildings**

19. The undertaker, in the case of the powers conferred by article 23 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

### **Acquisition of land**

20.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire

or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid unless agreed by National Grid.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or 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 authorised works.

(3) Save where otherwise agreed in writing between National Grid and the undertaker, the undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 23 (Retained apparatus: protection of electricity undertaker) or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub- paragraph (1).

### **Removal of apparatus**

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

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its reasonable satisfaction (taking into account paragraph 22(1) below) the necessary facilities and rights—

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

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

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

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

### **Facilities and rights for alternative apparatus**

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

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 29 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of electricity undertaker**

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

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

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

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

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

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

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

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

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

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

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

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

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 21(2).

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

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

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

## Expenses

24.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably and properly incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 21(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 29 (Arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

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

(6) Where in accordance with sub-paragraph (1) the undertaker pays National Grid in respect of an itemised invoice or claim for charges, costs and expenses reasonably anticipated within the following three months, should there be any unspent funds after the expiry of such three month period, National Grid shall repay such unspent funds within 60 days of the total charges, costs and expenses actually reasonably and properly incurred being known by National Grid.

### **Indemnity**

**25.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, and provided that at all times National Grid will be under an obligation to take reasonable steps to mitigate its loss, the undertaker will—

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

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 25; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business



interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

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

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

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

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid's apparatus until the following conditions are satisfied:

- (a) unless and until National Grid 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 authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and
- (b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

### **Enactments and agreements**

**26.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**27.—(1)** Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 21(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 23, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

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

and/or expense which may be claimed under this Part of this Schedule shall at all times be subject to National Grid acting reasonably.

### **Access**

28. If in consequence of the agreement reached in accordance with paragraph 20(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

29. Save for differences or disputes arising under paragraph 21(2), 21(4), 22(1) and 23 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 49 (arbitration).

### **Notices**

30. Notwithstanding article 46 (service of notices), any plans submitted to National Grid by the undertaker pursuant to this Part must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **PART 4**

### **For the protection of National Grid as gas undertaker**

### **Application**

31.—(1) For the protection of National Gas Transmission as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas Transmission.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas Transmission, where the benefit of this Order is transferred or granted to another person under article 7 (benefit of the Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Gas Transmission and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Gas Transmission on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas Transmission (but without prejudice to paragraph 41(3)(b) of this Part of this Schedule).

### **Interpretation**

32.—(1) In this Part of this Schedule—

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

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not

less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the duration of the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):

- (a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid
- (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

- (a) parent company guarantee from a parent company in favour of National Gas Transmission to cover the undertaker’s liability to National Gas Transmission to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas Transmission and where required by National Gas Transmission, 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 National Gas Transmission to cover the undertaker’s liability to National Gas Transmission for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas Transmission);

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

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Gas Transmission for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas Transmission for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any ancillary works as defined in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

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

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

“functions” includes powers and duties;

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

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities

and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Gas Transmission's approval a ground mitigation scheme;

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

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas Transmission: construct, use, repair, alter, inspect, renew or remove the apparatus;

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

“Network Code” means the network code prepared by National Gas Transmission pursuant to Standard Special Condition A11(3) of its Gas Transporter's Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas Transmission's Transporters Licence, as both documents are amended from time to time;

“Network Code Claims” means any claim made against National Gas Transmission by any person or loss suffered by National Gas Transmission under the Network Code arising out of or in connection with any failure by National Gas Transmission to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas Transmission as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

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

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Gas Transmission acting reasonably;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 37(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 37(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas Transmission's policies for safe working in proximity to gas apparatus, “Specification for safe working in the vicinity of National Grid, High Pressure Gas pipelines and associated installations- requirements for third parties”); and

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

### **On Street Apparatus**

**33.** Except for paragraphs 34 (Apparatus of statutory undertakers in temporarily restricted streets), 39 (retained apparatus: protection of gas undertaker), 40 (expenses) and 41 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas Transmission, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas Transmission are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of statutory undertakers in temporarily restricted streets**

34. Despite the temporary stopping up or diversion of any highway under article 15 (temporary restriction of use of streets), National Gas Transmission may at all times take all necessary access across any such highway and execute and do all such works and things in, on or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the restriction or diversion was in that highway.

### **Protective works to buildings**

35. The undertaker, in the case of the powers conferred by article 23 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas Transmission.

### **Acquisition of land**

36.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas Transmission unless agreed by National Gas Transmission.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Gas Transmission and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas Transmission or affect the provisions of any enactment or agreement regulating the relations between National Gas Transmission and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas Transmission reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas Transmission and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas Transmission unless otherwise agreed by National Gas Transmission, and it will be the responsibility of the undertaker to procure and/or 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 authorised works.

(3) Save where otherwise agreed in writing between National Gas Transmission and the undertaker, the undertaker and National Gas Transmission agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas Transmission and/or other enactments relied upon by National Gas Transmission as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Gas Transmission under paragraph 39 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

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

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas Transmission advance written notice of that requirement,

together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas Transmission reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Gas Transmission to its reasonable satisfaction (taking into account paragraph 38(1) below) the necessary facilities and rights—

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

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

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

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

### **Facilities and rights for alternative apparatus**

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

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Gas Transmission than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 45 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas Transmission as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of gas undertaker**

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

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

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

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Gas Transmission has given written approval of the plan so submitted.

(4) Any approval of National Gas Transmission required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

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

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Gas Transmission and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Gas Transmission for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas Transmission will be entitled to watch and inspect the execution of those works.

(7) Where National Gas Transmission 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 National Gas Transmission's satisfaction, , prior to the commencement of any specified works for which protective works are required and National Gas Transmission must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas Transmission in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 31 to 33 and 35 to 37 apply as if the removal of the apparatus had been required by the undertaker under paragraph 37(2).

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

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Gas Transmission notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Gas Transmission's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and 69 associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save

that National Gas Transmission 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 40.

### Expenses

**40.**—(1) Save where otherwise agreed in writing between National Gas Transmission and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas Transmission within 30 days of receipt of an itemised invoice or claim from National Gas Transmission all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Gas Transmission in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably and properly incurred by or compensation properly paid by National Gas Transmission in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas Transmission as a consequence of National Gas Transmission;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 37(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas Transmission;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 45 (Arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Gas Transmission by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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



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

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

(6) Where in accordance with sub-paragraph (1) the undertaker pays National Gas Transmission in respect of an itemised invoice or claim for charges, costs and expenses reasonably anticipated within the following three months, should there be any unspent funds after the expiry of such three month period National Gas Transmission shall repay such unspent funds within 60 days of the total charges, costs and expenses actually reasonably and properly incurred being known, and include an itemised accounting of the charges, costs and expenses reasonably and properly incurred for the three months following the issue of the itemised invoice or claim.

### **Indemnity**

**41.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Gas Transmission, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas Transmission, or National Gas Transmission becomes liable to pay any amount to any third party, **and provided that at all times National Gas Transmission will be under an obligation to take reasonable steps to mitigate its loss,** the undertaker will—

- (a) bear and pay on demand accompanied by an **appropriately detailed** invoice or **appropriately detailed** claim from National Gas Transmission the cost reasonably and properly incurred by National Gas Transmission in making good such damage or restoring the supply; and
- (b) indemnify National Gas Transmission for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas Transmission, by reason or in consequence of any such damage or interruption or National Gas Transmission becoming liable to any third party and including Network Code Claims other than arising from any default of National Gas Transmission.

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas Transmission, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Gas Transmission as an assignee, transferee or lessee of the

undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 41; and/or

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

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

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

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

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Gas Transmission or in respect of which National Gas Transmission has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas Transmission’s apparatus until the following conditions are satisfied:

- (a) unless and until National Gas Transmission 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 authorised works from the proposed date of commencement of construction of the authorised works) and National Gas Transmission has confirmed the same to the undertaker in writing; and
- (b) unless and until National Gas Transmission is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas Transmission that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas Transmission has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Gas Transmission from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

### **Enactments and agreements**

**42.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Gas Transmission and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas Transmission in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**43.—(1)** Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Gas Transmission requires the removal of apparatus under paragraph

7(2) or National Gas Transmission makes requirements for the protection or alteration of apparatus under paragraph 39, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Gas Transmission's undertaking and National Gas Transmission must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas Transmission's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed, and any action, decision, cost and/or expense which may be claimed under this Part of this Schedule shall at all times be subject to National Gas Transmission acting reasonably.

### **Access**

**44.** If in consequence of the agreement reached in accordance with paragraph 36(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas Transmission to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**45.** Save for differences or disputes arising under paragraph 37(2), 37(4), 38(1) and 39 any difference or dispute arising between the undertaker and National Gas Transmission under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas Transmission, be determined by arbitration in accordance with article 49 (arbitration).

### **Notices**

**46.** Notwithstanding article 46 (service of notices), any plans submitted to National Gas Transmission by the undertaker pursuant to this Part must be submitted to <https://lsbud.co.uk/> or such other address as National Gas Transmission may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **PART 5**

### **For the protection of Cadent Gas Limited**

### **Application**

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

### **Interpretation**

**48.** In this Part of this Schedule—

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

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of Cadent's undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent's undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as is given in article 2(1) of the Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Cadent’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

“commence” and “commencement” means carry out a material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or for the purposes of the authorised development including (but not limited to) any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the erection of construction plant and equipment, other than erection of fencing to site boundaries or marking out of site boundaries, installation of amphibian and reptile fencing, or environmental mitigation measures, and “commencement”, “commenced” and cognate expressions are to be construed accordingly;

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

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

“functions” includes powers and duties;

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

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

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

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

“maintain” and “maintenance” have effect as if Cadent’s existing apparatus was authorised development and as if the term maintain includes protect and use;

“parent company” means a parent company of the undertaker acceptable to Cadent and which shall have been approved by Cadent acting reasonably;

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

“protective works” means the underpinning, strengthening and any other works the purpose of which is to prevent damage to or interference with Cadent’s apparatus that may be caused by the carrying out, maintenance or use of the authorised development;

“rights” includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised development or activities (including maintenance) undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 53(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 53(2) or otherwise.

### **On Street apparatus**

**49.**—(1) This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

- (a) paragraphs 50, 55, and 57; and
- (b) where sub-paragraph (2) applies, paragraphs 53 and 54.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) The Protective Provisions in this Part of this Schedule apply and take precedence over article 37 (statutory undertakers) and 38 (recovery of costs of new connections) of the Order which shall not apply to Cadent.

### **Apparatus of Cadent in stopped up streets**

**50.**—(1) Where any street is stopped up under article 13 (temporary restriction of public rights of way), 15 (temporary restriction of use of streets) or Schedule 5 (streets to be temporarily stopped up or restricted), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the stopping up of any such street or highway, but nothing in this paragraph shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 53.

(2) Subject to sub-paragraph (3) below, and notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 13 (temporary restriction of public rights of way), 15 (temporary restriction of use of streets) or Schedule 5 (streets to be temporarily stopped up or restricted), Cadent will be at liberty at all times and at Cadent’s own risk to take reasonable access across any such street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that street.

(3) In taking access pursuant to sub-paragraph (2) above, Cadent must:

- (a) Comply with any plans produced by the undertaker pursuant to its obligations under the Construction (Design and Management) Regulations 2015; and
- (b) Comply with all relevant health and safety legislation, guidance, protocols and procedures.

### **Protective works to buildings**

**51.**—(1) The undertaker must exercise the powers conferred by article 23 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed) and if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in the view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the

undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall-

- (a)
  - (a) pay compensation to Cadent for any reasonable loss sustained by it; and
  - (b) indemnify Cadent against all claims, demands, proceedings, reasonable costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent, by reason of any such damage or interruption provided that at all times Cadent will be under an obligation to take all reasonable steps to mitigate its loss.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent or its contractors or workmen; and Cadent will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement, admission of liability or compromise thereof shall be made by Cadent, save in respect of any payment requirement under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

### **Acquisition of land**

**52.—**(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire from Cadent any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

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

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 55 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ Cadent must use reasonable endeavours to surrender its easement or other interest in land in respect of such decommissioned apparatus to the reversionary landowner. If Cadent is not released by the reversionary landowner from all liabilities in respect of such decommissioned apparatus the undertaker shall take on such liabilities in respect of such decommissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 53 do not apply, the undertaker must, unless Cadent agrees otherwise—

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and

- (b) (where no such notice of Cadent’s easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker’s interest in such acquired land at the Land Registry) a notice of Cadent’s easement, right or other interest in relation to such acquired land.

### **Removal of apparatus**

**53.**—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 52, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its reasonable satisfaction (taking into account paragraph 54(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

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

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's reasonable opinion), then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 60 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of Cadent**

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

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

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

(3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of Cadent given under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and
- (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

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

- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and
- (b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 47 to 49 and 52 to 54 apply as if the removal of the apparatus had been required by the undertaker under paragraph 53(2).



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

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

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) Cadent retains the right to carry out any further necessary protective works (in Cadent's reasonable opinion) for the safeguarding of its apparatus and can recover any such costs associated with the further protective works in line with paragraph 56.

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

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

## **Expenses**

**56.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all documented charges, costs and expenses reasonably anticipated or reasonably and properly incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—

- (a) any costs reasonably and properly incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all reasonable costs (including professional fees) incurred by Cadent as a consequence of Cadent;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 53(3) if it elects to do so; or
  - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 55(6).

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess.

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

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

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

(6) Where Cadent demands payment of reasonably anticipated charges, costs and expenses pursuant to sub-paragraph (1), Cadent must provide the undertaker with an itemised invoice or claim detailing such charges, costs, and expenses reasonably anticipated to fall due within the following three months of such a demand. The undertaker shall pay the reasonably anticipated costs set out in the itemised invoice to Cadent on demand in accordance with sub-paragraph (1). To the extent that this sum paid in advance has not been expended by Cadent before three months after payment by the undertaker of that sum, the undertaker may demand the unspent balance remaining to be repaid by Cadent and Cadent shall repay that unspent balance within 30 days (unless otherwise agreed in writing between the parties).

### **Enactments and agreements**

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

### **Co-operation**

**58.—(1)** Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under paragraph 53(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 55, the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

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

## **Access**

**59.** If in consequence of any agreement reached in accordance with paragraph 52(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction (in Cadent's reasonable opinion). For the avoidance of doubt, where the undertaker cannot grant such alternative rights and means of access to such apparatus by virtue of not being in possession of the requisite land rights, the undertaker shall use reasonable endeavours to assist in the securing of the requisite rights and means of access.

## **Arbitration**

**60.** Save for differences or disputes arising under sub-paragraphs 53(2) and 53(4) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 49 (arbitration).

## **Notices**

**61.** Notwithstanding article 46 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 55(1) must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com copied by e-mail to toby.feirn@cadentgas.com and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

# **PART 6**

## **For the protection of Network Rail**

**62.** The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 76, of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

**63.** In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8(1)(licences) of the Railways Act 1993;

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

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

“protective works” means the underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused by the carrying out, maintenance or use of the authorised development;

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

"railway property" means any railway belonging to Network Rail and-

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

"regulatory consents" means any consent or approval required under:

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property, and for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to maintain the authorised development) in respect of such works.

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

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

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

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

- (a) article 22 (authority to survey and investigate the land);
- (b) article 25 (compulsory acquisition of land);
- (c) article 27 (compulsory acquisition of rights and restrictive covenants);
- (d) article 28 (statutory authority to override easements and other rights);
- (e) article 32 (acquisition of subsoil or airspace only);
- (f) article 35 (temporary use of land for carrying out the authorised development);
- (g) article 36 (temporary use of land for maintaining the authorised development);
- (h) article 37 (statutory undertakers);
- (i) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (j) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail, such consent not to be unreasonably withheld

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act or article 37 (statutory undertakers) in relation to any right of access of Network Rail to railway property, but such right of access may be extinguished or diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would directly result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway, in Network Rail's reasonable opinion.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions including any conditions necessary to ensure operational or railway safety but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

**66.—**(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 49 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval, the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, subject to Network Rail seeking consent from the undertaker (such matters to be in the undertaker's absolute discretion) and if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the absolute satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

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

(5) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to Network Rail notice as soon as is reasonably practicable, and in addition to that notice shall provide a plan, section and description of those works as soon as reasonably practicable subsequently.

**67.—**(1) Any protective works to be constructed by virtue of paragraph 66(4) must, when commenced, be constructed—

- (a) without necessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 66;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of the construction of a specified work, the undertaker must, regardless of any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and reasonable compensation for any loss which it may sustain by reason of any such damage, interference or obstruction but always excluding any consequential loss or indirect loss.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its employees, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its employees, contractors or agents.

**68.** The undertaker must-

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

**69.** Network Rail must at all times afford reasonable facilities to the undertaker and its employees, contractors or agents for access to any works carried out by Network Rail under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**70.—**(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker written notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working, and when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed and provides its consent, (such matters to be in the undertaker's absolute discretion) Network Rail must assume construction of that part of the specified work and the undertaker must, regardless of any such approval of a specified work under paragraph 66(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and reasonable compensation for any loss which it may suffer by reason of the execution by Network Rail of that

specified work provided that at all times Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 71(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**71.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 66(3) or in constructing any protective works under the provisions of paragraph 66(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, guards and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**72.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as that it adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**73.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**74.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**75.—(1)** The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses (but always excluding any consequential or indirect loss) not otherwise provided for in this Part of this Schedule (subject to article 47 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the undertaker's construction, maintenance or operation of a specified work or the failure thereof; or

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

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission, provided Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss.

(2) The fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under this Part.

(3) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands

(4) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub paragraph (4).

(7) In this paragraph—

"the relevant costs" means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a direct result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**76.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part (including the amount of the relevant costs reasonably incurred and mentioned in paragraph 76) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

**77.** In the assessment of any sums payable to Network Rail under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary



and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

**78.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**79.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

**80.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**81.** The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 45 (certification of plans) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a USB stick or download link.

## PART 7

### For the protection of the Canal and River Trust

#### Interpretation

**82.—**(1) For the protection of the Canal & River Trust the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

(2) In this Part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal & River Trust (April 2022) 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 and “construct” and “constructed” have corresponding meanings;

“Canal & River Trust’s network” means the Canal & River Trust’s network of waterways;

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

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

- (ii) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (iii) the pollution of the waterway;
- (iv) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (v) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the Canal & River Trust's network); and
- (vi) any material interference with the exercise by any person of rights over Canal & River Trust's network;

“the engineer” means an engineer appointed by the Canal & River 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;

“protective work” means a work constructed under paragraph 86(3)(a);

“specified work” means so much of any authorised development as defined in article 2(1) of this Order that is situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway;

“the waterway” means each and every part of the Shropshire Union Canal within the order limits, and any works, lands or premises belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with that canal in connection with its statutory functions.

### **Powers requiring the Canal & River Trust's consent**

**83.—**(1) The undertaker must not in the exercise of the powers conferred by this Order to materially obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal & River Trust.

(2) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 20 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust, and such consent may be given subject to terms and conditions as the Canal & River Trust may reasonably impose, but must not be unreasonably withheld or delayed.

(3) The undertaker must not exercise the powers conferred by article 22 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the Shropshire Union Canal unless such exercise is with the consent of the Canal & River Trust.

(4) Articles 6(a) 6(b) and 6(d)(i) (limits of deviation) shall not apply in relation to the waterway unless in conducting such exercise the crown of any installed pipeline is at least 3.5 metres below the hard bed level of the waterway or otherwise with the consent of the Canal & River Trust.

(5) The consent of the Canal & River Trust pursuant to sub-paragraphs (1) to (4) must not be unreasonably withheld or delayed.

(6) This paragraph does not apply where the undertaker reasonably believes emergency works are required to prevent imminent injury or damage to persons or property. In such circumstances the Canal & River Trust must be notified as soon as reasonably practicable.

### **Fencing**

**84.—**(1) Where so required by the engineer the undertaker must to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

(2) Any fencing constructed under this provision shall not require any other consent from the Canal & River Trust for interferences or obstructions to access to their network under other provisions.

### **Survey of waterway**

**85.**—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker must bear the reasonable and proper cost of the carrying out by a qualified engineer (the “surveyor”), to be approved by the Canal & River Trust and the undertaker, of a survey including a dip-survey to measure the depth of the waterway (“the survey”) of so much of the waterway and of any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey the undertaker must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as they may reasonably require and which the undertaker holds with regard to such existing works of the undertaker and to the specified works or the method of their construction.

(3) The reasonable costs of the survey must include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part will apply with all necessary

(4) modifications to any such dewatering or reduction in the water level as though the same were specified works.

(5) Copies of the survey must be provided to both the Canal & River Trust and the undertaker at no cost to the Canal & River Trust.

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

**86.**—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal & River Trust proper and sufficient plans of that work, on the Canal & River Trust forms or as otherwise agreed, having regard to the Canal & River Trust’s Code of Practice and such further particulars as the Canal and River Trust may within 10 working days of the initial submission of the plans reasonably require. Construction of a specified work must not commence 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) must not be unreasonably withheld or delayed, and if within 30 working days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal & River Trust the engineer has not intimated their disapproval of those plans and the grounds of their disapproval the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify, on land held or controlled by the Canal & River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

- (a) any protective work (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.

(4) Any protective works required under this paragraph must be constructed by the undertaker or by the Canal & River Trust at the undertaker’s request as soon as practicable and the undertaker must 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 with such consent not to be unreasonably withheld or delayed.

(5) The undertaker must pay to the Canal & River Trust a capitalised sum representing the reasonably increased or reasonable additional cost of maintaining and, when necessary, renewing any specified works or permanent protective works provided under sub-paragraph (3) above, for which the Canal & River Trust is liable to maintain, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order. If the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

(6) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal & River Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 days, the Canal & River Trust may undertake protective works to make safe the area and avoid detriment, excluding any works to the pipeline itself, and the undertaker must reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

(7) The undertaker and the Canal & River Trust must engage in good faith to agree the works and timeframe in the notice served under this paragraph prior to its service upon the undertaker.

### **Design of works**

**87.**—(1) Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule and subject to safety requirements and compliance with this Order the undertaker must engage in good faith and consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal & River Trust in respect of works that materially affect the Canal & River Trust's network on—

- (a) the design and appearance of the specified works; and
- (b) the environmental effects of those works, having regard to such views as may be expressed by the Canal & River Trust in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways; and
- (c) amendments or alterations to the CEMP (as may be approved pursuant to paragraph 5 of Part 1 of Schedule 2) in respect of a specified work or a protective work or otherwise in connection therewith; and
- (d) any draft CTMP and/or any draft LEMP relating to a stage which contains a specified work;

### **Notice of works**

**88.** The undertaker must give to the engineer 30 days' notice of its intention to commence the construction of any of the specified works or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal & River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal & River Trust's network.

### **Construction of specified works**

**89.**—(1) Any specified works or protective works must, when commenced, be constructed—

- (a) as soon as reasonably practicable in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraphs 86 (approval of plans) and 87 (design of works) of this Part;

- (b) under the supervision (if given) of the engineer;
- (c) in such manner as to cause as little detriment to the waterway as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust; and
- (e) in such a manner as to reasonably ensure that no materials other than water are discharged or deposited into the waterway (subject always to paragraph 83(2) above); and
- (f) in compliance with the Code of Practice where relevant;

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968<sup>a</sup> to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal & River Trust.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal & River Trust and the undertaker must take account of any survey issued pursuant to paragraph 85 (survey of waterway) and any other information agreed between them pursuant to this Part.

### **Prevention of pollution**

**90.** The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which is reasonably foreseeable to result in the pollution of the waterway or the deposit of materials therein and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

### **Access to work – provision of information**

**91.—**(1) The undertaker on being given reasonable notice must—

- (a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) The Canal & River Trust on being given reasonable notice must—

- (a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their construction; and
- (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

### **Alterations to the waterway**

**92.—**(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 any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the

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<sup>a</sup> 1968 c.73, section 105 was amended by the British Waterways Board (Transfer of Functions) Order 2012 (S.I. 2012/1659) and the Transport and Works Applications (Inland Waterways Procedure) Regulations 1993 (S.I. 1993/1119)

construction of the specified work or the protective work in order to avoid detriment, and the Canal & River 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 Canal & River Trust the reasonable costs 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 Canal & River 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 Canal & River Trust under this paragraph.

(3) For the avoidance of doubt, while the Canal & River Trust may undertake works under this paragraph, including works required to make safe the area, the Canal & River Trust may not undertake any works to the pipeline, or works that may endanger the pipeline, itself under this paragraph.

### **Maintenance of works**

**93.** If at any time after the completion of a specified work or a protective work, not being a work vested in the Canal & River Trust, the Canal & River Trust gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the specified work or protective work appears to be such that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

### **Repayment of the Canal & River Trust's fees, etc.**

**94.** The undertaker must repay to the Canal & River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

- (a) in constructing any protective works reasonably required under the provisions of paragraph 86(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) [in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works;]
- (d) in bringing the specified works or any protective works to the notice of users of the Canal & River Trust's network; and
- (e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.

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

**95.—**(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Canal & River Trust) must make good such detriment and must pay to the Canal & River Trust all reasonable expenses properly incurred by the Canal & River Trust, and compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the detriment, provided that at all times Canal & River Trust will be under an obligation to take reasonable steps to mitigate its loss, and always excluding any consequential loss or indirect losses.

(2) The undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal & River 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 protective work;

and subject to sub-paragraph (4) the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (a) and (b), provided that at all times Canal & River Trust will be under an obligation to take reasonable steps to mitigate its loss, and always excluding any consequential loss or indirect loss.

(3) The fact that any act or thing may have been done by the Canal & River 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 done without negligence on the part of the Canal & River 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) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any detriment, damage, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal & River Trust, its officers, servants, contractors or agents.

(5) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

### **Arbitration**

96. Any difference arising between the undertaker and the Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 49 (arbitration) of this Order.

### **Capitalised sums**

97. Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the reasonable cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

## **PART 8**

### **For the protection of SP Manweb**

#### **Application**

98. The following provisions have effect for the protection of SP Manweb unless otherwise agreed in writing between the undertaker and SP Manweb.

#### **Interpretation**

99. In this Part of this Schedule—

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

“apparatus” means electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by SP Manweb together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SP Manweb for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 of this Order and commencement must be construed to have the same meaning;

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

“functions” includes powers and duties;

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

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SP Manweb including construct, use, repair, alter, inspect, renew or remove the apparatus;

“non-intrusive works” means any of the authorised development or activities undertaken in association with the authorised development which will or may be situated underneath electrical lines, or otherwise within 15 meters (measured in any direction) of any apparatus the removal of which has not been required by the undertaker under paragraph 102(2) or otherwise, but which:

- (a) is situated further than 15 meters from any electrical plant or electricity tower foundations the removal of which has not been required by the undertaker under paragraph 102(2) or otherwise; and
- (b) is not reasonably likely to adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 102(2) or otherwise;

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

“protective works” means the underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused by the carrying out, maintenance or use of the authorised development;

“SP Manweb” means SP Manweb PLC (Company No. 02366937) whose registered office is at 3 Prenton Way, Prenton, CH43 3ET or any successor company;

“specified works” means any of the authorised development or activities undertaken in association with the authorised development which:

- (a) will or may be situated over, or within 15 metres (measured in any direction) of any apparatus the removal of which has not been required by the undertaker under paragraph 102(2) or otherwise;
  - (i) is reasonably likely to adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 102(2) or otherwise; and/or
  - (ii) include any of the activities that are referred to in SP Manweb’s policies for development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.



## **On Street Apparatus**

**100.** Except for paragraphs 104, 105 and 106 of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of SP Manweb, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SP Manweb are regulated by the provisions of Part 3 of the 1991 Act.

## **Acquisition of land**

**101.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest of SP Manweb or appropriate, acquire, extinguish, interfere with or override any easement or other interest or right and/or apparatus of SP Manweb otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between SP Manweb and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of SP Manweb and/or affects the provisions of any enactment or agreement regulating the relations between SP Manweb and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as SP Manweb reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between SP Manweb and the undertaker acting reasonably and which must be no less favourable on the whole to SP Manweb unless otherwise agreed by SP Manweb, and it will be the responsibility of the undertaker to procure and/or 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 authorised development.

(3) Where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SP Manweb and/or other enactments relied upon by SP Manweb as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

(4) No agreement or consent granted by SP Manweb under any other paragraph of this Part of this Schedule constitutes agreement under sub-paragraph (1).

## **Removal of apparatus**

**102.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 101 or in any other authorised manner, including in the exercise of powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of SP Manweb to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of SP Manweb in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any specified works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to SP Manweb at least 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order SP Manweb reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to SP Manweb to its satisfaction (taking into account paragraph 105(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the use and maintenance of that apparatus.

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

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

(5) SP Manweb must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SP Manweb of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by SP Manweb and/or other enactments relied upon by SP Manweb as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

### **Facilities and rights for alternative apparatus**

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with SP Manweb under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SP Manweb 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 in the matter will be referred to arbitration in accordance with paragraph 110 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to SP Manweb as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph, article 49 (arbitration) applies.

### **Retained apparatus: Protection of SP Manweb as Electricity Undertaker**

**104.**—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to SP Manweb a plan of the works to be executed and seek from SP Manweb details of the underground extent of their electricity tower foundations.

(2) In relation to specified works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to SP Manweb under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the specified works;
- (b) the level at which the specified works are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all apparatus;

- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

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

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

(4) The undertaker must not commence any works to which sub-paragraph (2) or (3) applies until SP Manweb has given written approval of the plan so submitted provided that SP Manweb must not unreasonably delay notification of its approval or disapproval.

(5) Any approval of SP Manweb required under sub-paragraph (2)—

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

(6) If after the expiry of 56 days SP Manweb has not communicated approval or disapproval, SP Manweb is deemed to have approved the plans as supplied.

(7) In relation to any work requiring the submission of a plan under sub-paragraph (1), SP Manweb may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus and SP Manweb must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to SP Manweb.

(8) Works requiring the submission of a plan under sub-paragraph (1) must only be executed in accordance with the plan as approved or as amended from time to time by agreement between the undertaker and SP Manweb and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (7), (9) or (10) by SP Manweb for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and SP Manweb will be entitled to watch and inspect the execution of those works.

(9) Where SP Manweb reasonably 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 SP Manweb's reasonable satisfaction prior to the commencement of any relevant part of the authorised development for which protective works are required and SP Manweb must give notice of its requirement for such works within 56 days from the date of submission of a plan pursuant to sub-paragraph (1) or (7) (except in an emergency).

(10) If SP Manweb in accordance with sub-paragraphs (7) or (9) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (5) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 102(2).

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

(12) The undertaker must 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 SP Manweb notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (7), (8) and (9) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (13) at all times.

(13) At all times when carrying out any works authorised under the Order, the undertaker must comply with statutory requirements and guidelines for development near overhead lines EN43-8, HSE's guidance note 6 "Avoidance of Danger from Overhead Lines", and any other appropriate guidance in relation to any apparatus and aligning with SP Manweb guidelines.

(14) Not less than 56 days before the commencement of any non-intrusive works, the undertaker must notify and submit to SP Manweb a plan of the works to be executed, noting that approval of plans for non-intrusive works is not required.

## **Expenses**

**105.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SP Manweb within 30 days of receipt of an itemised invoice or claim from SP Manweb all reasonable charges, costs and expenses reasonably and properly incurred by SP Manweb in the execution of any authorised development, always excluding any consequential loss or indirect loss, and including without limitation in respect of: —

- (a) any costs reasonably and properly incurred by or compensation properly paid by SP Manweb in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by SP Manweb as a consequence of SP Manweb;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 102(3); and/or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SP Manweb;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of reasonable protective works (including any reasonable temporary protective works and their removal);
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 110 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to SP Manweb by virtue of sub-paragraph (1) will be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

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

## **Indemnity**

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

(a) bear and pay on demand accompanied by an invoice or claim and associated itemised accounting from SP Manweb the cost reasonably and properly incurred by SP Manweb in making good such damage or restoring the supply; and

(b) indemnify SP Manweb for any other expenses, loss, demands, proceedings, damages, claims, penalties or costs incurred by or recovered from SP Manweb, by reason of any such damage or interruption or SP Manweb becoming liable to any third party as aforesaid other than arising from any default of SP Manweb

always excluding any consequential loss or indirect loss and provided that at all times SP Manweb will be under an obligation to take reasonable steps to mitigate its loss.

(2) The fact that any act or thing may have been done by SP Manweb on behalf of the undertaker or in accordance with a plan approved by SP Manweb or in accordance with any requirement of SP Manweb as a consequence of the authorised development or under its supervision does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this paragraph where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord

with the approved plan (or as otherwise agreed between the undertaker and SP Manweb pursuant to paragraph 105).

- (3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of-
- (a) any damage or interruption to the extent that it is attributable to the neglect or default of SP Manweb, its officers, employees, contractors or agents;
  - (b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by SP Manweb as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 7 (benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development yet to be executed and not falling within this sub-paragraph 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph in respect of such new apparatus; and / or
  - (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption.

(4) SP Manweb must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand, unless payment is required in connection with a statutory compensation scheme, is to be made without first consulting the undertaker and considering its representations.

### **Enactments and agreements**

**107.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SP Manweb and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and SP Manweb in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**108.**—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or SP Manweb requires the removal of apparatus under paragraph 102(2) or SP Manweb makes requirements for the protection or alteration of apparatus under paragraph 104, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of SP Manweb’s undertaking and SP Manweb must use all reasonable endeavours to co-operate with the undertaker for that purpose.

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

### **Access**

**109.** If in consequence of the agreement reached in accordance with paragraph 101(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable SP Manweb to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**110.** Save for differences or disputes arising under paragraphs 102(2), 102(4), 103(1) and 104 any difference or dispute arising between the undertaker and SP Manweb under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SP Manweb, determined by arbitration in accordance with article 49 (arbitration).

## Notices

**111.** Notwithstanding article 46 (service of notices), any plans submitted to SP Manweb by the undertaker pursuant to this Part must be sent to such address as SP Manweb may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## PART 9

### Protection of CF Fertilisers UK Limited

**112.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and CF Fertilisers.

**113.** In this Part—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"CF Fertilisers" means CF Fertilisers UK Limited (company number 03455690), whose registered office is at Head Office Building, Ince, Chester, Cheshire, United Kingdom, CH2 4LB and any associated company of CF Fertilisers UK Limited which holds relevant property;

"relevant property" means:

- (a) any land, works, apparatus and equipment belonging to CF Fertilisers; and
- (b) any easement or other property interest held or used by CF Fertilisers or a tenant or licensee of CF Fertilisers for the purposes of such land, works, apparatus or equipment.

## Rights of access

**114.** Regardless of any provision of this Order or anything shown on the land plans, the undertaker-

- (a) must not extinguish any rights of access to the relevant property granted to CF Fertilisers otherwise than by agreement (both parties acting reasonably);
- (b) must provide a minimum of two working days notification prior to entry to the relevant property; and
- (c) must keep any existing roads used for access to the relevant property by CF Fertilisers clear from obstruction as far as reasonably practicable.

## Expenses

**115.** Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of CF Fertilisers or its servants, contractors or agents or any liability on CF Fertilisers with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**116.** The undertaker must pay to CF Fertilisers all reasonable and proper costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (but always excluding any consequential loss or indirect loss) which may be reasonably incurred by CF Fertilisers in respect of any damage caused to or additional maintenance required to relevant property as a direct result of the construction of the authorised development.

**117.** (1) Notwithstanding anything to the contrary in this Part of this Schedule, the undertaker shall not be liable for any consequential loss or indirect loss suffered by CF Fertilisers as a result of the construction of the authorised development and CF Fertilisers shall not be liable for any consequential loss or indirect loss suffered by the undertaker as a result of the construction of the authorised development.

(2) CF Fertilisers must-

- (a) give the undertaker reasonable written notice of any such sums referred to in paragraph 116 as soon as reasonably possible after CF Fertilisers become aware of the same;
- (b) not make any offers to settle claims or demands without the prior consent of the undertaker;
- (c) take all reasonable steps to mitigate any liabilities; and
- (d) keep the undertaker informed and have regard to the undertaker's representations in relation to any such sums referred to in paragraph 116.

## PART 10

### For the protection of Wales and West Utilities

**118.** For the protection of Wales and West Utilities as referred to in this part of this Schedule the provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Wales and West Utilities.

**119.** In this Part—

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

“apparatus” means all mains, pipes or other apparatus belonging to or maintained by Wales and West Utilities for the purposes of carrying out its statutory undertaking and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"authorised development" has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include associated development and the construction, use, maintenance and decommissioning of the authorised development and the construction of any authorised development;

“functions” includes powers and duties;

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

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

“protective works” means the underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused by the carrying out, maintenance or use of the authorised development;

“security infrastructure” includes cameras, perimeter fencing, fencing and gates and any other security measures required in order to ensure an appropriate level of security in respect of the authorised development or any apparatus;

“specified work” means so much of any of the works comprised in the authorised development or activities undertaken in association with the authorised development which:

- (a) are in, on or under any land purchased, leased, held, appropriated or used under this Order that are within 15 metres of, or will or may in any way affect, any apparatus the removal of which is not required under paragraph 123 of this Part of this Schedule; and/or
- (b) will or may be situated within 4 metres measured in any direction of any security infrastructure belonging to or maintained by Wales and West Utilities;

“WWU standards” means Wales and West Utilities Limited specification for safe working in the vicinity of pipelines and associated installations operating above 2 barg – requirements for third parties (SSW22) and Plant Protection General Conditions; and

“Wales and West Utilities” means Wales and West Utilities Limited (Company No. 05046791) whose registered office is at Wales & West House, Spooner Close Coedkernew, Newport, South Wales, NP10 8FZ and includes any successor in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986.



## **Apparatus in streets**

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

**121.** Regardless of the temporary prohibition or restriction of use of public rights of way or streets under the powers conferred by article 13 (temporary restriction of public right of way) and 15 (temporary restriction of use of streets), Wales and West Utilities is at liberty at all times to take all reasonably necessary access across any such public right of way or street and to execute and do all such works and things in upon or under any such public right of way or street as may be reasonably necessary to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that public right of way or street.

## **Acquisition of land**

**122.** Regardless of any provision of this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not (a) appropriate or acquire or take temporary possession of apparatus or (b) appropriate, acquire or extinguish interfere with or override any easement, other interest or right and/or apparatus any apparatus belonging to or maintained by Wales and West Utilities otherwise than by agreement, provided that such agreement is not unreasonably delayed or withheld.

## **Removal of apparatus**

**123.—(1)** If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 118, the undertaker acquires any interest in, on or under any land in which any apparatus is placed or over which access is enjoyed and requires Wales and West Utilities' apparatus is relocated or diverted, that apparatus must not be decommissioned or removed under this Part, and any right of Wales and West Utilities to maintain that apparatus in that land and to gain access to it must not be extinguished or interfered with until alternative apparatus has been constructed and is in operation and the facilities and rights referred to in sub-paragraph (2) to the reasonable satisfaction of Wales and West Utilities.

(2) If, for the purpose of executing any works in, on or under any land purchased, leased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Wales and West Utilities at least 28 days' written notice of that requirement, together with a plan, description, risk assessment method statement and section drawing of the work proposed which complies with WWU standards, 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 Wales and West Utilities reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Wales and West Utilities the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of and access to that apparatus and any appropriate working areas.

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between Wales and West Utilities and the undertaker or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(5) Wales and West Utilities must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 49 (arbitration), and after the grant to Wales and West Utilities of any such facilities and rights as are referred to in sub-paragraph

(2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove or decommission any apparatus required by the undertaker to be removed or decommissioned under the provisions of this Part.

### **Facilities and rights for alternative apparatus**

**124.**—(1) Where, in accordance with the provisions of this Part, the undertaker affords to Wales and West Utilities facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed or decommissioned, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Wales and West Utilities or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along the authorised development, the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus that may be required to prevent interference with any proposed works of the undertaker;
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised project for which the alternative apparatus is to be substituted; and
- (c) avoid any unreasonable adverse impact on Wales and West Utilities' operations or apparatus.

(3) 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 Wales and West Utilities than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Wales and West Utilities as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

**125.**—(1) Not less than 42 days before starting the execution of any specified works in, on or under any land purchased, leased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 123(2), the undertaker must submit to Wales and West Utilities a plan, section drawing, description of the works to be executed and a risk assessment method statement which comply with WWU standards.

(2) Those works must be executed only in accordance with the plan, section drawing, description and risk assessment method statement submitted under sub-paragraph (1) and in accordance with WWU standards and such reasonable requirements as may be made in accordance with sub-paragraph (3) by Wales and West Utilities for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Wales and West Utilities is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Wales and West Utilities under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section drawing, description, and risk assessment method statement under sub-paragraph (1) is submitted to it.

(4) If Wales and West Utilities, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal or decommissioning of any apparatus or any reasonably necessary protective works and gives written notice to the undertaker of that requirement, the provisions of this Part apply as if the removal or decommissioning of the apparatus or the protective works had been required by the undertaker under paragraph 123(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 42 days before commencing the execution of any works, a new plan instead of the plan, section drawing, description and risk assessment method statement previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section drawing, description and risk assessment method statement.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Wales and West Utilities notice as soon as is reasonably practicable and a plan, section drawing, description and risk assessment method statement of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) Where the specified works only include ground investigation or PAS128 Cat A surveys, all timeframes in this paragraph shall be reduced to 14 days.

### **Expenses and costs**

**126.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Wales and West Utilities within 30 days of a request by Wales and West Utilities the reasonable expenses agreed with the undertaker in advance and reasonably incurred by Wales and West Utilities in the inspection, removal, relaying or replacing, alteration or protection of any apparatus or security infrastructure of the construction of any new apparatus or security infrastructure which may be required in direct consequence of the execution of any such works as are referred to in paragraph 123(2) or any specified work, but always provided that the undertaker shall not be liable under any circumstances for any consequential loss or indirect loss suffered by Wales and West Utilities.

(2) The value of any apparatus removed under the provisions of this Part must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be necessary then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

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

**127.**—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any such works referred to in paragraph 6(2) or any specified work any damage is caused to any

apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Wales and West Utilities, or there is any interruption in any service provided, or in the supply of any goods, by Wales and West Utilities, the undertaker must—

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

as a direct result of any such damage or interruption and always provided that the undertaker shall not be liable under any circumstances for any consequential loss or indirect loss suffered by Wales and West Utilities.

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

(3) Wales and West Utilities must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker unless payment is required and the level specified in accordance with a statutory compensation scheme and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand provided that the undertaker consults Wales and West Utilities and takes any representations it makes into account.

### **Enactments and agreements**

**128.** Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and Wales and West Utilities in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

## **PART 11**

### **Protection for Welsh Water**

**129.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Welsh Water.

**130.** In this Part—

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

“apparatus” means—

- (a) mains, pipes or other apparatus belonging to or maintained by that water undertaker for the purposes of water supply; and
- (b) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991; and
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewerage disposal works, at future date) of that Act;

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

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

“utility undertaker” means—

- (a) a water undertaker within the meaning of the Water Industry Act 1991; and
- (b) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

### **On street apparatus**

**131.** This Part does not apply to—

- (a) apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

### **Acquisition of land**

**132.** Regardless of any provision of this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

**133.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question.

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 49 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-

paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

### **Facilities and rights for alternative apparatus**

**134.**—(1) Where, in accordance with the provisions of this Part, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along the authorised development, the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus that may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised project for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

**135.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 133(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

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

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, the provisions of this Part apply as if the removal of the apparatus had been required by the undertaker under paragraph 133(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

### **Expenses and costs**

**136.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses agreed with the undertaker in advance and reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 133(2).

(2) The value of any apparatus removed under the provisions of this Part must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be necessary then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

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

**137.**—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any such works referred to in paragraph 133(2) any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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

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

### **Miscellaneous**

**138.** Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

## **PART 12**

For the protection of United Utilities Water Limited (UU Water)

### **Application**

**139.** For the protection of UU Water the following provisions, unless otherwise agreed in writing between the undertaker and UU Water, have effect.

### **Interpretation**

**140.** In this Part of this Schedule—

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

“apparatus” means any treatment works, reservoirs, pumping stations, water mains, sewers, drains, sludge mains, disposal mains, pipes or any accessories (including those within the meaning of section 219 of the Water Industry Act 1991) vested in UU Water under the Water Industry Act 1991 and any preceding legislation or other apparatus belonging to or maintained by UU Water for the purposes of UU Water’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of UU Water for the purposes of UU Water’s undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“UU Water’s undertaking” means the rights, duties and obligations of United Utilities Water Limited as a water and sewerage undertaker under the Water Industry Act 1991;

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



“Estimate” means a reasonable estimate of the total reasonable and proper costs that UU Water expects to incur in respect of staff and orders or instructions that need to be given to UU Water’s vendors in its supply chain or to third party organisations to obtain their consent in respect of the specified works.

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

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by UU Water (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 conditions and vibration which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels and water supplies are to be monitored (including turbidity), the timescales of any monitoring activities and the extent of ground subsidence and / or vibration which, if exceeded, shall require the undertaker to submit for UU Water’s approval a ground mitigation scheme;

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

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

“maintain” and “maintenance” have effect as if the term maintain includes protect and use;

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

“protective works” means any works that are reasonably necessary to protect UU Water’s services to its customers and its apparatus from damage that may be caused by the carrying out, maintenance or use of the authorised development;

“rights” includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised works or activities (including maintenance) undertaken in association with the authorised development which—

- (a) when involving a pipe up to and including 300mm in diameter, will or may be situated over, or within 3000mm measured in any direction of any apparatus, the removal of which has not been required by the undertaker under sub-paragraph 144(2) or otherwise;
- (b) when involving a pipe exceeding 300mm in diameter, will or may be situated over, or within 5000mm measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 144(2) or otherwise ;or
- (c) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 144(2) or otherwise;

“UU Water” means United Utilities Water Limited (company number 02366678), registered office at Haweswater House, Lingley Mere Business Park, Lingley Green Avenue, Great Sankey, Warrington, WA5 3LP and includes its successors in title or any successor as a water and sewerage undertaker within the meaning of the Water Industry Act 1991.

### **Apparatus of UU Water stopped up in street**

**141.** Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 15 (temporary restriction of use of streets) UU Water will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and

things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that street

### **Discharge of Water, foul and surface water**

**142.**—(1) If the undertaker proposes to connect foul water to a public sewer operated by UU Water, the undertaker shall give to UU Water notice of the proposal, and within 42 days of the receipt by them of the notice, UU Water may refuse permission for the connection but only if it has reasonable grounds for doing so, or it may grant permission for the connection or alteration, subject to such reasonable conditions as it thinks fit acting reasonably. Any such permission may in particular specify the mode and point of connection.

(2) If the undertaker proposes to connect surface water to a public sewer operated by UU Water, the undertaker shall give to UU Water notice of the proposal, and within 42 days of the receipt by them of the notice, UU Water may refuse permission for the connection, but only if it has reasonable grounds for doing so, or it may grant permission for the connection or alteration, subject to such reasonable conditions as it thinks fit acting reasonably. Any such permission may in particular specify the mode, the point of connection, the rate of discharge and the size of any attenuation necessary. UU Water shall be entitled to refuse any connection where the sustainable drainage system hierarchy for managing surface water has not been reasonably investigated and / or sustainable drainage has not been incorporated within the proposed surface water drainage to the satisfaction of UU Water;

(3) Where there are separate public sewers for foul water and surface water, UU Water may prohibit the discharge of foul water into the public sewer reserved for surface water, and prohibit the discharge of surface water into the public sewer reserved for foul water

(4) Where UU Water has not granted or refused permission under this paragraph within 42 days from the receipt of notice of a proposal the permission shall be deemed to be granted

(5) Nothing in this section entitles the undertaker to:

- (a) discharge in to a public sewer (directly or indirectly), highway drainage, groundwater, trade effluent or any liquid or other matter, the discharge of which in to a public sewer is prohibited by or under any enactment; or
- (b) have drains or sewers that communicate directly with a storm water overflow.

### **Protective works to buildings**

**143.** The undertaker must exercise the powers conferred by article 23 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of UU Water (such consent not to be unreasonably withheld or delayed) and if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in the view of its intended removal or abandonment) or property of UU Water or any interruption in the supply of water and the provision of sewerage services by UU Water, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred and documented by UU Water in making good such damage or restoring the supply; and, shall – pay compensation to UU Water for any loss sustained by reason of any such damage or interruption.

### **Removal of apparatus**

**144.**—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 143, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed and any right of UU Water to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of UU Water and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to UU Water advance written notice of not less than 70 days of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order UU Water reasonably needs to move or remove any of its apparatus) the undertaker must afford to UU Water to its reasonable satisfaction the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by UU Water in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by UU Water in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by UU Water in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, UU Water must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation will not extend to the requirement for UU Water to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such position as may be agreed between UU Water and the undertaker, each acting reasonably.

(5) UU Water must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to UU Water of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring in to operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with UU Water under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to UU Water than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 149 of this Part of this Schedule and the arbitrator must make such provision for the payment of reasonable compensation by the undertaker to UU Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

## **Retained apparatus: protection of UU Water**

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

(2) The plan to be submitted to UU Water 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
- (d) excavation, positioning of plant etc.;
- (e) the position of all apparatus, identified if necessary by survey or investigation works carried out with the prior agreement and to the reasonable satisfaction of UU Water;
- (f) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (g) any intended maintenance regimes.

(3) the undertaker must not commence any specified works until UU Water has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of UU Water given under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and
- (b) must not be unreasonably withheld or delayed and UU Water and any approval or refusal must be provided to the undertaker within 56 days of the date of submission of the plan under sub-paragraph (1).

(5) UU Water may require protective works or such modifications to be made to the plan as may be reasonably necessary for the purpose of maintaining services to its customers, or securing its apparatus against interference or risk of damage, or for the purpose of providing or securing proper and convenient means of access to any apparatus.

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

- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and UU Water; and
- (b) all conditions imposed under sub-paragraph (4)(a), and UU Water will be entitled to watch and inspect the execution of those works.

(7) Where UU Water reasonably requires any protective works or such modifications to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works or modifications, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to UU Water's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which such protective works or modifications are required prior to commencement.

(8) If UU Water, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 139 to 141 and 143 to 145 apply as if the removal of the apparatus had been required by the undertaker under paragraph 144(2).

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

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

- (a) the undertaker must implement an appropriate ground mitigation scheme; and

- (b) UU Water retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such reasonable and documented costs in line with paragraph 147.

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

(12) In this paragraph, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to life or property or the environment, and to any interruption of a supply of water provided to any premises and to any interruption of the provision of sewerage services to any premises.

## **Expenses**

**147.**—(1) At the same time as any written notice is provided by UU Water in accordance with paragraph 146(8), UU Water shall also submit an Estimate to the undertaker.

(2) If the undertaker elects that it will proceed with the specified works it shall make an advance payment of the Estimate to UU Water no later than 28 days prior to the planned commencement of the specified works. The undertaker shall not commence the specified works until a minimum of 28 days of receipt by UU Water of the advance payment.

(3) If at any point UU Water’s Estimate is forecast to be exceeded, UU Water shall submit an early warning notification and then a change request documenting all costs already incurred and forecast to be reasonably incurred and submit an updated Estimate to the undertaker no less than 28 days prior to the Estimate being reasonably expected to be exceeded. The undertaker shall make such additional payment required by the updated Estimate as soon as reasonably possible and in any event no later than 56 days after receipt of the updated Estimate.

(4) Where the undertaker fails to make such additional payment required under sub-paragraph (3) within 56 days of receipt of the updated Estimate, UU Water will be entitled to require the undertaker to suspend works from the point at which the charges, costs and expenses reach or exceed the Estimate. In addition any reasonable abortive/demobilisation costs resulting from this would be recoverable by UU Water from the undertaker.

(5) In the event of any dispute as to the reasonableness of costs included in an updated Estimate submitted under sub-paragraph (3), UU Water must not exercise the powers of sub-paragraph (4) until the dispute has been finally determined.

(6) Subject to the following provisions of this paragraph, UU Water’ will retain an account of all its direct charges, costs and expenses reasonably incurred and documented by UU Water in the design, planning, inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus required as a direct result of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by UU Water in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including reasonable costs (including professional fees) incurred by UU Water as a consequence of UU Water;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 5(3) if it elects to do so; or
  - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting UU Water;
- (b) in connection with the cost of the carrying out of any necessary diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

- (d) the approval of plans;
- (e) the carrying out of protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works, the provision of network contingency measures or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to sub-paragraph 145(6);
- (h) in connection with an assessment of flood risk from UU Water apparatus (note above comment about whether this apparatus includes a reservoir);
- (i) in connection with an assessment of the impact on a UU Water outfall;
- (j) any relevant charges in accordance with the charges scheme under the Water Industry Act 1991.

(7) UU Water shall give the undertaker regular actual and forecast cost updates at intervals to be agreed between UU Water and the undertaker, each acting reasonably.

(8) Within 90 days of completion of the specified works, UU Water shall reconcile its accounts with its supply chain and collate its internal costs and advise the undertaker of the final account position. Within 28 days of this final account, UU shall reimburse the undertaker of all remaining monies that were received as part of any advance payment arrangements. If the final account is above the Estimate, the undertaker will be required to pay UU Water within 28 days of submission of the final account.

(9) UU Water may in carrying out works, elect to place —

- (a) alternative apparatus of a better type, or greater capacity or of greater dimensions in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions save where this has been solely due to using the nearest currently available type (or where it is more economical overall or there is no practical alternative to the relevant course of action, including where the same is mandated by UU Water’s Standards); or
- (b) existing or alternative apparatus at a depth greater than the depth at which the existing apparatus was situated save for where the requirement for a greater depth cannot reasonably be avoided, (a “Betterment”).

(10) The twinning of assets crossing the authorised works or similar initiatives to provide resilience to UU Water’s network in accordance with the prevailing business and engineering requirements may be necessary, in circumstances in which the proposed authorised works will compromise the future access or present an unacceptable operational or business risk to the relevant asset (without interference with the authorised work), and such twinning or similar arrangement is not Betterment. Where UU Water can demonstrate on a case by case basis that the particular asset is critical (for example, it is critical to the provision of water or wastewater services, or the authorised works cannot accommodate a like for like asset replacement, or there is no alternative means of maintaining services to customers by bypassing the asset under the authorised works), the twinning of assets crossing the authorised works or similar arrangement is not Betterment.

(11) Where UU Water has elected to place apparatus which is assessed and agreed by UU Water as Betterment, the undertaker shall not be required to cover any additional cost associated with that Betterment. Any such assessment and decision by UU Water on whether such apparatus is Betterment or not shall always be made by UU Water acting reasonably.

## **Indemnity**

**148.**—(1) If by reason of the authorised works any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of UU Water, or there is any material interruption in any service provided, or in the supply of any goods by UU Water, or UU Water has to take action to protect the services to its customers, or UU Water elects to use its statutory powers, the undertaker must—

- (a) bear and pay the cost reasonably incurred by UU Water in making good such damage or restoring the supply or use of the UU Water's statutory powers; and
- (b) make reasonable compensation to UU Water for any other expenses, loss, damages, penalty or costs suffered or incurred and documented by UU Water, by reason of any such damage or interruption or use of UU Water's statutory powers,

provided always that UU Water makes all reasonable endeavours to mitigate any such expenses, losses, damages, penalties or costs.

(2) The fact that any act or thing may have been done by UU Water on behalf of the undertaker or in accordance with a plan approved by UU Water or in accordance with any requirement of UU Water or under its supervision does not, excuse the undertaker from liability under the provisions.

(3) 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 UU Water, its officers, servants, contractors or agents.

(4) Notwithstanding any paragraph or sub-paragraph of this Part of the Schedule, the undertaker shall under no circumstances be liable for any consequential loss or indirect loss suffered by UU Water.

### **Enactments and agreements**

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

### **Co-operation**

**150.**—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or UU Water requires the removal of apparatus under paragraph 144(2) or UU Water makes requirements for the protection or alteration of apparatus under paragraph 146, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of UU Water's undertaking, using existing processes where requested by UU Water, provided it is appropriate to do so, and UU Water must use its reasonable endeavours to co-operate with the undertaker for that purpose.

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

(3) Where the undertaker identifies any apparatus which may belong to or be maintainable by UU Water but which does not appear on any statutory map kept for the purpose by UU Water, it shall inform UU Water of the existence and location of the apparatus as soon as is reasonably practicable.

(4) Where UU Water identifies any apparatus which may belong to Others but which does not appear on any statutory map kept for the purpose by UU Water, it shall inform the undertaker of the existence and location of the apparatus as soon as is reasonably practicable.

### **Access**

**151.** If in consequence of any agreement reached in accordance with paragraph 139(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker shall seek to provide such alternative rights and means of access to such apparatus, to the extent that provision of such rights and means of access is within the ability of the undertaker to grant, as will enable UU Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

## **Arbitration**

**152.** Save for differences or disputes arising under paragraph 141(4) any difference or dispute arising between the undertaker and UU Water under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and UU Water, be determined by arbitration in accordance with article 49 (arbitration).

## **Notices**

**153.** Notwithstanding article 46 (service of notices) any plans submitted to UU Water by the undertaker must be sent via email to UU Water s and sent to the General Counsel Department at UU Water's registered office or such other address as UU Water may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **PART 13**

### **For the protection of United Kingdom Oil Pipelines Limited**

**154.** For the protection of United Kingdom Oil Pipelines Limited

## **Application**

**155.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and UKOP.

## **Interpretation**

**156.** In this Part—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means alternative apparatus adequate to enable UKOP to fulfil its functions as a private commercial fuel pipeline operator/transporter in a manner no less efficient than previously;

"apparatus" means the whole or any part of any pipeline cable or other apparatus owned or operated by UKOP (or its authorised agents) used in connection with the transmission of hydrocarbon fuel together with any other plant and equipment ancillary thereto (which includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus);

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

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

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

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

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities



and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for UKOP's approval a ground mitigation scheme;

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

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of UKOP including construct, use, repair, alter, inspect, renew or remove the apparatus;

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

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 157(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 157(2) or otherwise;

“UKOP” means United Kingdom Oil Pipelines Limited (Co. No.00746709) whose registered office is at 5-7 Alexandra Road, Hemel Hempstead, Hertfordshire, HP2 5BS; and

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

### **On Street Apparatus**

**157.** Except for paragraph 161 (retained apparatus) and 162 (expenses and costs) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of UKOP, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and UKOP are regulated by the provisions of Part 3 of the 1991 Act.

### **Acquisition or possession of land**

**158.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of UKOP otherwise than by agreement (all such agreement(s) not to be unreasonably withheld or delayed) and unless it grants replacement rights to UKOP in a form agreed between the parties in accordance with the provisions of paragraph 160 (UKOP Replacement facilities and rights for apparatus)

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between UKOP and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of UKOP or affect the provisions of any enactment or agreement regulating the relations between UKOP and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as UKOP reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between UKOP and the undertaker, both acting reasonably, and which must be no less favourable on the whole to UKOP unless otherwise agreed by UKOP, and it will be the responsibility of the undertaker to procure and/or 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 authorised works.

(3) The undertaker and UKOP agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by UKOP and/or other enactments relied upon by UKOP as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by UKOP under paragraph 161 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

**159.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that UKOP's apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of UKOP to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of UKOP in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to UKOP advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order UKOP reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to UKOP to its reasonable satisfaction (taking into account paragraph 160(1) below) the necessary facilities and rights

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

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

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

(5) UKOP must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to UKOP 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 apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule

### **UKOP replacement facilities and rights**

**160.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker is to afford to or secure for UKOP facilities and rights in land for the construction, use, maintenance and protection of apparatus either in substitution for apparatus to be removed (or where existing rights are being sterilized), those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and UKOP both acting reasonably and must be

no less favourable on the whole to UKOP than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by UKOP

(2) If the facilities and rights to be afforded by the undertaker pursuant to sub-paragraph (1) above, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to UKOP than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 166 (Arbitration) of this Part of this Schedule the arbitrator must make such provision for the payment of compensation by the undertaker to UKOP as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

**161.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to UKOP a plan and, if reasonably required by UKOP, a ground monitoring scheme in respect of those works taking place within 20 metres of the apparatus.

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

- (a) the exact position of the works and details of any infrastructure machinery or vehicles to be used in connection therewith;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of all excavation, positioning of plant etc and any works' compounds;
- (d) the position of all apparatus and fencelines;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) In relation to any works which will or may be situated within 6.1 metres measured in any direction of any apparatus (the removal of which has not been required by the undertaker under paragraph 157(2) or otherwise), the plan to be submitted under sub-paragraph (1) must also describe:-

- (a) details of any trench design including route, dimensions and clearance to the apparatus;
- (b) demonstration that the apparatus will not be affected prior to, during and post construction; and
- (c) details of load bearing capacities of trenches.

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

(5) UKOP may within 10 working days of initial receipt of the plan submitted under sub-paragraph (1) raise any additional questions or comments or request further information and/or clarification in relation to the plan.

(6) Any approval of UKOP required under sub-paragraph (4):

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (8) or (10); and
- (b) must not be unreasonably withheld or delayed.

(7) UKOP is deemed to have approved the plan as submitted under sub-paragraph (1) if UKOP has not intimated its approval or disapproval of the plan, and the grounds of that disapproval, within 30 working days after the plan or the responses to any additional questions, comments, further information or clarification raised or requested under sub-paragraph (5) has been received by UKOP.

(8) In relation to any work to which sub-paragraphs (1), (2) and/or (3) apply, UKOP may require such modifications to be made to the plans as may be reasonably necessary for the purpose of

securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(9) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and UKOP and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (8) or (10) by UKOP for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and UKOP will be entitled to watch and inspect the execution of those works.

(10) Where UKOP reasonably 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 UKOP's satisfaction, acting reasonably, prior to the commencement of any specified works for which protective works are required and UKOP give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(11) If UKOP in accordance with sub-paragraphs (8) or (10) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (4) and (8) to (10) apply as if the removal of the apparatus had been required by the undertaker under paragraph 159(2)

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

(13) 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 UKOP notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (8), (9) and (10) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (14) at all times.

(14) At all times when carrying out any works authorised under the Order the undertaker must ensure that all works comply with:

- (a) Linewatch's Booklet for Special Requirements for safe working in close proximity to high pressure pipelines (rev23.03); and
- (b) Linesearch Before U Dig (LinesearchbeforeUdig Safety Practices - LinesearchbeforeUdig (lsbud.co.uk)); and
- (c) The United Kingdom Onshore Pipeline Operators' Association Good Practice Guides (Good Practice Guides | UKOPA); and
- (d) The Pipeline Safety Regulations 1996; and
- (e) The Pipe-lines Act 1962;

(all as updated or replaced from time to time)

(15) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that UKOP retains the right to carry out any further reasonably necessary protective works for the safeguarding of its apparatus and can recover any such reasonable costs in line with paragraph 160 (Expenses and costs).

### **Expenses and costs**

**162.**—(1) Save where otherwise agreed in writing between UKOP and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to UKOP within 30 days of receipt of an itemised invoice or claim from UKOP all charges, costs and expenses (including legal expenses) reasonably and properly incurred by UKOP in, or in connection with these protective provisions, the inspection, removal, relaying or replacing, alteration or protection of any apparatus

or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs and expenses (including but not limited to legal expenses) reasonably incurred by or compensation properly paid by UKOP in connection with the acquisition of rights or the exercise of statutory powers for such apparatus;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of reasonably required protective works, plus a capitalised sum to cover the reasonable cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary for the execution of any such works referred to in this Part of this Schedule.

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 166 (Arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to UKOP by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

(6) Subject to sub-paragraph (2), if by reason or in consequence of the construction of the authorised works (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) on property of UKOP, or there is any interruption in any service provided, or in the supply of any goods, by UKOP, the undertaker must:

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

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

(7) 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 UKOP, its officers, servants, contractors or agents.

(8) UKOP must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Miscellaneous**

**163.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between UKOP and the undertaker, nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and UKOP in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**164.**—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or UKOP requires the removal of apparatus under paragraph 159(2) or UKOP makes requirements for the protection or alteration of apparatus under paragraph 160, the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of UKOP's undertaking and UKOP must use reasonable endeavours to co-operate with the undertaker for that purpose.

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

### **Access**

**165.** If in consequence of the agreement reached in accordance with paragraph 158(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable UKOP to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**166.** Any difference or dispute arising between the undertaker and UKOP under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and UKOP, be determined by arbitration in accordance with article 49 (arbitration).

### **Notices**

**167.** Notwithstanding article 46 (service of notices), any plans submitted to UKOP by the undertaker pursuant to this Part must be sent to the then Company Secretary of UKOP at its then current registered address or such other address as UKOP may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **Deviation of authorised development**

**168.** Notwithstanding article 5 of the Order (Power to maintain the authorised development) the undertaker is not permitted to install or deviate vertically the authorised works to a limit less than 2.5 metres below the surface of the ground and no closer than 600mm provided that where directional drilling methods are to be used this minimum distance shall be increased to a 1.5 metre clearance from the apparatus.

## **PART 14**

### **For the protection of PEEL NRE Limited**

**169.** The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Peel and, in the case of paragraph 183 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

**170.** In this Part of this Schedule—

"alternative access road(s)" means the existing access road at Plots 1-01a and 1-01 as identified on the Land Plans and the access road proposed to be constructed by Peel to connect Plot 1-01a to Plot 1-04 as identified on the Land Plans D2.2 Sheet 1 pursuant to planning application Ref: 23/01239/FUL for construction of gas fired electricity generators, enclosures with ancillary equipment, metering station, transformer compound and access from Grinsome Road;

"existing access road" means the existing access road over Plot 1-01 as identified on the Land Plans;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"CEMP" means Construction Environmental Management Plan;

"CTMP" means Construction Traffic Management Plan;

"LEMP" means Landscaping Environmental Management Plan;

"DEMP" means Decommissioning Environmental Management Plan;

"Network Rail Standard" means Network Rail Standard reference 'NR/L2/CIV/044 'Planning, Design and Construction of Undertrack Crossings';

"Peel" means Peel NRE Limited (company number 04480419), whose registered office is at Venus Building, 1 Old Park Lane, Traffordcity, Manchester, M41 7HA and any associated company of Peel NRE Limited which holds property;

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

"relevant property" means:

- (a) any land, works, apparatus and equipment belonging to Peel; and
- (b) any easement or other property interest held or used by Peel or a tenant or licensee of Peel for the purposes of such land, works, apparatus or equipment;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, relevant property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to maintain the authorised development) in respect of such works.

"working days" Monday to Friday inclusive but excluding days which are public holidays

**171.—**(1) Where Peel is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or delayed but may be given subject to reasonable conditions. If by the end of the period of 30 working days beginning with the date on which consent is requested Peel

has not intimated their refusal together with the grounds of any such refusal, Peel will be deemed to have given its consent.

(2) In the event that Peel constructs and makes available for use by the undertaker the alternative access road the undertaker must not:

- (a) commence that part of Work No. 3 to which the existing access road relates;
- (b) use the existing access road; or
- (c) otherwise exercise the powers conferred by the provisions listed in sub-paragraph (1) over the existing access road,  
provided that Peel has granted the undertaker a right to pass and repass over the alternative access road with or without vehicles.

**172.**—(1) The undertaker must before commencing construction of any specified work supply to Peel proper and sufficient plans of that work for the reasonable approval of Peel and the specified work must not be commenced except in accordance with such plans as have been approved in writing by Peel or settled by arbitration under article 49 (arbitration).

(2) The approval of Peel under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Peel and Peel has not intimated their disapproval together with the grounds of any such disapproval of those plans, Peel will be deemed to have approved the plans as submitted.

**173.**—(1) Any specified work must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 172;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of Peel;
- (c) in such manner as to cause as little damage as is possible to relevant property; and

(2) If any damage to relevant property or any such interference or obstruction is caused by the carrying out of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Peel all reasonable and proper expenses to which Peel may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction provided that the undertaker shall only be liable up to a maximum of £20,000,000.

(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Peel or its servants, contractors or agents or any liability on Peel with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**174.**—(1) The undertaker must pay to Peel all reasonable and proper costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be reasonably incurred by Peel —

- (a) by reason of the construction, maintenance or operation of a specified 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 a specified work;
- (c) in respect of any damage caused to or additional maintenance required to relevant property;

And the undertaker must indemnify and keep indemnified Peel from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission provided that the undertaker shall only be liable up to a maximum limit of £20,000,000.

(2) Peel must –

- (a) give the undertaker reasonable written notice of any such sums referred to in sub-paragraph (1) as soon as reasonably possible after Peel become aware of the same;



- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker;
- (c) take all reasonable steps to mitigate any liabilities; and
- (d) keep the undertaker informed and have regard to the undertaker's representations in relation to any such sums referred to in sub-paragraph (1).

**175.**—(1) The undertaker must consult with Peel prior to submitting any CTMP relating to or in the vicinity of relevant property (including any CTMP affecting land adjacent to relevant property) to the relevant planning authority for approval in accordance with Requirement 6. The undertaker will provide a draft CTMP to Peel no later than 25 working days prior to submission and confirm to Peel the intended date of submission at the same time. Peel may make representations on the draft CTMP to the undertaker no later than 10 working days prior to the notified intended date of submission. The undertaker will only be required to have due regard to any representations timeously made by Peel in accordance with the timescales stipulated in this paragraph (2) in finalising the CTMP for submission and will seek to incorporate any reasonable requests made by Peel where practicable.

(2) The undertaker must consult with Peel prior to submitting any LEMP relating to or in the vicinity of relevant property (including any LEMP affecting land adjacent to relevant property) to the relevant planning authority for approval in accordance with Requirement 11. The undertaker will provide a draft LEMP to Peel no later than 25 working days prior to submission and confirm to Peel the intended date of submission at the same time. Peel may make representations on the draft LEMP to the undertaker no later than 10 working days prior to the notified intended date of submission. The undertaker will have due regard to any representations made by Peel in finalising the LEMP for submission and will seek to incorporate any reasonable requests made by Peel where practicable.

(3) The undertaker must consult with Peel prior to submitting any CEMP relating to or in the vicinity of relevant property (including any CEMP affecting land adjacent to relevant property) to the relevant planning authority for approval in accordance with Requirement 5. The undertaker will provide a draft CEMP to Peel no later than 25 working days prior to submission and confirm to Peel the intended date of submission at the same time. Peel may make representations on the draft CEMP to the undertaker no later than 10 working days prior to the notified intended date of submission. The undertaker will have due regard to any representations made by Peel in finalising the CEMP for submission and will seek to incorporate any reasonable requests made by Peel where practicable.

(4) The undertaker must consult with Peel prior to submitting any DEMP relating to or in the vicinity of relevant property (including any DEMP affecting land adjacent to relevant property) to the relevant planning authority for approval in accordance with Requirement 18. The undertaker will provide a draft DEMP to Peel no later than 25 working days prior to submission and confirm to Peel the intended date of submission at the same time. Peel may make representations on the draft DEMP to the undertaker no later than 10 working days prior to the notified intended date of submission. The undertaker will have due regard to any representations made by Peel in finalising the LEMP for submission and will seek to incorporate any reasonable requests made by Peel where practicable.

**176.** The undertaker will procure that in carrying out Work No. 4 at Plots 1-19, 1-20, 1-22, 1-23 and 1-24, as identified on the Land Plans, the Network Rail Standard (as in force when the works are being carried out) shall be complied with.

## PART 15

### Protection of Encirc Limited

**177.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Encirc.

**178.** In this Part—

"Ash Road bridge" means the rail bridge crossing Ash Road;

“COMAH Regulations” means the Control of Major Accident Hazards Regulations 2015;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“CTS Meetings” means construction and traffic scheduling meetings to discuss a schedule in relation to the co-ordination of traffic movements relating to the specified works.

“Encirc” means Encirc Limited (company number NI030990, whose registered office is at 11 Gortahurk Road, Tonymore Derrylin, Enniskillen, Fermanagh, BT92 9DD and any associated company of Encirc Limited which holds property;

“Encirc’s business and operations” means the current operations and business carried out at the Encirc site and also includes any future business and operations of the Encirc site once the future development works have been implemented;

"Fence" means the existing fence erected by Encirc along the boundary between plots 1-02 and 1-06 as identified on the Land Plans;

“fit for purpose” means a road or access route which is of a standard equivalent to or better than the standard of the road or access route included in the Order for the same purpose;

“future development works” means;

- (a) construction of automated warehouse including automated link to glass manufacturing and filling facility, ancillary office space, driver welfare building, security building, HGV parking and marshalling yard and other associated works (LPA Ref: 22/03693/FUL) or any variation to or alternative to that form of development effecting Land Plan Plots 1-02 and 1-06 (Ref Land Plan D2.2 Sheet 1); and
- (b) construction of hydrogen/electricity fired furnace on site of existing dispatch yard and surrounding area effecting Land Plan Plot 1-02 (Ref: Land Plan D2.2 Sheet 1); and
- (c) construction of new rail sidings and intermodal area between existing rail sidings and Network Rail main line effecting Land Plan Plots 1-06, 1-06a 1-20, 1-21 and 1-22 (Ref: Land Plan D2.2 Sheet 1).

“Network Rail Standard” means Network Rail Standard reference ‘NR/L2/CIV/044 ‘Planning, Design and Construction of Undertrack Crossings’;

"Peel" means Peel NRE Limited (company number 004480419), whose registered office is at Venus Building, 1 Old Park Lane, Traffordcity, Manchester, M41 7HA;

“Existing Peel access road” means the existing access road at Plots 1-01a and 1-01 as shown on the Land Plans

“Proposed Peel access road(s)” means the access road(s) proposed to be constructed to connect Plot 1-01a to Plot 1-04 as identified on the Land Plans D2.2 Sheet 1 pursuant to planning application Ref: 23/01239/FUL for construction of gas fired electricity generators, enclosures with ancillary equipment, metering station, transformer compound and access from Grinsome Road;

“Peel access road(s)” means collectively the Existing Peel access road and the Proposed Peel access road(s) and being fit for purpose to allow the undertaker access to Plot 1-01 and between Plots 1-01a and 1-04;

"relevant property" means:

- (a) any land, works, apparatus and equipment belonging to Encirc; and
- (b) any easement or other property interest held or used by Encirc or a tenant or licensee of Encirc for the purposes of such land, works, apparatus or equipment;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over, or may in any way adversely affect, relevant property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to maintain the authorised development) in respect of such works.

## **Rights of access**

**179.** Regardless of any provision of this Order or anything shown on the land plans, the undertaker-

- (a) Must not extinguish any rights of access to the relevant property granted to Encirc otherwise than by agreement (both parties acting reasonably);
- (b) must provide a minimum of two working days notification prior to each entry to the relevant property, such notice to be submitted in writing to [ ], and a single notification may cover multiple dates of entry
- (c) provide any such details relating to the required access as is reasonably required by Encirc;
- (d) comply with any reasonable conditions which Encirc may specify in relation to the undertaker's entry to the relevant property but only to the extent they do not restrict or impede the ability of the undertaker to construct, operate or maintain the authorised development;
- (e) must keep any existing roads used for access to the relevant property by Encirc clean but only to the extent they have been dirtied as a result of the specified works, clear from obstruction and in a usable condition as far as reasonably practicable; and
- (f) must pay a fair and reasonable proportion (according to use) of the costs incurred by Encirc in repairing and maintaining the entirety of Ash Road.

**180.** The parties shall hold the CTS Meetings fortnightly during detailed design and construction of the specified works. The undertaker and Encirc shall use all reasonable but commercially prudent endeavours to agree a schedule in relation to the co-ordination of traffic movements relating to the specified works. Where a schedule is agreed the parties will use the access routes only in accordance with the agreed schedule.

## **Rights of access – Grinsome Road to the Protos Site**

**181.** Subject to paragraph 183 (Rights of access – Ash Road (South)), provided that (a) Peel has constructed the Peel access road(s) prior to the undertaker completing that part of Work No. 3 which relates to Land Plans Plots 1-01a, 1-01, 1-02, 1-03 and 1-04, (b) Peel has granted the undertaker an easement for all rights of access required by the undertaker over the Peel access road(s) and Land Plans Plot 1-04 to ensure the undertaker has suitable access (to the undertaker's satisfaction) to Plots 1-05, 1-08, 1-09, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-17 and 1-18, and (c) the undertaker is satisfied that the Peel access road(s) are fit for purpose for the purposes of Work No.1, No.2, No. 3 and No.4:

- (a) The undertaker must not exercise the Powers conferred by this Order to (a) appropriate or acquire or take temporary possession of Land Plans Plots 1-02 and 1-03, or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right held by Encirc over Land Plans Plots 1-01a and 1-01

**182.** The undertaker shall use all reasonable but commercially prudent endeavours to secure the grant by Peel of an easement for all rights of access required by the undertaker over the Peel access road(s) and Plot Plans Plot 1-04 to ensure the undertaker has suitable access (to the undertaker's satisfaction) to Plots 1-05, 1-08, 1-09, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-17 and 1-18.

## **Rights of access – Ash Road (South)**

**183.** Subject to Paragraph 184 (Rights of Access – Abnormal Loads), the undertaker must use the entrance from Ash Road as the primary access route (over Plots 1-06, 1-06a, 1-06b and 1-06c as identified on the Land Plans) for construction activities within Plots 1-20, 1-21 and 1-22. Provided that Encirc has granted to the undertaker a suitable right of access across a fit for purpose access route (to the undertaker's satisfaction) to all of Plot 1-22 as identified on the Land Plans as required by the undertaker:

- (a) The undertaker may in relation to Plot 1-21 exercise its powers under article 35 (temporary use of land for carrying out the authorised development) for the purpose of temporary use as a construction working area and for access only; and
- (b) The undertaker may not exercise the powers conferred under article 27 (compulsory acquisition of rights and restrictive covenants) in relation to Land Plans Plot 1-21 without the prior consent in writing of Encirc.

### **Rights of Access – Abnormal Loads**

**184.** In respect of abnormal loads, the undertaker may use the access route over Grinsome Road, being either (a) over Plots 1-01a, 1-01, 1-02, 1-03, 1-06, and 1-06d as identified in the Lands Plans, (b) over a route to be determined from Plots 1-01a, 1-01, part of 1-02, and from a point of egress (to be determined) in Plot 1-02 to the north end of Plot 1-06 subject to Encirc granting to the undertaker a suitable right of access across such route which must be a fit for purpose route (to the undertaker's satisfaction), or (c) over a route to be determined from that part of the Peel access road(s) constructed pursuant to planning permission reference 22/0363/FUL over Plots 1-03 and 1-02, and from an egress in Plot 1-02 (to be determined) to the north end of Plot 1-06 subject to Encirc granting to the undertaker a suitable right of access across such route which must be a fit for purpose route (to the undertaker's satisfaction) Use of any of the above routes is subject to the following conditions:

- (a) The undertaker must provide a minimum of two working days notification prior to use of the construction access, writing to be provided to [ ];
- (b) The undertaker must not take access through the Fence unless and until Encirc have confirmed the written approval of HMRC and shall not take any steps which would lead to Encirc being in breach of any obligations to HMRC;
- (c) The undertaker shall comply with all reasonable conditions imposed by Encirc when taking access through the Fence and shall notify Encirc immediately if there is a breach of any such condition;
- (d)
- (e) The undertaker will use all reasonable endeavours to take access through the Fence in such a manner as to cause as little damage as reasonably practicable and shall inform Encirc immediately if any damage is caused to the Fence including providing full details of the location and the damage caused.
- (f) The undertaker must pay to Encirc all reasonable and proper costs incurred by Encirc in providing reasonably necessary security detail to escort abnormal loads through the Fence;
- (g) The undertaker must make good any damage to the Fence as soon as reasonably practicable and must pay to Encirc all documented reasonable and proper expenses to which Encirc may be put and any compensation for any direct loss which it may sustain by reason of such damage provided that at all times Encirc will be under an obligation to take reasonable steps to mitigate its loss.

### **Railway**

**185.**—(1) The undertaker will procure that in carrying out Work No. 4 at Plots 1-19, 1-20, 1-22, 1-23 and 1-24, as identified on the Land Plans:

- (a) The Network Rail Standard (as in force when the works are being carried out) shall be complied with;
- (b) All crossings under the existing railway lines (or any future development works installed by Encirc at the relevant property prior to the commencement of Work No. 4) will use trenchless crossing methods;
- (c) COMAH Regulations shall be complied with.

(2) The undertaker must—

- (a) at all times before, during and after the construction of the specified works allow an engineer or other person appointed by Encirc to watch and inspect the execution of the specified work ; and
- (b) supply the appointed person with all such information and all relevant and available documents as they may reasonably require with regard to the method of constructing a specified work.

(3) Encirc shall provide details of their scheduled trains at the relevant property to the undertaker on a monthly basis at CTS Meetings, and the undertaker and Encirc shall use all reasonable but commercially prudent endeavours to agree at the CTS Meetings provision to enable the authorised development and the operation of the scheduled trains. Where Encirc advise the undertaker of any changes to the schedule as soon as reasonably practicable, the undertaker shall use all reasonable endeavours to minimise interference of the carrying out of the specified works with the operation of Encirc's re-scheduled trains.

### **Construction Traffic Management Plan**

**186.**The undertaker must consult with Encirc prior to submitting any CTMP to the relevant planning authority for approval in accordance with Requirement 6. The undertaker will provide a draft CTMP to Encirc no later than 20 working days prior to submission, and confirm to Encirc the intended date of submission at the same time. Encirc may make representations on the draft CTMP to the undertaker no later than 14 days prior to the notified intended date of submission. The undertaker will have due regard to any reasonable representations timeously made by Encirc in finalising the CTMP for submission

### **Co-operation**

**187.**Where Encirc propose to carry out any piling or construction works on the Order land within Land Plan Plots 1-20 and 1-22, prior to carrying out such works Encirc must agree with the undertaker the design and methodology which will be used, and the operational use of such works.

**188.**The undertaker and Encirc must use all reasonable but commercially prudent endeavours to reach agreement to enable the authorised development, Encirc's business and operations and any future development works to be carried out (subject to Encirc obtaining all necessary consents, permissions and authorisations).

**189.**The undertaker shall ensure that the pipeline is buried to a minimum depth of 4.3m under the existing railway ground level.

### **Specified work**

**190.** The undertaker must give Encirc no less than 56 days written notice of the intended commencement of any specified works and must include with this notification a plan and description of the works to be commenced and a programme for these works.

**191.**Any specified work must, when commenced, be constructed-

- (a) In such a manner as to cause as little damage and disruption as reasonably practicable to the relevant property, including damage by way of pollution or to the operation of Encirc's business and operations;
- (b) In such a manner so as not to cause any breaches of Encirc's obligations to HMRC or under the COMAH Regulations; and
- (c) If any damage to the relevant property or Encirc's business and operations or any such interference or obstruction is caused by the carrying out of the construction of a specified work, the undertaker must promptly inform Encirc of such damage, must make good such damage and must pay to Encirc all reasonable and proper expenses to which Encirc may be put and any compensation for any loss which it may sustain by reason of such damage, interference or obstruction, provided that at all times Encirc will be under an obligation to take reasonable steps to mitigate its loss,

## Expenses

**192.**—(1) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Encirc or its servants, contractors or agents or any liability on Encirc with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

(2) The undertaker must pay to Encirc all reasonable and proper costs, charges, penalties, damages and expenses not otherwise provided for in this Part of this Schedule which may be reasonably incurred by Encirc, provided that at all times Encirc will be under an obligation to take reasonable steps to mitigate its loss -

- (a) by reason of the construction, maintenance or operation of a specified 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 a specified work;
- (c) in respect of any damage caused to or additional maintenance required to relevant property
- (d) in respect of any damage to any access routes to the relevant property for which Encirc have a maintenance obligation but always limited to the extent such damage is attributable to the undertaker and the undertaker has not reimbursed the costs of remediation of such damage under sub-paragraph (e);
- (e) in respect of any claim against Encirc by any third party in respect of the access routes to the extent such claim relates to damage to the access routes but always limited to the extent such damage is attributable to the undertaker and the undertaker has not reimbursed the costs of remediation of such damage under sub-paragraph (d);
- (f) by the provision of reasonably necessary security detail for any land, works, apparatus and equipment belonging to Encirc to the extent attributable to the specified works;
- (g) in respect of securing any required consents from HMRC in respect of the undertaking authorised development by the undertaker.

(3) The undertaker must indemnify and keep indemnified Encirc from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission to a maximum cap on liability of £5 million for each individual claim and an aggregate cap of £15 million provided that there shall be no cap on liability in respect of any damage caused to the Ash Road bridge which prevents access to the relevant property, provided that at all times Encirc will be under an obligation to take reasonable steps to mitigate its loss Encirc must-

- (a) give the undertaker reasonable written notice of any such sums referred to in paragraph 192 (3) as soon as reasonably possible after Encirc become aware of the same;
- (b) not make any offers to settle claims or demands without the prior consent of the undertaker;
- (c) take all reasonable steps to mitigate any liabilities;
- (d) where any claims or demands are made by Network Rail, advise Network Rail that any claims and demands should be directed to the undertaker only; and
- (e) keep the undertaker informed and have regard to the undertaker's representations in relation to any such sums referred to in this paragraph.

## General

**193.** (1) Any difference or dispute arising between the undertaker and Encirc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Encirc, be determined by arbitration in accordance with article 49 (arbitration) of this Order.

(2) The undertaker and Encirc must each act reasonably in connection with the implementation of this Part of this Schedule.

## Notices

**194.** Any plans or notices submitted to Encirc by the undertaker pursuant to this Part must be sent to Encirc at such address as Encirc may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## PART 16

For the protection of Welsh Ministers as Strategic Highway Authority

### Application

**195.** The provisions of this Part have effect for the protection of the Welsh Ministers (“the WM”) as the Highway Authority for the strategic road network in Wales, in addition to all other applicable statutory protections, unless otherwise agreed in writing between the undertaker and the WM.

### Interpretation

**196.** In this Part—

“highway structure” means any bridge, subway, culvert, pipe, tunnel, manhole, chamber, wall, reinforced soil embankment, piece of street furniture, building or other structure built in, over, under or adjacent to any part of the highway which materially affects the support of that highway and/or the safety of the travelling public;

“strategic highway” means any part of the highway network including trunk roads or special roads which the WM are responsible for;

“NMWTRA” means the North and Mid Wales Trunk Road Agency, who act as the highway agents of the WM and exercise functions relating to the management and operation of the relevant part of the strategic highway on behalf of the WM pursuant to an agreement between the WM and Gwynedd Council under section 6 of the Highways Act 1980. In practice therefore, the procedural matters contained in this Part will be largely dealt with by NMWTRA on behalf of the WM; and

“works” means—

- (a) that part of Work No. 39 which requires the trenchless installation of the pipeline under the A494 (Aston Expressway) highway;
- (b) that part of Work No. 44 which requires the open cut installation of the pipeline under the verge of the A55 adjacent to Junction 33a, heading north under Chester Road; or
- (c) any other work forming part of the authorised development within or which affects or requires occupation of the strategic highway.

### Approvals

**197.** The crossing of the A494 and its associated assets must only be carried out by trenchless techniques. The installation of the pipeline under the verge of the A55 adjacent to Junction 33a, heading north under Chester Road shall be carried out as open cut installation.

**198.**—(1) Prior to the commencement of the works the undertaker must obtain the written approval of the WM to such works.

(2) When requesting approval under sub-paragraph (1), the undertaker must submit to the WM:

- (a) Copy of location plan to a scale not less than 1/10,000 showing the location and/or proposed route and siting of the works;
- (b) Details of the methodology of the works;
- (c) Details of the proposed timing of the works;

- (d) Details of any traffic management measures (including signage) proposed in connection with the works; and
- (e) Where approval is sought for works to or within the carriageway of a strategic highway, evidence of NHSS (National Highways Sector Scheme) certification and Street Works Qualifications.

**199.** No crossing is to take place until a monitoring regime and the Geotechnical Design Report (GDR as defined by the DMRB CD622 Managing Geotechnical Risk) is agreed and certified by the WM.

**200.** Technical Approval from WM in accordance with DMRB CG300 is required in advance of any part of the works which is likely to affect any existing highway structure(s).

**201.** Approval under this Part may be sought in one or more applications.

**202.** Any approval of the WM under this Part may be given subject to such reasonable requirements or conditions as the WM may determine.

**203.** The undertaker must contact any owners or operators of apparatus in, on, over, under or near the strategic highway including other statutory undertakers to ascertain whether their existing or proposed apparatus to within or under the strategic highway is likely to be affected by the works. The undertaker must comply with the reasonable requirements and conditions imposed by the owners or operators relating to the protection of existing apparatus in, on, over, under or near the strategic highway likely to be affected by the works.

**204.** The undertaker must pay a fee of £250 to the WM with any application for approval under this Part.

### **Indemnity**

**205.** The undertaker indemnifies the WM against any and all claims in respect of injury, damage or loss arising out of—

- (a) the placing or presence in the strategic highway of apparatus as part of the works; or
- (b) the excavation by any person of any works within the strategic highway,

always provided that the undertaker shall not be liable for any consequential loss or any indirect loss under any circumstances.

**206.** The undertaker (or any person carrying out works on its behalf) must have and maintain in force for the duration of any works to or within the strategic highway network, public liability/third party insurance to the sum of £10 million covering its liability under paragraph 205. The undertaker must provide evidence of such insurance to the WM if requested.

### **Traffic management**

**207.** The undertaker must contact the NMWTRA, the WM RA Control Room, North Wales Traffic Management Centre, Ffordd Sam Parri, Morfa, Conwy, LL32 8HH – Telephone number 01492 564790 before erecting or removal of traffic management measures on the strategic highway on each occasion that erection or removal is required.

**208.** The undertaker must execute the works in strict accordance with the requirements contained in Chapter 8 of the Traffic Signs Manual (2009) as published by Her Majesty's Stationery Office HMSO and any amendments thereof.

### **Inspections**

**209.** The WM or any person authorised by them for this purpose is entitled to inspect any works to, within or under the strategic highway while such works are being carried out and following completion of such works.



**210.** Exercise of the right to inspect under paragraph 209 must be carried out reasonably, in compliance with any requirements of any health and safety requirements in place within the site of any works, and in accordance with the instructions of the undertaker.

**211.**—(1) The undertaker must compensate the WM in respect of any loss, damage, charge, cost or expense reasonably suffered or incurred by the WM as a result of the execution, use or maintenance of the works.

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

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of WM, its officers, employees, contractors or agents; and / or
- (b) any indirect or consequential loss of WM or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption).

### **Reinstatement**

**212.** Any reinstatement of the strategic highway required in connection with or as a consequence of the works must be carried out in strict conformity with the Code of Practice “Specification for the Reinstatement of Openings in Highways”.

**213.**—(1) Where, in the reasonable opinion of the WM, any reinstatement carried out by the undertaker is defective, three defect inspections will be carried out comprising:

- (a) A joint inspection by the WM and the undertaker to determine the nature of the failure and what remedial works need to be carried out;
- (b) Inspection by or on behalf of the WM of remedial works in progress; and
- (c) Inspection by or on behalf of the WM when remedial works have been completed.

(2) The undertaker must pay an inspection fee of £47.50 for each inspection carried out under this paragraph.

**214.** Any and all reasonable costs associated with the reinstatement work will be met by the undertaker.

### **Notice of completion of Works**

**215.** The undertaker must notify the WM of the completion of works approved by the WM under this Part within 10 working days of such completion.

**216.** The undertaker must supply the WM with as built records of any apparatus sited within or under the strategic highway within 20 working days of the completion of works, including, in particular, the location and depth of any electrical cables on a plan to a scale of 1/500 with a longitudinal and vertical accuracy of + or - 100mm.

**217.** The undertaker must submit a Geotechnical Feedback Report (GFR as defined in the DMRB CD622 Managing Geotechnical Risk) including all monitoring results and as built drawings to the WM no later than six months from the date of completion.

**218.** After the apparatus has been placed, the undertaker must not carry out any further works or maintenance to the apparatus or works or any other works involving excavation within the boundaries of the strategic highway without the prior written approval of the WM, such approval not to be unreasonably withheld or delayed, and any such works must be carried out and completed to the reasonable satisfaction of WM.

### **Arbitration**

**219.** Any difference or dispute arising between the undertaker and the WM under this Part must, unless otherwise agreed in writing between the undertaker and the WM, be determined by arbitration in accordance with article 49 (arbitration).

## Notices

220. The plans submitted to the WM by the undertaker pursuant to this Part must be submitted to North & Mid Wales Trunk Road Agent, Unit 5 Llys Britannia, Parc Menai, Bangor, Gwynedd, LL57 4BN and streetworks@nmwtra.org.uk or such other address as the WM may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## Maintenance

221. The undertaker must maintain the apparatus in an appropriate state of repair and condition. The undertaker must if required place and maintain within the limits of the said highway suitable permanent signs of a type and in positions to be approved by the WM for the purpose of indicating as nearly as possible the exact position under the highway in which the said apparatus is laid.

# PART 17

## For the protection of National Highways Limited

### Application etc.,

222. The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

### Interpretation

223.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with subparagraph (2) the latter prevail.

(2) In this Part of this Schedule—

“acceptable security” means either:

- (a) a parent company guarantee from a parent company in favour of National Highways to cover the undertaker’s liability to National Highways to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Highways and where required by National Highways, 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 National Highways to cover the undertaker’s liability to National Highways for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Highways);

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

- (a) as constructed drawings in both PDF and AutoCAD DWG formats showing the location and depth of the pipeline as installed and any ancillary or protective measures installed within the strategic road network;
- (b) as constructed information for any utilities discovered or moved during the specified works;
- (c) method statements for the specified works carried out;
- (d) in so far as it is relevant to the specified works, the health and safety file; and
- (e) such other information as is reasonably required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway’s Asset Data Management Manual as is in operation at the relevant time.

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

“detailed design information” means such of the following drawings specifications and calculations as are relevant to the specified works—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (d) utilities diversions; and
- (e) other such information that may be reasonably required by National Highways to be used to inform the detailed design of the specified works;

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

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the specified works required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

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

“parent company” means a parent company of the undertaker acceptable to National Highways acting reasonably;

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

“specified works” means so much of the authorised development, including any maintenance of that work, as is on, in, under or over the strategic road network for which National Highways is the highway authority, and specifically including Work No.12 in so far as that crosses the M56 motorway, Work No.16 in so far as that crosses the M53 motorway, and Work No. 22 in so far as that crosses the A41 highway.

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway;

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991; and

(3) References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

## **General**

**224.** The undertaker acknowledges that parts of the works authorised by this Order affect or may affect parts of the strategic road network in respect of which National Highways may have appointed or may appoint a highway operations and maintenance contractor.

**225.** Notwithstanding the limits of deviation permitted pursuant to article 6 (limits of deviation) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road carriageway at a distance less than 4 metres below the lowest point of the carriageway surface.

**226.** References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

### **Prior approvals and security**

**227.**—(1) Any specified works which involve tunnelling, boring or otherwise installing the pipeline under the strategic road network without trenching from the surface, must be designed by the undertaker in accordance with DMRB CD622 unless otherwise agreed in writing by National Highways.

(2) The specified works must not commence until—

- (a) the programme of works has been approved by National Highways;
- (b) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
  - (i) the detailed design information;
  - (ii) the identity and suitability of the contractor and nominated persons; and
  - (iii) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;
- (c) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways reasonably considers will be affected by the specified works, has been agreed in writing by National Highways; and
- (d) an acceptable security in favour of National Highways for the indemnity set out in paragraph 232 below has been put in place, which security must be maintained in place until the expiry of 12 months following the completion of all of the specified works.

(3) National Highways must, prior to the commencement of the specified works, inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (2).

(4) Any approval of National Highways required under this paragraph-

- (a) must not be unreasonably withheld;
- (b) must be given in writing;
- (c) shall be deemed to have been given if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways (acting reasonably) within 2 months of receipt of the information to which the request for further particulars relates; and
- (d) may be subject to any reasonable conditions as National Highways considers necessary.

(5) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request.

(6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 227(2) of this Part.

### **Construction of the specified works**

**228.**—(1) The undertaker must give National Highways 28 days' notice in writing of the date on which the specified works will start.

(2) The specified works must be carried out by the undertaker to the reasonable satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 227(2) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) in so far as it may be applicable, the DMRB, save to the extent that exceptions from those standards apply which have been approved by National Highways; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same.

(3) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works for the purposes of inspection and supervision of the specified works.

(4) If any part of the specified works is constructed-

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways, acting reasonably.

(5) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(6) If within 28 days on which a notice under sub-paragraph (4) or sub-paragraph (5) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure reasonably incurred by National Highways in so doing.

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

(8) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities.

(9) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme of works pursuant to paragraph 227(2)(b) of this Part, or suspends the carrying out of any specified work beyond 14 days, and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

## **Payments**

**229.**—(1) The undertaker must pay to National Highways a sum equal to the whole of any reasonable costs and expenses which National Highways incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph 227(2);
- (b) the supervision of the specified works;
- (c) any costs reasonably incurred under paragraph 228(7) of this Part, and
- (d) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) National Highways must provide the undertaker with a schedule showing its reasonable estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the reasonable estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

(3) If at any time after the payment referred to in sub-paragraph (2) has become payable, National Highways reasonably believes that the NH costs will exceed the reasonably estimated NH costs it may give notice to the undertaker of the amount that it reasonably believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(4) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of the date of completion of the specified works as set out in the programme of works.

(5) Within 28 days of the issue of the final account:

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

(6) If any payment due under sub-paragraph (2) above, is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

### **Condition survey and as built details**

**230.**—(1) The undertaker must, as soon as reasonably practicable after completing the specified work, arrange for any highways structures and assets that were the subject of the condition survey under paragraph 227(2)(c) to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to sub-paragraph 230(1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways. National Highways must remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing from the undertaker

(3) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

(4) Within 30 days of completion of the specified works, the as built details must be provided by the undertaker to National Highways.

### **Insurance**

**231.** Prior to the commencement of the specified works the undertaker must effect and maintain in place until the completion of all of the specified works, public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

## **Indemnity**

**232.** The undertaker fully indemnifies National Highways from and against all reasonable costs, claims, expenses, damages, losses and liabilities suffered by National Highways directly arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 30 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways and always excluding any indirect or consequential loss suffered by National Highways.

## **Maintenance of the specified works**

**233.**—(1) The undertaker must, prior to the commencement of any works of external maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably. Works of inspection or maintenance undertaken from within the pipeline will not be subject to this paragraph.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) The undertaker must comply with any reasonable requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 14 days' in advance of the planned commencement date of the maintenance works.

## **Land**

**234.**—(1) The undertaker must not, in reliance on or in exercise of any power under this Order, interfere with, remove, damage or prevent or impair the functioning of, and must on reasonable request (or in case of emergency, on demand) allow access by National Highways to, the highway drainage assets located in plots 2-14, 4-20, 5-01, 5-02, 5-03, 5-04, 5-10, 5-14, 5-15, 5-20, 5-22, 5-23, 6-02, 6-04, 6-05, 6-06,

(2) The undertaker must not, in reliance on or in exercise of any power under this Order, interfere with, remove or prevent access by National Highways in pursuance of any right held over plots 2-03, 2-14 and 5-05.

(3) The undertaker must not, in reliance on or in exercise of any power under this Order, acquire, extinguish or remove any right National Highways holds for the purposes of its undertaking in any of the plots listed in sub-paragraphs (1) and (2) and plot 9-04.

## **Expert Determination**

**235.**—(1) Article 49 (arbitration) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use all reasonable but commercially prudent endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

- (c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 49 (arbitration).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

## PART 18

### For the protection of local highway authorities

**236.** The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the relevant local highway authority.

**237.** In this Part of this Schedule—

“Consents” means approvals, consents, licences, permissions, or registrations;

“RSA” or “Road Safety Audit” means a review of the proposed design or any works and any road safety impacts carried out in accordance with the Design Manual for Roads and Bridges or such other standard as the undertaker and the relevant local highway authority may agree;

“highway” means a highway vested in or maintainable by the relevant local highway authority as highway authority under the 1980 Act and this definition shall include any bridge or structure carrying a highway;

“relevant local highway authority” means in relation to highways within Cheshire West and Chester, Cheshire West and Chester Council, and in relation to highways in Flintshire, Flintshire County Council

“specified work” means the works under the Order to create new, permanent junctions to the public highway and the installation of the pipeline in or under the highway where that requires breaking open of the surface of the highway.

### **Highway condition and highway assets surveys**

**238.**—(1) The undertaker will notify the of relevant local highway authority -

- (a) of the anticipated date of commencement of any Works to be undertaken under this Order; and
- (b) of the anticipated construction programme and date of completion of the authorised development;

not less than 3 months prior to that anticipated date of commencement of any Works to be undertaken under this Order.

(2) The undertaker and relevant local highway authority may agree that the relevant local highway authority will procure the highway condition surveys required under this Part of this Schedule at the cost of the undertaker.

(3) The undertaker will agree a proposed scope with the relevant local highway authority setting out the number (having regard to the construction programme), content and format of the highway condition surveys no later than 4 weeks after notification under sub- paragraph (1). If the undertaker fails to provide a highway condition survey or does not provide the relevant local highway authority with sufficient time to undertake a highway condition survey prior to any Works being undertaken pursuant to the Order then in default the last highway condition survey undertaken by the relevant local highway authority will amount to the baseline condition of the relevant highway and/or highway asset.



(4) A final highway condition survey must be procured by the undertaker within 28 days of the relevant local highway authority being notified by the undertaker that the construction of the authorised development is complete.

(5) Copies of any highway condition survey carried out in accordance with this paragraph must be provided to the relevant local highway authority by the undertaker within 10 working days of the completion of the relevant survey.

### **HGV route remediation**

**239.**—(1) The undertaker must maintain and provide to the relevant local highway authority at 3 month intervals from the date of any Works being undertaken under this Order until the authorised development is complete, records of the number of HGVs using the highway identified in paragraph 238(2) and/ or any amendments thereto to access the authorised development and details of which route such HGVs used.

(2) The relevant local highway authority will, having regard to the highway condition surveys, identify any need for remediation of the highway on the highway identified in paragraph 238(3) and/or any amendments made thereto.

(3) Where a need for remediation works or measures is identified under sub-paragraph (1), the relevant local highway authority must prepare a schedule of the works or measures required and of the cost of the delivery of those works or measures identified. For the avoidance of doubt, the reasonable cost of reviewing the highway condition surveys and preparing the schedule of works will be met by the undertaker.

(4) Upon receipt of the schedule of works identified in paragraph (2) and/or any amendments made thereto, the undertaker will apply for a licence from the relevant local highway authority to undertake the remediation works to the highway and must undertake these works within 3 months of that licence being granted. The cost of the licence and relevant approvals will be paid by the undertaker to the relevant local highway authority.

### **Specified work**

**240.**—(1) The undertaker will allow and facilitate an appropriately qualified officer of the relevant local highway authority to participate in the design process for any Work authorised by this Order which involves a specified work and/or any other Work to the local highway network required pursuant to this Order, and will have reasonable regard to any views of that officer in finalising the detailed design of that Work, provided always that any such view shared by the officer will not be an instruction, requirement or authorisation under this Order.

(2) Any officer of the relevant local highway authority duly appointed for the purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the authorised development which—

- (a) is in, on, over or under any highway; or
- (b) which may affect any highway;

during the carrying out of the Work, and the undertaker will give to such officer all reasonable facilities for such inspection (subject to any reasonable adjustments necessary for the safety of such officer) and, if the officer is of the opinion that the construction of the Work poses danger to any highway or to any property of the relevant local highway authority or danger to persons or vehicles or other property in relation to which the relevant local highway authority might be liable on, in, over or under any highway, the undertaker will adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway or persons or vehicles or other property aforesaid.

(3) Any officer of the relevant local highway authority exercising the right to inspect works under sub-paragraph (1) must comply with all reasonable health and safety requirements and instructions of the undertaker in doing so.

(4) The undertaker must, if reasonably required by the relevant local highway authority, provide and maintain during such time as the undertaker may occupy any part of a highway for the purpose

of the construction of any part of the authorised development, temporary ramps for vehicular or pedestrian traffic and any other traffic measures required to protect the safety of road users in accordance with chapter 8 of the Traffic Signs Manual and the Safety at Street Works and Road Works A Code of Practice as may be necessary.

**241.**(1) Where, under this Order, any street works require to be undertaken to the reasonable satisfaction of the local highway authority, this paragraph will apply.

(2) The relevant local highway authority will, as soon as reasonably practicable following the receipt of notice from the undertaker that it considers any street works to which this paragraph applies to be complete, carry out an inspection of such street works.

(3) The relevant local highway authority will confirm when any street works have been completed to their reasonable satisfaction in writing and will set out in such confirmation the date on which the works were last inspected to establish such reasonable satisfaction. For the period of 24 months from the date of last inspection as stated in the confirmation of reasonable satisfaction, the undertaker will be liable to pay to the relevant local highway authority the reasonable costs of repairing or rectifying any defect in the highway which, in the opinion of the relevant local highway authority (acting reasonably) was caused by or is attributable to the carrying out of street works by the undertaker.

(4) The reasonable costs set out in paragraph (3) may include the costs of the time of the relevant local highway authority's officers and employees incurred in the remediation or rectification of a defect as well as the cost of the remediation or repair, whether carried out by the local highway authority or on their instruction. The costs payable under paragraph (3) must be paid by the undertaker in full within 30 days of receipt of an invoice for such costs provided that such invoice includes a breakdown of the charges incurred and is accompanied by copies of any invoices received by the relevant local highway authority for works undertaken to remedy or repair the defect.

(5) Any difference arising between the undertaker and the relevant local highway authority under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) will be resolved by arbitration under article 49 (arbitration).

## PART 19

### For the protection of drainage authorities

**242.**The provisions of this Part of this Schedule apply for the protection of the drainage authority unless otherwise agreed between the undertaker and the drainage authority.

**243.** In this Part of this Schedule—

“construction” includes execution, placing, altering, laying, replacing, relaying, connecting, building, installing, removal and excavation, and “construct” and “constructed” are to be construed accordingly;

“the drainage authority means—

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

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

“ordinary watercourse” has the same meaning as given in section 72 (interpretation) of the Land Drainage Act 1991(a);

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

“specified work” means works carried out in relation to or which may alter or obstruct any ordinary watercourse including by—

- (c) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;
- (d) construction or installation of a bridge or other crossing structure;
- (e) installing a culvert in the watercourse; or
- (f) altering a watercourse or a culvert or other form of drainage infrastructure in a manner that would be likely to affect the flow of the watercourse.

**244.**—(1) Before beginning to construct any specified work, the undertaker must submit to the drainage authority plans of the work, and such further particulars as the drainage authority may within 14 days of the first submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority, or determined under paragraph 250

(3) The drainage authority must approve or refuse approval of the plans for a specified work within 56 days of receipt of the later of—

- (a) the plans under sub-paragraph (1); or
- (b) such further particulars as the drainage authority may reasonably require under sub-paragraph (1).

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

- (a) must not be unreasonably withheld or delayed;
- (b) is to be deemed to have been given if it is neither given nor refused within the period specified in sub-paragraph (3); and
- (c) may be given subject to such reasonable requirements or conditions as the drainage authority may make for the protection of any ordinary watercourse or for the prevention of flooding.

**245.** The requirements or conditions which the drainage authority may make under paragraph 244 include conditions requiring the undertaker at its own expense to construct such protective works (including any new works as well as alterations to existing works) as are reasonably necessary—

- (a) to safeguard any ordinary watercourse against damage, or
- (b) to secure that the efficiency of any ordinary watercourse for flood defence or land drainage purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of the specified work in relation to the ordinary watercourse.

**246.**—(1) Any specified work in relation to an ordinary watercourse, and all protective works required by the drainage authority under paragraph 244, must be constructed to the reasonable satisfaction of the drainage authority and an officer of the drainage authority is entitled, on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works.

(2) The undertaker must give to the drainage authority not less than 14 days’ notice of its intention to commence construction of any specified work and the undertaker must give to the drainage authority notice of completion of a specified work not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work in, over or under any ordinary watercourse is constructed otherwise than in accordance with the requirements of this Part of this Schedule or as agreed between the undertaker and the drainage authority, the drainage authority may by notice require the undertaker at its own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld) at the undertaker’s expense to remove, alter or pull down the work and, where removal is agreed, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress toward their implementation, the drainage authority may execute the works specified in the notice, subject to the undertaker having the right to supervise the planning and execution of such works to the extent they may affect the pipeline to the extent that those works are compliant with and do not compromise the undertaker's ability to comply with the Pipeline Safety Regulations 1996, and any expenditure reasonably incurred by it in so doing is to be recoverable from the undertaker. Notwithstanding the foregoing, the drainage authority may not under any circumstances undertake any works to the pipeline itself which could or would conflict with the duties and obligations of the undertaker under the Pipeline Safety Regulations 1996, any direction issued by the Health and Safety Executive under those Regulations or any other health and safety legislation relating to the operation and maintenance of the pipeline.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not, except in an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

**247.**—(1) From the commencement of the construction of any specified work until the date falling 12 months from the date of completion of the specified work (“the maintenance period”), the undertaker must at its expense, maintain in at least as good repair and condition immediately prior to commencement of the construction of the specified work and keep free from obstruction any part of a drainage work which is situated within land held or occupied by the undertaker in respect of the specified work, whether the drainage work is constructed under this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain during the maintenance period is not maintained to the reasonable satisfaction of the drainage authority, it may by notice require the undertaker to maintain the drainage work at the undertaker's expense, or any part of it, to such extent as the drainage authority reasonably requires.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance, subject to the undertaker having the right to supervise the planning and execution of such works to the extent they may affect the pipeline to the extent that those works are compliant with and do not compromise the undertaker's ability to comply with the Pipeline Safety Regulations 1996, and may recover any expenditure reasonably incurred by it in doing so from the undertaker. Notwithstanding the foregoing, the drainage authority may not under any circumstances undertake any works to the pipeline itself which could or would conflict with the duties and obligations of the undertaker under the Pipeline Safety Regulations 1996, any direction issued by the Health and Safety Executive under those Regulations or any other health and safety legislation relating to the operation and maintenance of the pipeline.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not, except in a case of emergency, exercise the powers of sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

**248.** Subject to paragraph 247(5)(b), if by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial

action, such impairment or damage must be made good by the undertaker at its own expense to the reasonable satisfaction of the drainage authority and if the undertaker fails to do so, the drainage authority may make good the same and recover the expense reasonably incurred by it in so doing from the undertaker.

**249.**—(1) The undertaker must make reasonable compensation to the drainage authority for costs, charges and expenses which it may reasonably incur or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule; and
- (b) in the inspection and supervision of the construction of a specified work in respect of an ordinary watercourse or any protective works required by the drainage authority under this Part of this Schedule.

**250.** Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule is to be determined by arbitration in accordance with article 49 (arbitration) of the Order.

## PART 20

### For the protection of Exolum Pipeline System Ltd

#### Application

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

#### Interpretation

**252.** In this Part of this Schedule, 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 and/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 in respect of these items;

and, where the context allows, includes Alternative Apparatus.

“Application” means the application to the Secretary of State for the Order made by the undertaker under the Planning Act 2008 on 3 October 2022.

“Authorised Development” has the same meaning as that given in article 2(1) (interpretation) of the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule.

“Commence” has the same meaning as that given in article 2(1) of the Order (and commencing must be construed accordingly).

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

“Exolum” means Exolum Pipeline System Ltd (company number 09497223) 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.

“Expert” is a person appointed in accordance with paragraphs 307 to 315 to resolve a dispute under this Schedule.

“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.

“Order” means the order granting development consent, made by the Secretary of State and brought into force following the Application under the Planning Act 2008.

“parties” means the undertaker and Exolum and "party" is to be construed accordingly.

“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 relevant works to be executed properly and sufficiently and in particular must describe:

- (d) the exact position of the works;
- (e) the level at which the works are proposed to be constructed or renewed;
- (f) the manner of the works' construction or renewal including details of excavation, positioning of plant etc.;
- (g) the position of the affected Apparatus and/or Premises and any other apparatus belonging to another undertaker;
- (h) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (i) any intended maintenance regime;
- (j) details of the proposed method of working and timing of execution of works; and
- (k) 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:

- (l) 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,
- (m) the crossing of Apparatus by other utilities,
- (n) the use of explosives within 400 metres of any Apparatus or Premises,
- (o) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of any Apparatus or Premises,
- (p) all works that impose a load directly upon the Apparatus, wherever situated

whether carried out by the undertaker 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**

**253.**—(1) Regardless of any other provision in the Order or anything shown on the land plans or if the Order covers any Premises or interest in any land in which any Apparatus is placed or over which access to any Apparatus is enjoyed:

- (a) the undertaker must not, otherwise than in accordance with this Schedule:
  - (i) obstruct or render less convenient the access to any Apparatus or Premises;
  - (ii) interfere with or affect Exolum's ability to carry out its functions as an oil pipeline operator;
  - (iii) require that Apparatus is relocated or diverted; or
  - (iv) remove or required to be removed any Apparatus;
- (b) any right of Exolum to maintain, repair, renew, adjust, alter or inspect Apparatus may not be extinguished until any necessary Alternative Apparatus has been constructed, it is in operation and the Alternative Rights have been granted, all to the reasonable satisfaction of Exolum; and
- (c) any right of Exolum to access the Exolum Apparatus and/or Premises must not be extinguished until necessary alternative access has been provided to Exolum's reasonable satisfaction.

**254.** Prior to the carrying out of any Restricted Works or any works authorised by this Order that will affect the existing rights of Exolum, the parties must use all reasonable endeavours to negotiate and enter into such Deeds of Consent (crossing consent) and (if 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 Schedule, and it will be the responsibility of the undertaker to procure and / or 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.

**255.** Where the undertaker acquires land which is subject to any existing rights held by Exolum and the provisions of paragraph 265 do not apply, the undertaker must:

- (a) Retain any notice of the existing rights held by Exolum on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) provide up to date official entry copies to Exolum within 20 working days of receipt of such up to date official entry copies.

**256.** Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which Exolum has an easement, right, asset, interest, Apparatus or Premises:

- (a) where reasonably necessary, and provided that all health and safety requirements, including any requirements applicable to the undertaker under the Construction, Design and Management Regulations 2015, Exolum may exercise its rights to access such land:
  - (i) in an emergency, without notice but in all such instances Exolum will notify the undertaker as soon as reasonably practicable and until service of such notice, entry will be at Exolum's own risk; and
  - (ii) in non-emergency circumstances, having first given prior 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
- (b) the undertaker may 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**

**257.** If, having used all reasonable endeavours to implement the Authorised Development without the removal of any Apparatus:

- (a) the undertaker reasonably requires the removal of any Apparatus; or

(b) Exolum reasonably requires the removal of any Apparatus;

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

**258.** The parties must use all 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.

**259.** 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 265 to 269.

**260.** 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 position or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by expert determination in accordance with paragraphs 304 to 315.

**261.** After the details for the works for Alternative Apparatus to be provided or constructed have been agreed or settled by expert determination in accordance with paragraphs 304 to 315, and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 257, Exolum must proceed as soon as reasonably practicable using all 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 Schedule.

**262.** The following paragraphs 263 and 264 only apply if:

- (a) Exolum fails to comply with its obligations under paragraph 261 to remove any redundant Apparatus; and
- (b) the undertaker has served notice on Exolum specifying the default; and
- (c) Exolum has failed to remedy the default within 28 days.

**263.** In the circumstances set out in paragraph 262, if the undertaker then gives notice in writing to Exolum that it will 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.

**264.** Nothing in paragraph 263 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**

**265.** 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 in accordance with this Schedule or in default of agreement settled by expert determination in accordance with paragraphs 304 to 315.

**266.** Alternative Rights must be granted before any Alternative Apparatus is operating as part of the pipeline and storage system which forms the Apparatus.

**267.** The parties agree that the Alternative Rights be granted by way of a 999 year lease, substantially in the form of Exolum's precedent from time to time as amended by written agreement between the parties acting reasonably.

**268.** Nothing in this Schedule or contained in the Alternative Rights shall require Exolum to divert or remove any Alternative Apparatus.



**269.** 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 Expert 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, the Expert will make such provision for the payment of compensation by the undertaker to Exolum as appears to the Expert to be reasonable having regard to all the circumstances of the particular case.

### **Retained Apparatus and Alternative Apparatus: protection**

**270.** 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.

**271.** No Restricted Works are to be commenced until the Plan to be submitted to Exolum under paragraph 270 has been approved by Exolum in writing and are to be carried out only in accordance with the details submitted under paragraph 270 and in accordance with such reasonable requirements as may be notified to the undertaker in writing in accordance with paragraph 272 by Exolum.

**272.** Any approval by Exolum of the Plan of works submitted under paragraph 270 must not be unreasonably withheld or delayed, and Exolum must communicate its approval or refusal of the plans within 56 days of the date of submission of the plan under paragraph 270 and any approval of the Plan of works may be given subject to such reasonable requirements as Exolum may require to be made for:

- (a) the continuing safety and operational viability of any Apparatus and/or Premises; and
- (b) 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/or Premises

providing such reasonable requirements are notified to the undertaker in writing.

**273.** Exolum will be entitled to watch and inspect the execution of Restricted Works at any time.

**274.** 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.

**275.** If in consequence of the works notified to Exolum by the undertaker under paragraph 271, the circumstances in paragraph 7 apply, then the parties will follow the procedure in paragraph 257 onwards.

**276.** Nothing in paragraphs 270 to 275 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 will re-run the procedure from paragraph 275 onwards.

**277.** Where Exolum reasonably requires Protective Works, the parties must use all 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.

**278.** 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 265 to 269.

**279.** 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 position or situation as may be

agreed between Exolum and the undertaker or in default of agreement settled by expert determination in accordance with paragraphs 304 to 315.

**280.** After the details for the Protective Works to be provided or constructed have been agreed or settled in accordance with paragraphs 305 to 315, and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 259, Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Protective Works.

**281.** Where the undertaker needs to carry out emergency works:

- (a) it must give to Exolum notice before such works commence, or as soon as is reasonably practicable after the works have commenced where it is not reasonably practicable to provide notice prior to commencement;
- (b) the parties will work together to co-ordinate their respective works and agree a plan of those works before such works commence, or as soon as is reasonably practicable after the works have commenced where it is not reasonably practicable to provide notice prior to commencement; and
- (c) it must comply with the conditions imposed under paragraph 272 insofar as is reasonably practicable in the circumstances.

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

### **Cathodic protection testing**

**283.** Where in the reasonable opinion of Exolum or the undertaker:

- (a) the Authorised Development might interfere with the cathodic protection forming part of Apparatus; or
- (b) 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.

**284.** The Parties must carry out the works and enter into such agreements as are reasonably necessary to implement the measures for providing or preserving cathodic protection.

### **Expenses**

**285.**—(1) Subject to the following provisions of these paragraphs 285 to 288, 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:

- (a) undertaking its obligations under this Schedule including:
  - (i) the installation, inspection, removal, alteration, testing or protection of any Apparatus, Alternative Apparatus and/or Protective Works;
  - (ii) the execution of any other works under this Schedule; and
  - (iii) the review and assessment of Plans;
- (b) 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

- (c) 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 272;

together with any administrative costs properly and reasonably incurred by Exolum.

**286.** Provided that Exolum takes all reasonable steps to minimise the costs incurred in the following circumstances, there will be no deduction from any sum payable under paragraph 285 as a result of:

- (a) the placing of apparatus of a better type, greater capacity or of greater dimensions, or at a greater depth than the existing Apparatus; or
- (b) 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;

**287.** The scrap value (if any) of any Apparatus removed under the provisions of this Schedule is to be deducted from any sum payable under paragraph 285.

**288.** Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Exolum, the undertaker must pay Exolum sufficiently in advance but to enable Exolum to undertake its obligations under this Schedule provided that in the event that the costs reasonably incurred by Exolum are less than the amount paid by the undertaker pursuant to this paragraph 288 then Exolum must promptly repay any overpayment to the undertaker within 30 days of the payment of those costs.

#### **Damage to property and other losses**

**289.** Subject to paragraphs 290 to 294, the undertaker will:

- (a) indemnify Exolum for all reasonable loss, damage, liability, costs and expenses reasonably suffered or incurred by Exolum directly arising out of:
  - (i) the carrying out of works under this Schedule;
  - (ii) the carrying out of the Authorised Development;
  - (iii) 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;
  - (iv) any injury or damage whatsoever to any property, real or personal, including the property of Exolum; and
  - (v) any matters arising out of or in connection with this Order;
- (b) 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;
- (c) pay to Exolum on demand 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
- (d) 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 of any such damage or interruption including all claims by third parties.

**290.** The fact that any act or thing may have been done by Exolum on behalf of the undertaker or in accordance with a Plan approved by Exolum or in accordance with any requirement of Exolum or under its supervision will not, subject to paragraph 291, excuse the undertaker from liability under the provisions of paragraph 289.

**291.** The undertaker and Exolum must 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.

**292.** The undertaker warrants that:

- (a) 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
- (b) 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.

**293.** Exolum must give to the undertaker reasonable notice of any claim or demand to which paragraph 289 applies.

**294.** Under no circumstances shall the undertaker be liable for any consequential loss or indirect loss suffered by Exolum.

### **Insurance**

**295.** The undertaker must not Commence the Authorised Development or any intrusive environmental (including archaeological) surveys and investigation or intrusive site or soil surveys on any land in respect of which Exolum has an easement, right, operations, assets or other interests or 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, where relevant, and public liability insurance with minimum cover of £25 million per event, with respect to the carrying out of the works.

**296.** The undertaker must maintain such insurance for the construction period of the Restricted Works, being from the proposed date of Commencement of the Authorised Development to the completion of any Restricted Works or Protective Works.

### **Co-operation and reasonableness**

**297.** 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 Schedule:

- (a) in the interests of safety;
- (b) 47.2 in the interest of the efficient and economic execution of both Exolum's works and the Authorised Development; and
- (c) 47.3 taking into account the need to ensure the safe and efficient operation of Apparatus and carrying out of Exolum's functions.

**298.** Exolum must use all reasonable endeavours to co-operate with the undertaker for the purposes outlined in paragraph 297.

**299.** The undertaker and Exolum must 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 Schedule it must not be unreasonably withheld or delayed.

### **Emergency circumstances**

**300.** The undertaker 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.

**301.** In the following circumstances, Exolum may on written notice to the undertaker immediately suspend all works that necessitate the stopping or suspending of the supply of product through any Apparatus under this Schedule and Exolum will not be in breach of its obligations under this Schedule:

- (a) 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
- (b) 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
- (c) 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
- (d) any circumstances identified as such by the COBRA committee of the Government (or any successor committee thereof); or
- (e) 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.

**302.** The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which will include costs of demobilising and remobilising any workforce, and any costs to protect the Apparatus "mid-works") to account for the suspension.

**303.** Exolum is not liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under paragraphs 300 to 303 or delays caused by it.

#### **Escalation of differences**

**304.** 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 Schedule in accordance with the following provisions.

**305.** The undertaker and Exolum will 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.

**306.** 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 either the undertaker or Exolum may refer the matter to expert determination or arbitration in accordance with the provisions of paragraphs 304 to 315.

#### **Dispute resolution**

**307.** If any dispute or difference arising out of or in connection with this Schedule is not resolved in accordance with paragraphs 304 to 306, either the undertaker or Exolum may refer the matter to:

- (a) in the case of any dispute or difference pursuant to paragraphs 260, 265, 269 or 283, expert determination under paragraphs 308 to 314; or
- (b) in the case of any dispute or difference not falling within paragraphs 307(a), arbitration under article 49 (arbitration) of the Order.

**308.** The parties will agree on the appointment of an independent Expert and must agree with the Expert the terms of their appointment.

**309.** If the parties are unable to agree on an Expert or the terms of their appointment within five working days of either party serving details of a suggested expert on the other, either party will then be entitled to request the Institution of Civil Engineers or its successor to appoint an Expert and to agree with the Expert the terms of their appointment.

**310.** The Expert is required to prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to them.

**311.** If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by paragraph 310 then either party may re-apply to the relevant professional body referred to above to discharge the Expert and to appoint a replacement Expert with the required expertise and this clause will apply to the new Expert as if they were the first Expert appointed.

**312.** The parties are entitled to make submissions to the Expert and will provide the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.

**313.** The Expert will act as an expert and not as an arbitrator. The Expert may award interest as part of their decision. The Expert's written decision on the matters referred to them will be final and binding on the parties in the absence of manifest error or fraud.

**314.** The Expert may direct that any legal costs and expenses incurred by a party in respect of the determination will be paid by another party to the determination on the general principle that costs should follow the event, except where it appears to the Expert that, in the circumstances, this is not appropriate in relation to the whole or part of such costs. The Expert's fees and any costs properly incurred by them in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) will be borne by the parties equally or in such other proportions as the Expert directs.

**315.** The dispute resolution procedure set out in this Schedule will apply to matters dealt with in this Schedule notwithstanding any dispute resolution procedure provided for either in the Order or as part of any other consent in respect of the Authorised Development.

### **Miscellaneous**

**316.** Nothing in this Schedule affects the provisions of any enactment or prior agreement regulating the relations between the undertaker and Exolum in respect of any Apparatus laid or erected in land belonging to the undertaker on the date the Order is granted.

**317.** No failure or delay by a party to exercise any right or remedy provided under 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.

## **PART 21**

### **For the protection of the Environment Agency**

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

(2) In this part of this Schedule –

“Agency” means the Environment Agency;

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

“flood risk activity permit” means an environmental permit granted under regulation 13 of the Environmental Permitting (England and Wales) Regulations 2016 for the purposes of a flood risk activity;

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

“specified work” means any development authorised by this Order and carried out in relation to or which may affect any drainage work.

**319.**—(1) Subject to sub-paragraph (4) the undertaker must, for the duration of the construction of the specified work, as far as reasonably practicable maintain in good repair and condition and keep free from obstruction any part of any drainage work which is situated on land held or occupied by the undertaker for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

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

(3) If within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may undertake the works reasonably necessary for such compliance, subject to the undertaker having the reasonable opportunity to supervise the planning and execution of such works to the extent reasonably necessary to ensure they are compliant with and do not compromise the undertaker’s ability to comply with the Pipeline Safety Regulations 1996 and any expenditure reasonably and properly incurred by the Agency in so doing is recoverable from the undertaker. Notwithstanding the foregoing, the Agency may not under any circumstances undertake any works to the pipeline itself which would or would be likely to conflict with the duties and obligations of the undertaker under the Pipeline Safety Regulations 1996, any direction issued by the Health and Safety Executive under those regulations or any other health and safety legislation relating the operation and maintenance of the pipeline.

(4) This paragraph does not apply to-

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

(5) Where the authorised development involves the crossing of any watercourse by open cut trench installation, the use of a dam as part of such installation works shall not constitute an obstruction for the purpose of these provisions.

## SCHEDULE 11

Article 40

### Removal of hedgerows

#### PART 1

##### Removal of hedgerows

<i>(1) Area</i>	<i>(2) Grid coordinates</i>		<i>(3) Identifier</i>	<i>(4) Grid coordinates</i>		<i>(5) Identifier</i>
In the Borough of Cheshire West and Chester	346950	376184	1a	347003	375913	1b
	346897	375898	2a	347019	375915	2b
	346875	375645	3a	347001	375629	3b
	346785	375868	4a	347022	375902	4b
	346294	375265	6a	346575	375409	6b
	346292	375019	8a	346448	375100	8b
	346203	374951	9a	346332	374872	9b
	345865	374566	11a	345928	374681	11b
	345719	374573	13a	345752	374637	13b
	345691	374534	14a	345700	374566	14b
	345499	374566	16a	345508	374559	16b
	345406	374424	17a	345527	374576	17b
	345402	374427	18a	345406	374424	18b
	345393	374649	19a	345473	374778	19b
	345233	374763	20a	345325	374692	20b
	345140	374609	21a	345241	374775	21b
	345029	374340	23a	345037	374375	23b
	345025	374399	24a	345121	374612	24b
	338243	370613	25a	338253	370606	25b
	345016	374362	26a	345021	374384	26b
	344672	373470	30a	344798	373398	30b
	344631	374707	31a	344681	374744	31b
	344606	373756	32a	344727	373613	32b
	344577	374124	34a	344612	374061	34b
	344583	373750	35a	344649	373774	35b
	344526	374826	38a	344550	374829	38b
	344523	373977	39a	344618	374028	39b
	344510	373273	40a	344552	373268	40b
	344501	374115	41a	344557	374134	41b
	344466	373286	43a	344492	373300	43b
	344544	374793	44a	344505	374788	44b
	343371	371565	45a	343383	371547	45b
343147	372270	47a	343217	372199	47b	
342929	372091	51a	342957	372017	51b	
342797	372709	52a	343066	372802	52b	
342773	371940	53a	342957	372017	53b	
342645	371389	54a	342686	371384	54b	
342340	371321	57a	342551	371274	57b	
342277	371214	58a	342303	371319	58b	
342254	371171	59a	342291	371319	59b	
342072	371246	61a	342184	371178	61b	
341985	371184	62a	342057	371107	62b	
341904	371138	63a	341970	371047	63b	
341611	371039	65a	341700	371076	65b	
341467	371130	66a	341529	371189	66b	
341467	371130	67a	341515	371042	67b	
341386	371217	69a	341555	371545	69b	
341416	371081	71a	341473	371121	71b	



<i>(1) Area</i>	<i>(2) Grid coordinates</i>		<i>(3) Identifier</i>	<i>(4) Grid coordinates</i>		<i>(5) Identifier</i>
	340962	371264	76a	340981	371281	76b
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	340207	371124	84a	340234	371227	84b
	339951	371169	85a	339989	371042	85b
	339167	370831	87a	339224	370832	87b
	338915	370692	89a	338980	370762	89b
	338866	370911	90a	338877	370893	90b
	338815	370876	91a	338866	370911	91b
	338566	371004	98a	338651	371061	98b
	338535	371059	99a	338623	371117	99b
	338535	371059	100a	338566	371004	100b
	338499	370956	101a	338512	370946	101b
	338457	370927	102a	338566	371004	102b
	338408	370977	103a	338499	371036	103b
	338313	370737	105a	338336	370696	105b
	338304	370502	107a	338345	370543	107b
	338287	370485	108a	338293	370500	108b
	338250	370603	109a	338253	370606	109b
	338236	370569	110a	338341	370669	110b
	338236	370569	111a	338304	370502	111b
	338227	370562	112a	338293	370500	112b
	338171	370148	114a	338255	370272	114b
	338078	370262	116a	338189	370125	116b
	338078	370068	117a	338162	370042	117b
	338028	370227	118a	338078	370262	118b
	338075	370052	119a	338069	370046	119b
	337741	369579	121a	337741	369578	121b
	337173	369465	127a	337399	369467	127b
	337154	369441	128a	337172	369464	128b
	337096	369519	129a	337108	369538	129b
	337011	369425	130a	337072	369498	130b
	336896	369517	131a	336929	369499	131b
	336894	369447	132a	336922	369425	132b
	336889	369434	133a	336929	369499	133b
	336867	369418	134a	336889	369434	134b
	336780	369506	135a	336889	369434	135b
	336702	369326	136a	336733	369339	136b
	336698	369446	137a	336778	369375	137b
	336691	369439	139a	336766	369370	139b
	336676	369301	140a	336697	369277	140b
	336584	369273	142a	336702	369326	142b
	336559	369147	143a	336637	369169	143b
	336559	369148	144a	336588	369082	144b
	336461	369054	145a	336562	369137	145b
	336383	368928	146a	336415	368981	146b
In the Counties of Cheshire	336303	368960	147a	336401	368893	147b

<i>(1) Area</i>	<i>(2) Grid coordinates</i>		<i>(3) Identifier</i>	<i>(4) Grid coordinates</i>		<i>(5) Identifier</i>
West and Chester and Flintshire						
In the County of Flintshire	336239	367713	148a	336360	367878	148b
	336142	368871	149a	336266	368825	149b
	336108	368859	150a	336234	368808	150b
	336008	368717	151a	336140	368845	151b
	335996	367600	152a	336373	367882	152b
	335969	367585	153a	336229	367705	153b
	335630	368512	154a	335687	368466	154b
	335619	368523	155a	335629	368513	155b
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	335569	367286	158a	335621	367253	158b
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	335389	368464	160a	335499	368602	160b
	335352	368028	161a	335423	367975	161b
	335345	368019	162a	335419	367962	162b
	335198	366277	163a	335205	366276	163b
	335166	367550	164a	335412	367959	164b
	335087	367588	165a	335156	367543	165b
	335042	367607	166a	335152	367537	166b
	334943	367786	167a	335039	367614	167b
	334921	367141	168a	335150	367525	168b
	334904	366740	169a	334997	366883	169b
	334830	366923	170a	334859	366966	170b
	334704	367059	172a	335344	366659	172b
	334542	366813	173a	334668	366738	173b
	334395	366600	174a	334541	366815	174b
	334275	366437	175a	334316	366404	175b
	334044	366404	176a	334146	366303	176b
	333818	366173	177a	333966	366411	177b
	333659	366309	178a	333729	366232	178b
	333482	366284	179a	333529	366345	179b
	333425	366475	180a	333431	366472	180b
	333424	366475	181a	333427	366481	181b
	333388	366375	182a	333441	366456	182b
	333337	366435	183a	333388	366512	183b
	333299	366475	184a	333356	366549	184b
	333272	366507	185a	333329	366581	185b
	333250	366666	186a	333253	366664	186b
	333199	366592	187a	333250	366666	187b
	333192	366603	188a	333249	366687	188b
	333172	366557	189a	333189	366552	189b
	333032	366784	190a	333090	366870	190b
	332962	366852	191a	333032	366934	191b
	332744	366971	192a	332785	367066	192b
	332926	366929	193a	332962	366852	193b
332923	366932	194a	332981	366992	194b	

<i>(1) Area</i>	<i>(2) Grid coordinates</i>		<i>(3) Identifier</i>	<i>(4) Grid coordinates</i>		<i>(5) Identifier</i>
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	332676	367377	199a	332790	367259	199b
	332716	367301	200a	332718	367299	200b
	332700	366983	201a	332759	366962	201b
	332669	367371	202a	332787	367255	202b
	332664	366908	203a	332700	366983	203b
	332664	367347	204a	332717	367297	204b
	332643	367203	205a	332717	367297	205b
	332587	367258	208a	332643	367203	208b
	332587	367258	209a	332664	367347	209b
	332550	366995	210a	332613	367078	210b
	332526	367028	211a	332590	367105	211b
	332359	367497	215a	332432	367575	215b
	332280	367529	216a	332341	367495	216b
	331727	367302	224a	331857	367429	224b
	331530	367209	228a	331541	367347	228b
	331228	367137	230a	331311	367098	230b
	331070	367005	231a	331205	366894	231b
	330957	366836	232a	331000	366727	232b
	330915	366760	235a	330942	366849	235b
	330908	366762	236a	330931	366866	236b
	330651	366885	237a	330714	366843	237b
	330528	366750	238a	330706	366827	238b
	330438	366842	241a	330491	366910	241b
	330414	366978	242a	330438	366842	242b
	330211	367080	243a	330235	367100	243b
	330114	366912	244a	330180	366966	244b
	330104	366922	245a	330138	366883	245b
	330104	366922	246a	330117	366983	246b
	330090	366996	248a	330133	366986	248b
	329986	366784	249a	330104	366922	249b
	329961	367023	250a	330015	367007	250b
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	329909	367035	253a	329943	367028	253b
	329901	367043	254a	329954	367166	254b
	329898	367037	255a	329898	367037	255b
	329882	366859	256a	329916	366837	256b
	329865	367251	257a	329954	367165	257b
	329860	366914	258a	329903	366910	258b
	329743	367134	261a	329898	367037	261b
	329612	367250	263a	329684	367215	263b
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<i>(1) Area</i>	<i>(2) Grid coordinates</i>		<i>(3) Identifier</i>	<i>(4) Grid coordinates</i>		<i>(5) Identifier</i>
	329305	367310	268a	329378	367221	268b
	329221	367018	269a	329224	367042	269b
	329062	367150	270a	329221	367018	270b
	328807	366603	275a	328888	366632	275b
	328800	366502	276a	328875	366550	276b
	328798	366607	277a	328867	366640	277b
	328731	366404	278a	328753	366430	278b
	328726	366466	280a	328753	366430	280b
	328682	366490	281a	328711	366483	281b
	328653	366393	282a	328770	366410	282b
	328559	366439	283a	328681	366490	283b
	328513	366475	286a	328620	366501	286b
	328450	366614	287a	328480	366638	287b
	328415	366670	288a	328429	366680	288b
	328279	366680	291a	328280	366715	291b
	327958	366851	294a	328010	366935	294b
	327714	367029	297a	327781	367086	297b
	327393	367320	301a	327512	367331	301b
	327252	367349	303a	327298	367324	303b
	327091	367365	304a	327094	367433	304b
	326967	367405	305a	326973	367455	305b
	326966	367405	306a	327019	367382	306b
	326604	367661	310a	326692	367648	310b
	326302	367738	315a	326330	367636	315b
	326218	367619	316a	326239	367615	316b
	326164	367732	317a	326269	367745	317b
	326068	367737	318a	326127	367936	318b
	325952	367770	319a	326068	367737	319b
	325945	367768	320a	325948	367772	320b
	325873	367846	321a	325943	367774	321b
	325873	367846	322a	325948	368011	322b
	325709	367995	323a	325722	368095	323b
	325696	368121	324a	325745	368096	324b
	325659	368161	325a	325742	368162	325b
	325650	368091	326a	325722	368095	326b
	325646	368419	327a	325721	368438	327b
	325645	368137	328a	325748	368084	328b
	325644	368147	329a	325696	368121	329b
	325631	368243	330a	325730	368276	330b
	325617	368405	331a	325646	368419	331b
	325589	368654	335a	325601	368662	335b
	325307	369097	339a	325390	369118	339b
	325259	369284	343a	325436	369399	343b
	325253	369808	344a	325328	369868	344b
	325249	369750	345a	325317	369622	345b
	325251	369729	346a	325314	369614	346b
	325181	370133	351a	325202	370107	351b

<i>(1) Area</i>	<i>(2) Grid coordinates</i>		<i>(3) Identifier</i>	<i>(4) Grid coordinates</i>		<i>(5) Identifier</i>
	325115	370883	353a	325236	370821	353b
	325021	370722	355a	325149	370671	355b
	325054	370798	357a	325069	370825	357b
	321735	372374	360a	321853	372471	360b
	321667	372508	361a	321730	372369	361b
	321671	372509	362a	321733	372549	362b
	321713	372597	363a	321730	372550	363b
	317359	373302	365a	317408	373427	365b
	317408	373427	366a	317441	373485	366b
	317359	373295	367a	317441	373307	367b
	314858	374549	368a	314982	374524	368b
	314858	374549	369a	314832	374486	369b
	314787	374642	370a	314712	374555	370b
	344911	373387	371a	344910	373357	371b

## PART 2

### Removal of important hedgerows

<i>(1) Area</i>	<i>(3) Grid coordinates</i>		<i>(4) Identifier</i>	<i>(5) Grid coordinates</i>		<i>(4) Identifier</i>
	<i>Easting</i>	<i>Northing</i>		<i>Easting</i>	<i>Northing</i>	
In the Borough of Cheshire West and Chester	346624	375332	5a	346664	375246	5b
	346292	375019	7a	346294	375264	7b
	346049	374719	10a	346148	374646	10b
	345039	374387	12a	345144	374595	12b
	345627	374612	15a	345739	374541	15b
	345137	374603	22a	345398	374429	22b
	344751	374565	27a	344807	374608	27b
	344707	374590	28a	344795	374656	28b
	344694	373445	29a	344795	373389	29b
	344599	374805	33a	344624	374809	33b
	344539	373869	36a	344606	373763	36b
	344534	373865	37a	344628	373892	37b
	344502	373275	42a	344506	373277	42b
	343217	372213	46a	343434	372429	46b
	343076	372437	48a	343228	372556	48b
	343063	372424	49a	343222	372203	49b
	342945	371968	50a	343205	372217	50b
	342551	371276	55a	342553	371198	55b
	342371	371314	56a	342371	371220	56b
	342191	371330	60a	342291	371319	60b
	341633	371144	64a	341738	371041	64b
	341398	371114	68a	341502	371217	68b
	341369	371155	70a	341423	371258	70b
	341357	371041	72a	341371	371028	72b
	341344	371060	73a	341357	371041	73b
	341137	371423	74a	341340	371196	74b
	341127	371421	75a	341351	371185	75b

In the  
County of  
Flintshire

340954	371326	77a	340974	371368	77b
340954	371326	78a	340990	371269	78b
340778	371314	80a	340836	371229	80b
340643	371289	81a	340700	371201	81b
340364	371214	82a	340399	371152	82b
340231	371186	83a	340357	371251	83b
339914	371154	86a	339964	371033	86b
339077	370769	88a	339211	370710	88b
338811	370884	92a	338890	370951	92b
338646	371110	95a	338684	371119	95b
338646	371110	96a	338811	370884	96b
338623	371117	97a	338647	371068	97b
338404	370985	104a	338478	370910	104b
338312	370737	106a	338334	370755	106b
338199	369957	113a	338216	369986	113b
338081	370260	115a	338233	370393	115b
338033	369865	120a	338120	369812	120b
337739	369580	122a	337843	369618	122b
337586	369599	123a	337724	369622	123b
337412	369476	124a	337642	369511	124b
337389	369566	125a	337415	369465	125b
337383	369549	126a	337399	369466	126b
336696	369311	138a	336725	369327	138b
336639	369370	141a	336702	369326	141b
335599	368576	157a	335897	368938	157b
334798	367194	171a	334925	367117	171b
332904	366926	196a	332964	366986	196b
332637	367004	206a	332691	366972	206b
332600	366945	207a	332647	367039	207b
332512	367500	212a	332574	367438	212b
332510	367498	213a	332512	367500	213b
332413	367593	214a	332512	367500	214b
332273	367501	217a	332288	367601	217b
332259	367501	218a	332272	367584	218b
332104	367495	219a	332272	367584	219b
332104	367495	220a	332142	367420	220b
331969	367402	221a	332062	367499	221b
331877	367426	222a	331943	367496	222b
331862	367425	223a	331921	367377	223b
331661	367352	225a	331713	367302	225b
331652	367350	226a	331688	367310	226b
331545	367204	227a	331556	367347	227b
331469	367345	229a	331537	367288	229b
330944	366855	233a	330955	366844	233b
330492	366911	239a	330508	366932	239b
330444	366959	240a	330492	366911	240b
330102	366928	247a	330103	366925	247b
329922	366843	252a	329986	366785	252b
329761	367123	259a	329864	367248	259b
329761	367123	260a	329901	367043	260b

329612	367366	262a	329612	367256	262b
328932	366825	271a	328966	366838	271b
328872	366730	272a	328893	366779	272b
328870	366885	273a	328932	366825	273b
328829	366781	274a	328886	366782	274b
328716	366479	279a	328751	366522	279b
328557	366467	284a	328653	366493	284b
328527	366460	285a	328557	366467	285b
328353	366747	289a	328460	366562	289b
328280	366717	290a	328306	366790	290b
328108	366779	292a	328280	366717	292b
328069	366797	293a	328119	366884	293b
327663	367004	295a	327813	367131	295b
327714	367027	296a	327781	366960	296b
327698	367024	298a	327720	367006	298b
327695	367023	299a	327698	367024	299b
327544	367308	300a	327550	367172	300b
327351	367408	302a	327405	367174	302b
326832	367465	307a	326966	367405	307b
326702	367616	308a	326841	367604	308b
326680	367522	309a	326694	367649	309b
326594	367585	311a	326604	367661	311b
326484	367713	312a	326550	367712	312b
326471	367636	313a	326484	367713	313b
326407	367723	314a	326426	367724	314b
325609	368499	332a	325704	368265	332b
325589	368493	333a	325684	368517	333b
325589	368653	334a	325655	368525	334b
325583	368501	336a	325678	368529	336b
325515	368599	337a	325601	368507	337b
325515	368599	338a	325589	368653	338b
325285	371191	340a	325386	371067	340b
325278	369143	341a	325343	368935	341b
325269	371159	342a	325280	371190	342b
325234	370069	347a	325282	370100	347b
325228	370076	348a	325257	370093	348b
325203	370107	349a	325280	370151	349b
325181	369471	350a	325299	369558	350b
325118	370888	352a	325269	371159	352b
325054	370382	354a	325136	370425	354b
324975	370644	356a	325094	370577	356b
324927	370546	358a	325114	370883	358b
324927	370546	359a	325136	370425	359b
317403	373102	364a	317359	373295	364b

## SCHEDULE 12

Article 49

### Arbitration rules

#### Primary objective

1.—(1) The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the Arbitrator is appointed pursuant to article 49 (arbitration) of the Order.

(2) The Parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the Parties. Any dispute which is not resolved amicably by the senior management of the Parties within twenty business days of the dispute arising, or such longer period as agreed in writing by the Parties, will be subject to arbitration in accordance with the terms of this Schedule.

(3) The Arbitration will be deemed to have commenced when a party (“the Claimant”) serves a written notice of arbitration on the other party (“the Respondent”).

#### Time periods

2.—(1) All time periods in these Arbitration Rules will be measured in business days and this will exclude weekends, bank and public holidays.

(2) Time periods will be calculated from the day after the Arbitrator is appointed which will be either—

- (a) the date the Arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the Arbitrator is appointed by the Secretary of State.

#### Timetable

3.—(1) The timetable for the arbitration will be that set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 15 days of the Arbitrator being appointed, the Claimant must provide both the Respondent and the Arbitrator with—

- (a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant’s contentions as to those issues, and the remedy it is seeking; and
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 15 days of receipt of the Claimant’s statements under sub-paragraph (2) by the Arbitrator and Respondent, the Respondent must provide the Claimant and the Arbitrator with—

- (a) a written Statement of Defence responding to the Claimant’s Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant’s claim, its acceptance of any element(s) of the Claimant’s claim, its contentions as to those elements of the Claimant’s claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and
- (c) any objections it wishes to make to the Claimant’s statements, comments on the Claimant’s expert report(s) (if submitted by the Claimant) and explanations for the objections.

(4) Within 5 days of the Respondent serving its statements sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the Arbitrator with—



- (a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
- (c) any expert report in response to the Respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent; and
- (e) its written submissions in response to the legal and factual issues involved.

## **Procedure**

4.—(1) The Arbitrator will make an award on the substantive difference based solely on the written material submitted by the parties unless the Arbitrator decides that a hearing is necessary to explain or resolve any matters.

(2) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(3) Within 5 days of receiving the last submission, the Arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

(4) Within 10 days of the Arbitrator advising the parties that he will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the Arbitrator must direct a date and venue which he considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the Arbitrator's direction confirming the date and venue of the hearing.

(5) A decision will be made by the Arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the Arbitrator, then any expert(s) attending the hearing may be asked questions by the Arbitrator.

(6) There will be no process of examination and cross-examination of experts, but the Arbitrator will invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the Arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

- (a) at least 20 days before a hearing, the Arbitrator will provide a list of issues to be addressed by the expert(s);
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 10 days of the issues being provided; and
- (c) the form and content of a joint report will be as directed by the Arbitrator and must be provided at least 5 days before the hearing.

(7) Within 10 days of a Hearing or a decision by the Arbitrator that no hearing is to be held the Parties may by way of exchange provide the Arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The Arbitrator will take these submissions into account in the Award.

(8) The Arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which they are appointed, unless both parties otherwise agree to an extension to the date for the award.

(9) If a party fails to comply with the timetable, procedure or any other direction then the Arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before them attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(10) The Arbitrator's award must include reasons. The parties will accept that the extent to which reasons are given is to be proportionate to the issues in dispute and the time available to the Arbitrator to deliver the award.

### **Arbitrator's powers**

5.—(1) The Arbitrator has all the powers of the Arbitration Act 1996(a), including the non-mandatory sections, save where modified by these Rules.

(2) There will be no discovery or disclosure, except that the Arbitrator has the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the Arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the Arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the Arbitrator. In the absence of agreement, the Arbitrator may vary the timescales and/or procedure—

- (a) if the Arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the Arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the Arbitrator's fees and expenses.

### **Costs**

6.—(1) The costs of the Arbitration will include the fees and expenses of the Arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the Arbitration.

(2) Subject to sub-paragraph (3), the Arbitrator will award recoverable costs on the general principle that each party should bear its own costs.

(3) The Arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as defined within the National Planning Practice Guidance or such other guidance as may replace it.

### **Confidentiality**

7.—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation will be confidential and will only be publically disclosed where required by law or with the agreement of both parties.

(2) The Arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) Nothing in this paragraph prevents any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order grants development consent for, and authorises the construction, operation and maintenance of a pipeline for the transport of carbon dioxide from Ince, near Stanlow in the County of Cheshire and Chester West to the Point of Ayr Terminal, Talacre, Flintshire. This Order imposes requirements in connection with the development and authorises the compulsory purchase of land (including rights in land) and the right to use land and to override easements and other rights. A copy of the plans and book of reference referred to in this Order and certified in accordance with article 45 (certification of plans) may be inspected free of charge at the offices of Liverpool Bay CCS at Eni House, 10 Ebury Bridge Road, London SW1W 8PZ.