

## Protective Provisions

### FOR THE PROTECTION OF THE SOUTH TEES GROUP

1. For the protection of the South Tees Group, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the STG entity in relation to that entity's interests.
  
2. (1) In this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the STG entity;

“apparatus” means apparatus (including cables, mains, pipelines, plant and ancillary apparatus) within the Order limits, or which has benefit of rights over the Order limits, and which is apparatus belonging to or maintained by an STG entity;

“diversion condition” means that in relation to the relevant diversion work—

  - (a) in relation to a proposed work which is required for the construction of the authorised development, that it in the reasonable opinion of the undertaker enables the authorised development to be constructed and commissioned;
  - (b) in relation to a proposed work which is required for the maintenance or operation of the authorised development, that it in the reasonable opinion of the undertaker, it enables the authorised development to be constructed (where relevant), maintained, operated and (where relevant) decommissioned;
  - (c) its cost is reasonable having regard to the nature and scale of the relevant proposed work;
  - (d) planning permission is not required, or has been granted, or in the reasonable opinion of the undertaker can be obtained in accordance with the undertaker's programme for the construction of the authorised development;
  - (e) such other consents, licences or authorisations as are required for the diversion work have been obtained, or in the reasonable opinion of the undertaker can be obtained in accordance with the undertaker's programme for the construction of the authorised development;
  - (f) the STG entity can grant adequate interest in land or a licence to the undertaker to use, maintain and operate the diversion work for its intended purpose as part of the authorised development and if relevant to carry out the diversion work;
  - (g) the diversion work—
    - (i) is already constructed and available for use by the undertaker; or
    - (ii) where a diversion work is to be carried out, whether by the STG entity or the undertaker, it can be carried out and completed in accordance with the undertakers' programme for the construction of the authorised development;

“diversion notice” means a notice from the STG entity to the undertaker under paragraph [16];

“diversion work” means works, development or use of land;

“diversion works agreement” means an agreement between the STG entity and the undertaker in relation to a diversion work which provides—

- (a) adequate interest in land to allow the undertaker to use and where relevant maintain and operate the diversion work for its intended purpose as part of or in connection with the authorised development; and
- (b) where relevant, that the undertaker can carry out the diversion work or that the STG entity must carry out the diversion work, in either case in accordance with the undertakers’ programme for the construction of the authorised development;

“identified power” means a power conferred by the following in relation to a proposed work—

- (a) article 22 (compulsory acquisition of land);
- (b) article 23 (power to override easements and other rights);
- (c) article 25 (compulsory acquisition of rights etc.);
- (d) article 26 (private rights);
- (e) article 28 (acquisition of subsoil and airspace only);
- (f) article 32 (temporary use of land for carrying out the authorised development);
- (g) article 33 (temporary use of land for maintaining the authorised development); and
- (h) article 34 (statutory undertakers),

or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or any powers conferred by section 4 (execution of declaration) of the 1981 Act as applied by this Order;

“information notice” means a notice issued by the undertaker under paragraph [17](c) that additional information is reasonably required before it can decide whether to agree to a diversion work;

“proposed land” means the land within the Teesworks site required for a proposed work, as shown in the corresponding numbered area on the works plans;

“proposed work” means Work Nos. 2 to 10 to the extent the work is located within the Teesworks site;

“proposed work programme” means a programme for the construction and use of a proposed work;

“the respective authorised developments” means the authorised development, Net Zero Teesside, HyGreen and the Teesworks development respectively;

“STDC” means South Tees Development Corporation whose headquarters are at Teesside Airport Business Suite, Teesside International Airport, Darlington, DL2 1NJ;

“STDL” means South Tees Developments Limited (Company number 11747311) whose registered office is at Teesside Airport Business Suite, Teesside International Airport, Darlington, United Kingdom, DL2 1NJ;

“SRPL” means Steel River Power Limited (Company number 14753711) whose registered office is Wynyard Park House, Wynyard Avenue, Wynyard, Billingham TS22 5TB;

“South Tees Group” means STDC, STDL, SRPL and Teesworks;

“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 paragraph (5)(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 5(2) or otherwise.

“STG entity” means an entity within the South Tees Group which owns or holds an interest in land in the part of the Teesworks site to which the provisions of this Schedule apply, and any successor in title to that entity;

“Teesworks” means Teesworks Limited (Company number 12351851) whose registered office is at Venture House, Aykley Heads, Durham, England, DH1 5TS;

“the Teesworks development” means any development authorised by any planning permission or development consent order granted in relation to the Teesworks site (or generally by permitted development rights), or prospective development planned in relation to the Teesworks site;

“the Teesworks site” means any land or interests in land within the Order limits owned by STDC, STDL, SRPL or Teesworks;

“works details” means—

- (a) plans and sections;
- (b) details of the proposed design;
- (c) details of the proposed method of working;
- (d) details of the programme and timing of execution of the works;
- (e) details of vehicle access routes for construction and operational traffic;
- (f) details of the location within the Teesworks site of a corridor situated within the limits shown on the works plans for the relevant numbered works within which the corresponding works are proposed to be carried out;
- (g) details of the location within the Teesworks site of a corridor situated within the limits shown on the works plans for the relevant numbered works within which the permanent corresponding works will be placed; and
- (h) any further particulars provided in response to a request under paragraph 3; and

“works notice” means a notice setting out details of a proposed work (sufficient to allow consideration of a potential diversion work and including a programme) and the exercise of an identified power in respect of any part of the proposed land.

(2) For the purposes of this Schedule, a diversion work or associated interest in land is capable of meeting the diversion condition notwithstanding that—

- (a) it is longer in distance than the relevant proposed work it is replacing; or

(b) in the case of vehicular or staff access, it increases the time taken to travel to the authorised development compared to the relevant proposed work it is replacing,

provided that a diversion work or associated interest in land may not be considered to be adequate where in the reasonable opinion of the undertaker an increase in distance or time (whichever is relevant) would—

- (a) incur unreasonable cost, having regard to both the nature and scale of the relevant proposed work, and the nature and scale of the impact on the Teesworks development; or
- (b) have a material adverse impact on the timetable for the delivery of the authorised development in accordance with the undertaker's construction programme.

### **Consent for works and acquisition**

3. (1) Before commencing the construction of any part of the authorised development including any permitted preliminary works within the Teesworks site, the undertaker must first submit to the STG entity for its approval the works details for the work and such further particulars as the STG entity may, within 30 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No works comprising any part of the authorised development including any permitted preliminary works within the Teesworks site are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved in writing by the STG entity.

(3) Any approval of the STG entity required under sub-paragraph (2) must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements or conditions as the STG entity may require to be imposed.

(4) The authorised development must be carried out in accordance with the works details approved under sub-paragraph (2) and any requirements or conditions imposed on the approval under sub-paragraph (3) or where there has been a reference to an arbitrator in accordance with paragraph 14 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator.

(5) The undertaker must not exercise any of the powers contained articles 10 to 16 and 18 to 20 of this Order within the Teesworks site without the prior written approval of the STG entity, such approval not to be unreasonably withheld or delayed.

(6) 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 must not, otherwise than by agreement with the STG entity:

- (a) appropriate or acquire or take temporary possession of any land owned or held by the STG entity;
- (b) appropriate, acquire, create, extinguish or override any easement or other interest, including by temporary possession, in land owned or held by the STG entity; or
- (c) appropriate, acquire, extinguish or override any easement or other interest owned or held by the STG entity, including by temporary possession, such agreement not to be unreasonably withheld or delayed.

#### **Provision for diversion of H2Teesside works**

4. (1) The undertaker must—

- (a) as soon as reasonably practicable following the grant of the DCO consent, and prior to commencement of the authorised development—
  - (i) provide to the STG entity details of its proposed works programme; and
  - (ii) provide such further particulars relating to the proposed works as the STG entity may on occasion reasonably request, and must provide the details reasonably available to the undertaker that have been requested by the STG entity within a period of 30 days of a request by the STG entity or such longer period as the STG entity and the undertaker may agree; and
- (b) prior to exercising an identified power in respect of any part of the proposed land issue a works notice to the STG entity for that part.

(2) If the undertaker intends to change the timing of the proposed work as set out in a proposed works programme issued to the STG entity or the timing of the proposed works set out in a work notice the undertaker must notify the STG entity as soon as reasonably practicable and where the undertaker decides to change timing which was specified in a work notice it must issue a revised work notice to the STG entity.

(3) The STG entity may issue a notice (a “diversion notice”) to the undertaker at any time prior to 60 days after the later of—

- (a) the date of issue of the works notice under sub-paragraph (1)(b); or
- (b) the date of issue of the most recent works notice under sub-paragraph (2),

unless the STG entity and the undertaker, acting reasonably, agree such longer period prior to the expiry of the relevant 30-day period.

(4) A diversion notice must set out—

- (a) the diversion work proposed; and
- (b) how the diversion work proposed satisfies so far as relevant each part of the diversion condition.

(5) If a diversion notice is issued to the undertaker before the expiry of the period under sub-paragraph (3), the undertaker must notify the STG entity no later than 30 days after the date of receipt of the diversion notice confirming whether the undertaker—

- (a) agrees to diversion work;
- (b) does not agree to the diversion work; or
- (c) requires additional information to consider whether it agrees to the diversion work (an “information notice”).

(6) In making the decision under sub-paragraph (5) the undertaker must act reasonably and may only issue a notice stating that it does not agree to the diversion work where it considers that the diversion condition is not satisfied.

(7) Where the undertaker gives an information notice to the STG entity, that notice must set out what additional information is required by the undertaker to decide whether or not it agrees to the diversion notice.

(8) Where the undertaker notifies the STG entity under sub-paragraph (5)(b) that it does not agree to a diversion work, that notice must set out the reasons why the undertaker does not agree that the diversion work satisfies the diversion condition along with an indication of what would be required to make it satisfy the diversion condition.

(9) If the undertaker issues an information notice to the STG entity, the STG entity may submit further information to the undertaker within 30 days of receipt of the information notice.

(10) If the STG entity submits further information to the undertaker within 30 days of receipt of the information notice, the undertaker must consider the further information and sub-paragraph (5) applies again provided that the undertaker is not obliged to consider any further information that is received by the undertaker—

- (a) more than 30 days after the date of the information notice issued by the undertaker under sub-paragraph (5)(c); or
- (b) in any case 150 days from the date of the undertaker’s works notice under sub-paragraph (1)(b) or if relevant 150 days from the date of any revised works notice issued by the undertaker under sub-paragraph (2).

(11) If the undertaker issues notice to the STG entity under sub-paragraph (5)(b) confirming that it does not agree to the diversion notice, the STG entity may submit a further diversion notice to the undertaker to address the undertaker's reasons for refusal under sub-paragraph (5), provided that the undertaker is not obliged to consider any further diversion notice that is received by the undertaker—

- (a) more than 30 days after the date of the notice issued by the undertaker under sub-paragraph (5)(b); or
- (b) in any case 150 days from the date of the undertaker's works notice under sub-paragraph (1)(b) or if relevant 150 days from the date of any further works notice issued by the undertaker under sub-paragraph (2).

(12) If the undertaker issues a notice under paragraph (5)(a) the STG entity and the undertaker must use reasonable endeavours to enter into a diversion works agreement within 30 days of the notice on such terms as may be agreed between them, and where a planning permission is still to be obtained for the diversion work, the STG entity must use reasonable endeavours to obtain the planning permission in order that the diversion work can be carried out without delay to the undertakers' programme for the construction of the authorised development.

(13) Subject to sub-paragraphs (14) and (15), if a diversion works agreement is not entered into within the 30 day period set out in sub-paragraph [12] (or such longer period as may be agreed between the parties prior to the expiry of that 30 day period) the STG entity or the undertaker may within 5 days of the end of that period refer the matter to arbitration under paragraph 14.

(14) If a diversion works agreement is not entered into within the 30 day period set out in sub-paragraph (12) (or such longer period as may be agreed between the parties prior to the expiry of that 30 day period) because any planning permission required for the diversion work has still not been obtained, and in the reasonable opinion of the undertaker the planning permission is not likely to be obtained in order to allow the diversion work to be carried out without material delay to the undertaker's programme, the undertaker may issue a notice to the STG entity confirming that it is not entering into the diversion works agreement.

(15) A notice issued by the undertaker under sub-paragraph (14) shall have the same effect as a notice issued by the undertaker under sub-paragraph (10).

(16) If a reference is made to arbitration under paragraph [14] the arbitrator must determine whether the terms of the diversion works agreement can reasonably be in accordance with the

diversion condition and if it can then the arbitrator must determine the terms of the diversion works agreement and which must be in accordance with the diversion condition.

(17) Where the arbitrator determines that the terms of the diversion works agreement can be in accordance with the diversion condition the STG entity and the undertaker must use best endeavours to enter into the diversion works agreement on the terms determined by the arbitrator within 10 days of the arbitrator's decision.

(18) If—

- (a) a diversion works agreement is entered into within the 30 day period set out in sub-paragraph (12); or
- (b) a reference to arbitration is made in accordance with paragraph [14] and a diversion works agreement is entered into within the 10 day period in sub-paragraph (17),

the undertaker must not exercise the identified powers in respect of the relevant proposed land.

(19) If—

- (a) no diversion notice is issued by the STG entity to the undertaker before the expiry of the period under sub-paragraph (3);
- (b) a diversion notice is issued by the STG entity to the undertaker, the undertaker issues a notice not agreeing to the diversion work under sub-paragraph (5)(b), and no further diversion notice is issued by the STG entity to the undertaker prior to the dates set out in sub-paragraph (11);
- (c) a diversion notice is issued by the STG entity to the undertaker, the undertaker issues an information notice, and no further information is provided by the STG entity to the undertaker prior to the dates set out in sub-paragraph (9);
- (d) sub-paragraph (12) applies and the STG entity and the undertaker do not enter into a diversion works agreement within the 30 day period set out in that paragraph and no reference to arbitration is made prior to the expiry of the period in sub-paragraph (13);
- (e) the arbitrator determines under paragraph [14] that the terms of the diversion works agreement cannot reasonably be in accordance with the diversion condition; or
- (f) sub-paragraph (17) applies and the STG entity has not executed and unconditionally released for completion a diversion works agreement within the 10 day period set out in that paragraph,

the undertaker may exercise the identified powers in respect of the relevant proposed land in order to (as relevant) carry out, use, maintain, operate or decommission the relevant proposed work.



(20) For the avoidance of doubt, in circumstances where sub-paragraph (18) applies, this does not obviate the need for the undertaker to comply with paragraph 3 in respect of the relevant proposed work.

### **Removal of apparatus owned or maintained by an STG entity**

5. (1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or takes temporary possession of any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of the relevant STG entity to operate, access and maintain that apparatus in that land must not be extinguished, suspended or overridden until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the STG entity in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development 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 the STG entity advance written notice of that requirement, together with work details for the work proposed, including 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 the STG entity 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 the STG entity to its satisfaction (taking into account paragraph 6(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, the STG entity 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 the STG entity to seek compulsory purchase powers.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between the STG entity and the undertaker.

(5) The STG entity 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 the STG entity of any such facilities and rights as are referred to in subparagraph (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 Schedule.

6. (1) Where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for the STG entity 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 the STG entity and must be no less favourable on the whole to the STG entity than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by the STG entity.

(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 the STG entity 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 14 (arbitration) of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to the STG entity as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Protection of apparatus owned or maintained by an STG entity**

7. (1) Where the undertaker seeks approval under paragraph 3(1) of this Schedule in relation to any specified works, the works details submitted under paragraph 3(1) must 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; and
  - (f) any intended maintenance regimes.

(2) As part of its approval under paragraph 3, the STG entity may require (and the undertaker must comply with) such modifications to the works details for specified works as may be reasonably necessary for the purpose of—

(a) securing its apparatus against interference or risk of damage, and to ensure its continuing safety and operational viability; and

(b) providing or securing for the STG entity proper and convenient means of access to any apparatus with or without vehicles to inspect, repair, replace and maintain and ensure its continuing safety and operational viability.

(3) The STG entity will be entitled to watch and inspect the execution of specified works where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

(4) Where the STG entity 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 under paragraph 3, must be carried out to the STG entity's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(5) If the STG entity, 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 5 and 6 apply as if the removal of the apparatus had been required by the undertaker.

(6) 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 the STG entity notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraphs 3(3) and 7(2) insofar as is reasonably practicable in the circumstances.

(7) 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.

8. Where the undertaker takes temporary possession of any land or carries out survey works on land within which is situated apparatus owned or operated by an STG entity, the STG entity's rights to access and maintain the apparatus are not overridden or suspended by this Order and the STG entity may continue to exercise those rights—

- (a) in an emergency without notice; and
- (b) in non-emergency circumstances having first given the undertaker prior written notice in order to allow the parties to liaise over timing and coordination of their respective works during the period of temporary possession.

## **Co-operation**

9. The STG entity must provide the undertaker with information the undertaker reasonably requests in relation to the Teesworks development and which the undertaker reasonably needs (and which is reasonably available for disclosure by the STG entity) in order to understand the interactions between the respective authorised developments or to design, build and operate the authorised development.
10. The undertaker must provide the STG entity with information the STG entity reasonably requests in relation to the authorised development and which the STG entity reasonably needs (and which is reasonably available for disclosure by the undertaker) in order to understand the interactions between the respective authorised developments or to design, build and operate the Teesworks development.
11. (1) This paragraph applies insofar as—
  - (a) the construction of the authorised development may be undertaken on the Teesworks site concurrently with demolition or site preparation works undertaken by the STG entity;
  - (b) the construction of the respective authorised developments may be undertaken on the Teesworks site concurrently; or
  - (c) the planning, construction, operation or maintenance of one of the respective authorised developments would have an effect on the planning, construction, operation or maintenance of the other respective authorised development or access to it.(2) Where this paragraph applies the undertaker and the STG entity must—
  - (a) co-operate with each other with a view to ensuring—
    - (i) the co-ordination of construction programming and the carrying out of the respective authorised developments;
    - (ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker, the STG entity and their respective employees, contractors and sub-contractors; and
    - (iii) that operation, maintenance and access to the respective authorised developments is maintained for the undertaker and the STG entity; and
  - (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

## Expenses

12. (1) Subject to the following provisions of this paragraph, the undertaker must repay to the STG entity the reasonable costs and expenses incurred by them in, or in connection with—
- (a) the authorisation of works details in accordance with paragraph 3;
  - (b) the process in relation to proposed works and diversion works set out in paragraph 4;
  - (c) where the relevant diversion work is provided by the STG entity and solely for the use of the undertaker in connection with the authorised development, the construction of a diversion work provided instead of the relevant proposed work;
  - (d) where the relevant diversion work is provided for the use of the undertaker in connection with the authorised development and for use in connection with or as part of the wider Teesworks site, a proportion of the cost of construction of a diversion work provided instead, such proportion to be agreed between the undertaker and the STG entity acting reasonably or to be determined by arbitration pursuant to paragraph [14];
  - (e) 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 accordance with paragraphs 5, 6 and 7, including without limitation:
    - (i) the review, assessment and approval of works details, including the imposition of any conditions or modifications;
    - (ii) the drafting, negotiating and entering into of any written agreement in relation to the diversion and protection of apparatus, including for the provision of necessary facilities and rights in land;
    - (iii) the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
    - (iv) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
    - (v) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
    - (vi) 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 Schedule.
- (2) Prior to incurring any expenses associated with the activities outlined in sub-paragraph (1), the STG entity must give prior written notice to the undertaker of the activity or activities to be undertaken and an estimate of the costs to be incurred.

## Indemnity

13. (1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, use, maintenance or failure of any of the works referred to in paragraph 3(1) and approved under paragraph 3(2), or any diversion works, any damage is caused to the Teesworks site

(including apparatus, alternative apparatus or other property of an STG entity), or there is any interruption in any service provided, or in the supply of any goods, by an STG entity, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the STG entity in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the STG entity for any other expenses, loss, damages, penalty or costs incurred by the STG entity, 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 the STG entity, its officers, employees, servants, contractors or agents.

(3) The STG entity 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 which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The STG entity must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies.

(5) If requested to do so by the undertaker, the STG entity must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall only be liable under this paragraph for claims reasonably incurred by the STG entity.

## **Arbitration**

- 14. Any difference or dispute arising between the undertaker and the STG entity under this Schedule must, unless otherwise agreed in writing between the undertaker and the STG entity, be referred to and settled by arbitration in accordance with article [46] (arbitration).

## **Miscellaneous**

- 15. Where a notice or information is provided by the undertaker to any of the STG entities under this Schedule, a copy of that notice or information must also be sent to the other STG entities.

16. Paragraphs (5) and (6) of article 43 (Procedure in relation to certain approvals) do not apply to this Schedule.
17. Schedule 18 (protective provisions for the protection of third party apparatus) does not apply to apparatus to which this Schedule applies.