

SCHEDULE 1 Article **Error! Reference source not found.**

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF CATS
NORTH SEA LIMITED**

Application

1. For the protection of CATS, the following provisions have effect, unless otherwise agreed in writing between the undertaker and CATS.

Interpretation

2. —(1) In this Schedule—

“CATS” means CATS North Sea Limited (company number 09250798), whose registered address is Suite 17th Floor, 50 Broadway, London, United Kingdom, SW1H 0BL acting in its capacity as operator of the CATS system for and on behalf of the CATS Owners and any successor in title or function to the CATS pipelines;

“CATS Owners” means any company that from time to time owns an interest in the CATS system and, as at the date upon which this Order is made, comprise the following—

- (a) CATS;
- (b) Kellas CATS Limited (company number 08021886), whose registered address is Suite 17th Floor, 50 Broadway, London, United Kingdom, SW1H 0BL;
- (c) Eni UK Limited (company number 00862823), whose registered address is Eni House, 10 Ebury Bridge Road, London, SW1W 8PZ; and
- (d) Chrysaor Petroleum Company U.K. Limited (company number 00792712), whose registered address is 151 Buckingham Palace Road, London, England, SW1W 9SZ;

“CATS pipelines” means the following pipelines, owned by CATS and operated by Wood UK Ltd—

- (e) The 36” CATS pipeline (PL-774) transporting high pressure natural gas 411.84km (404km subsea, 7.84km onshore) from the CATS Riser Platform, located in the Central Graben Development of the North Sea, to processing facilities at the CATS Terminal in Teesside;
- (f) Onshore 6” Condensate export pipeline (PL-937) transporting natural gas condensate 2.87km from the CATS Terminal to Sabic, North Tees plant;
- (g) Onshore 6” Condensate export pipeline (PL-938) transporting natural gas condensate 2.45km from the CATS Terminal to the Navigator Terminals storage site;
- (h) Onshore 6” Propane pipeline (CAT-Pipeline-04) transporting propane 1.09km from the CATS Terminal to ConocoPhillips storage site;
- (i) CAT-Pipeline-05 6” Butane pipeline transporting butane 1.09km from the CATS Terminal to ConocoPhillips storage site;

“CATS requirements” means the requirements applicable for works undertaken within 50 metres of the CATS pipelines as set out in the—

- (j) CATS Wayleaves Guidance for Landowners and Third Parties, Doc Number: CAT-PPI-PRC-019;
- (k) CATS Conditions and Restrictions for Work Activities in Close Proximity to CATS Pipelines, Doc Number: CAT-PPI-PRC-020; and

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(l) CATS Procedures for the Excavation and Backfill of CATS Pipelines, Doc Number: CAT-PPI-PRC-021,

or any updates or amendments thereto as notified to the undertaker in writing;

“CATS system” means the facilities commonly known as the Central Area Transmission System gas pipeline and processing plant, as commonly abbreviated and known as the CATS pipeline and CATS processing plant, as the same may exist from time to time including, without limitation, the CATS pipeline;

“function” includes a power or duty;

“ground mitigation scheme” means a scheme setting out the reasonably necessary measures (if any) which are proposed to mitigate a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus or infrastructure 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 CATS' 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;

“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 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 the CATS pipelines that may be caused by the carrying out, maintenance or use of the authorised development;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (m) will or may be situated within 50 metres in any direction of the CATS system, or
- (n) in the case of explosives for blasting, are within 400 metres of any part of the CATS system.

(2) Where this Schedule provides—

- (a) that the acknowledgement, approval, agreement, consent or authorisation of CATS or the undertaker is required; or
- (b) that any thing must be done to CATS' reasonable satisfaction,

that acknowledgement, approval, agreement, consent, authorisation or intimation of satisfaction shall not be unreasonably withheld or delayed.

(3) When carrying out any function under this Schedule, CATS (and any arbitrator appointed for the purposes of paragraph 14) must at all times have regard to the interests of safety and the efficient and economic execution, construction and operation of the authorised development.

Consent under this Schedule in respect of specified works

3.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to CATS a plan in respect of those works.

(2) The plan to be submitted to CATS 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 and positioning of plant;

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- (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 proposed ground monitoring scheme; and
 - (g) any intended maintenance regimes.
- (3) The undertaker must not commence any specified works until the plan submitted under sub-paragraph (1)—
- (a) has been approved by CATS under sub-paragraph (4)(a);
 - (b) is deemed to have been approved pursuant to sub-paragraph (8) or (9); or
 - (c) has been approved by an arbitrator following a reference under sub-paragraph (10).
- (4) Following submission of a plan under sub-paragraph (1), CATS must within 56 days of the date of receipt thereof notify the undertaker in writing—
- (a) that its approval has been granted in respect of all or any part of that plan; or
 - (b) that its approval has been refused in respect of all or any part of that plan, and the full reasons for its disapproval.
- (5) Any approval of CATS given under sub-paragraph (4)(a) may be given subject to such reasonable conditions for any purpose mentioned in sub-paragraph (6) as CATS may notify to the undertaker in writing at the same time as CATS' decision under sub-paragraph (4)(a), with that notice setting out CATS' full reasons for those conditions.
- (6) Conditions may only be imposed by CATS pursuant to sub-paragraph (5) to effect such modifications to the plan as may be reasonably necessary for the purpose of—
- (a) securing the CATS pipelines against interference or risk of damage;
 - (b) providing or securing proper and convenient means of access to the CATS pipelines;
 - (c) the provision of any protective works by the undertaker (whether of a temporary or permanent nature).
- (7) Specified works must only be executed in accordance with—
- (a) the plan approved or deemed to be approved under sub-paragraph (3); and
 - (b) unless sub-paragraph (11) applies, any conditions imposed under sub-paragraph (5).
- (8) If CATS does not provide any response to the undertaker within the period specified in sub-paragraph (4) then the plan submitted under sub-paragraph (1) is deemed to be approved on the day next following the last day of that period.
- (9) If CATS provides a response under sub-paragraph (4)(b) in respect of part only of the plan submitted under sub-paragraph (1) then the remainder of the submitted plan is deemed to be approved on the day next following the date of the notification under sub-paragraph (4)(b).
- (10) If CATS gives notice to the undertaker—
- (a) under sub-paragraph (4)(b); or
 - (b) grants its approval subject to one or more conditions under sub-paragraph (5) to which the undertaker objects,
- then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred to an arbitrator for determination in accordance with paragraph 14.
- (11) Where—
- (a) the imposition of a condition has been referred to an arbitrator under sub-paragraph (10); and
 - (b) the arbitrator determines that the condition in question should not be imposed,
- the undertaker is not obliged to comply with that condition.

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(12) The undertaker is not required to comply with sub-paragraph (1) prior to the commencement of a specified work which forms part of any emergency works, but in that case it must as soon as is reasonably practicable in the circumstances—

- (a) give to CATS notice that it is carrying out works pursuant to this sub-paragraph; and
- (b) submit a plan of any specified works carried out as part of those emergency works for approval under this paragraph.

(13) 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.

Approval of revised or replacement plan

4.—(1) Nothing in paragraph 3 precludes the undertaker from submitting at any time or from time to time a revised or replacement plan, instead of any plan previously approved or deemed to have been approved for the purposes of that paragraph.

(2) Subject to sub-paragraph (3), the provisions of paragraph 3 will apply to and in respect of any revised or replacement plan so submitted.

(3) If the specified works to which the plan relates have already been commenced in accordance with a plan previously approved or deemed to be approved under paragraph 3—

- (a) the requirement in paragraph 3(1) for the plan to be submitted prior to the commencement of the works in question does not apply; and
- (b) the revised or replacement plan must instead be submitted as soon as reasonably possible.

Implementation of protective works

5.—(1) This paragraph applies where a condition is imposed for the purpose set out in paragraph 3(6)(c).

(2) The protective works which are the subject of that condition must be completed to CATS’ reasonable satisfaction prior to the commencement of the specified works to which they relate.

(3) Where protective works have been completed in accordance with sub-paragraph (2), the undertaker may request that CATS provide an intimation that they have been done to CATS’ satisfaction for the purposes of that sub-paragraph.

(4) Following a request under sub-paragraph (3), CATS must within 7 days of the date of receipt thereof give an intimation to the undertaker in writing that the protective works in question—

- (a) have been completed to CATS’ satisfaction; or
- (b) have not been completed to CATS’ satisfaction and the reasons for this.

(5) If CATS does not notify the undertaker of its decision within the period specified in sub-paragraph (4) then the protective works are deemed to have been completed to CATS’ satisfaction for the purposes of this paragraph.

(6) If CATS gives notice to the undertaker under sub-paragraph (4)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred to an arbitrator for determination in accordance with paragraph 14.

Compliance with the CATS requirements

6. In undertaking any specified works, the undertaker must comply with such conditions, requirements or regulations as are set out in the CATS requirements.

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7. Where formal consent is required under the CATS requirements for works within the wayleave of the CATS pipelines, an approval given or deemed to be given under paragraph 3 constitutes formal consent for the purposes of the CATS requirements.

Monitoring for ground subsidence

8.—(1) This paragraph applies where the plan approved or deemed to be approved under paragraph 3 includes a ground monitoring scheme.

(2) The undertaker shall implement and comply with that ground monitoring scheme.

(3) If a ground subsidence event occurs, the undertaker must as soon as reasonably practicable—

- (a) notify CATS; and
- (b) submit a ground mitigation scheme for CATS' approval.

(4) Following submission of a ground mitigation scheme under sub-paragraph (3), CATS must within 28 days of the date of receipt thereof notify the undertaker in writing—

- (a) that its approval has been granted in respect of all or any part of that scheme; or
- (b) that its approval has been refused in respect of all or any part of that scheme, and the full reasons for its disapproval.

(5) If CATS does not provide any response to the undertaker within the period specified in sub-paragraph (4) then the ground mitigation scheme submitted under sub-paragraph (3) is deemed to be approved on the day next following the last day of that period.

(6) If CATS provides a response under sub-paragraph (4)(b) in respect of part only of the ground mitigation scheme submitted under sub-paragraph (3) then the remainder of the submitted scheme is deemed to be approved on the day next following the date of the notification under sub-paragraph (4)(b).

(7) If CATS gives notice to the undertaker under sub-paragraph (4)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred to an arbitrator for determination in accordance with paragraph 14.

(8) The undertaker must proceed to implement any ground mitigation scheme—

- (a) approved by CATS under sub-paragraph (4)(a);
- (b) deemed to be approved under sub-paragraph (5) or (6); or
- (c) approved by an arbitrator following a reference under sub-paragraph (7).

Monitoring for damage to pipelines

9.—(1) When undertaking any specified works, the undertaker must monitor the CATS pipelines to establish whether damage has occurred.

(2) Where any damage occurs to the CATS pipelines as a result of the works, the undertaker must immediately cease all work in the vicinity of the damage and must notify CATS to enable repairs to be carried out in accordance with sub-paragraph (3).

(3) If damage has occurred to the CATS pipelines as a result of the works the undertaker will, at the request and election of CATS—

- (a) afford CATS all reasonable facilities to enable it to fully and properly repair and test the CATS pipelines and pay to CATS its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected pipeline as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the reasonable satisfaction of CATS to have effectively repaired the affected pipeline before any backfilling takes place.

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(4) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where CATS agrees otherwise in writing) provide CATS with a copy of the results of such testing prior to any backfilling.

(5) Where sub-paragraph (3)(b) applies, the undertaker may request that CATS provide an intimation that the repairs in question have been done to CATS' satisfaction for the purposes of that sub-paragraph.

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(6) Following a request under sub-paragraph (5), CATS must within 7 days of the date of receipt thereof give an intimation to the undertaker in writing that the repairs in question—

- (a) have been completed to CATS' satisfaction; or
- (b) have not been completed to CATS' satisfaction and the reasons for this.

(7) If CATS does not notify the undertaker of its decision within the period specified in sub-paragraph (6) then the repairs are deemed to have been completed to CATS' satisfaction for the purposes of this paragraph.

(8) If CATS gives notice to the undertaker under sub-paragraph (6)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred to an arbitrator for determination in accordance with paragraph 14.

(9) Following the completion of any specified works, if damage is found to have occurred to any of the CATS pipelines as a result of the relevant works, sub-paragraphs (2) to (8) of this paragraph apply to that damage.

(10) In the event that the undertaker does not carry out necessary remedial work in a timely manner then CATS is entitled, but not obliged, to undertake the necessary remedial work and (subject to CATS complying with the requirements of paragraph 12) to recover the reasonable cost of doing so from the undertaker.

(11) CATS is entitled to appoint an independent engineer to watch and inspect the execution of the specified works, and to provide safety advice in accordance with the CATS requirements.

10.—(1) If any damage occurs to a CATS pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and CATS must be notified immediately.

(2) Where there is a leakage or escape, the undertaker must immediately—

- (a) evacuate all personnel from the immediate vicinity of the leak;
- (b) inform CATS;
- (c) prevent any approach by the public;
- (d) shut down any machinery and other sources of ignition within at least 350 metres from the leakage; and
- (e) assist emergency services as may be requested,

save as may be required in order to stop, reduce or mitigate that leakage or escape.

Access

11.—(1) If the access to any of the CATS pipelines is materially obstructed as a result of the carrying out of the authorised development, the undertaker must provide such alternative means of access as will enable CATS to maintain or use the CATS pipelines no less effectively than was possible before such obstruction.

(2) Where the undertaker cannot grant to CATS alternative rights and means of access to the CATS pipelines by virtue of not being in possession of the requisite land rights, the undertaker shall use reasonable endeavours to assist CATS in securing the requisite rights and means of access.

Costs and expenses

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12.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to CATS the reasonable expenses incurred by them in, or in connection with, the inspection, removal, alteration or protection of any CATS pipeline which may be reasonably required in consequence of the execution of any specified works, including without limitation—

- (a) the grant of any acknowledgement, approval, agreement, consent, authorisation or intimation of satisfaction in accordance with paragraphs 3 to 10;
- (b) the engagement of an engineer for the purposes of paragraph 9(11);
- (c) any reasonable costs incurred by CATS in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary for the discharge of CATS' functions under this Schedule;
- (d) the carrying out of protective works, plus either the cost of maintaining and renewing any permanent protective works or, if the undertaker so elects, a capitalised sum to cover the cost of maintaining and renewing any permanent protective works; and
- (e) the survey, inspection and monitoring of any land, apparatus or infrastructure associated with the CATS pipelines or the installation or removal of any temporary works.

(2) Prior to incurring any fees, costs, charges or expenses associated with the activities outlined in sub-paragraph (1), CATS must give prior written notice to the undertaker of the activity or activities to be undertaken and an estimate of the fees, costs, charges or expenses to be incurred.

(3) Subject to sub-paragraphs (4) and (5), if by reason or in consequence of the construction of any of the specified works any damage is caused to the CATS pipelines, or there is any interruption in any service provided, or in the supply of any goods, by CATS, the undertaker must—

- (a) bear and pay within a reasonable time the cost reasonably incurred by CATS in making good such damage or restoring the supply; and
- (b) make reasonable compensation to CATS for any other expenses, loss, damages, penalty or costs incurred by CATS, by reason or in consequence of any such damage or interruption.

(4) Nothing in this paragraph imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of CATS, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by CATS.

(5) CATS must give the undertaker reasonable notice of any such fees, costs, charges, expenses, loss, claim, demand or penalty 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.

(6) CATS must use its reasonable endeavours to mitigate in whole or in part and to minimise any fees, costs, charges, expenses, loss, claim, demand or penalty to which this paragraph applies.

(7) If requested to do so by the undertaker, CATS must provide an explanation of how the fees, costs, charges, expenses, loss, claim, demand or penalty in question has been minimised or details to substantiate any sum claimed pursuant to this paragraph.

(8) The undertaker shall only be liable under this paragraph for sums reasonably incurred by CATS.

Insurance

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13.—(1) Prior to commencing construction of any part of the authorised development on the insured land, the undertaker must request CATS' approval in respect of the policy of acceptable insurance which the undertaker proposes to effect.

(2) Where the undertaker proposes to change the terms of a policy of acceptable insurance approved for the purposes of this paragraph then it must request CATS' approval of the proposed revisions to the acceptable insurance that the undertaker proposes prior to effecting such revisions.

(3) Where a request is submitted to CATS pursuant to sub-paragraph (1) or (2) then CATS must give notice as to the undertaker as to whether its approval of the proposed policy of acceptable insurance is granted or refused within the period of 7 days commencing on the day next following the date upon which the request was submitted.

(4) If CATS does not give notice under sub-paragraph (3) within that period then the proposed policy of acceptable insurance is deemed to be approved.

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(5) If CATS gives notice under sub-paragraph (3) that its approval is refused then—

- (a) that notice must also include—
 - (i) CATS full reasons for such refusal; and
 - (ii) any reasonable alterations to the proposed policy of acceptable insurance which CATS considers would overcome those reasons;
- (b) the question of whether the policy of acceptable insurance proposed by the undertaker should be approved for the purposes of this paragraph may be referred by the undertaker to an arbitrator for determination under paragraph 14.

(6) The undertaker (or any contractor carrying out works on behalf of the undertaker) must maintain the policy of acceptable insurance approved or deemed to be approved under this paragraph—

- (a) during the construction of any specified works on the insured land; and
- (b) after the completion of such construction, for the period of any use and maintenance of those works.

(7) In this paragraph

“acceptable insurance” means a policy of general third party liability insurance effected and maintained by the undertaker with a reputable insurer which includes—

- (a) a waiver of subrogation and an indemnity to principal clause in favour of CATS;
- (b) a combined property damage and bodily injury limit of indemnity of not less than one hundred million pounds sterling per occurrence or series of occurrences arising out of one event; and
- (c) cover in respect of pollution liability for third party property damage and third party bodily damage arising from any pollution or contamination event with a sub-limit of indemnity of not less than—
 - (i) ten million pounds sterling per occurrence or series of occurrences arising out of one event; and
 - (ii) twenty million pounds sterling in aggregate;

“insured land” means any land owned by CATS or the CATS owners or in respect of which CATS has an easement or wayleave for apparatus or infrastructure associated with the CATS system.

Arbitration

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14.—(1) Any difference or dispute arising between the undertaker and CATS under this Schedule must, unless otherwise agreed in writing between the undertaker and CATS, be referred to and settled by arbitration in accordance with this paragraph.

(2) Article 46 (arbitration) applies to such arbitration subject to the following provisions.

(3) Subject to sub-paragraph (5), the fees of the arbitrator are payable by the parties in such proportions as the arbitrator may determine or, in the absence of such determination, equally.

(4) The arbitrator must—

- (a) invite the parties to make a submission in writing and copied to the other party to be received by the arbitrator within 14 days of the arbitrator’s appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submissions under paragraph (a);
- (c) issue a decision within 21 days of receipt of—

- (i) the submissions under sub-paragraph (b); or
 - (ii) if no submissions are submitted under that paragraph, the submissions under paragraph (a); and
 - (d) give reasons for the arbitrator's decision.
- (5) If the arbitrator does not issue the decision within the time required by sub-paragraph (4)(c) then—
- (a) the arbitrator is not entitled to any payment in respect of their fees; and
 - (b) the matter in question shall immediately be referred to a new arbitrator in which case—
 - (i) the parties shall immediately upon the new arbitrator's appointment provide the new arbitrator with copies of the written submissions and comments previously provided under sub-paragraphs (4)(a) and (4)(b);
 - (ii) no further submissions or comments may be requested by or provided to the new arbitrator in addition to those provided pursuant to sub-paragraph (i); and
 - (iii) the new arbitrator shall then proceed to comply with sub-paragraphs (4)(c) and (4)(d).

SUBMISSIONS:

1. Issue 1 – various definitions (paragraph 2(1))

- 1.1. The definitions that are contained in Schedule 33 to the draft DCO differ from those contained in CATS' preferred protective provisions [REP5-072].
- 1.2. **acceptable insurance:** this definition has been omitted from paragraph 2 because of the insertion of a new paragraph specifically dealing with the insurance obligations (see Issue 9 below).
- 1.3. **authorised works:** this definition has been omitted. This is because it cross-refers back to the definition of the "authorised development" in the main body of the Order and is accordingly duplicative. All of the matters included within CATS' proposed definition of "authorised works" are already 'caught by' and included within the scope of the "authorised development" as defined in the Order.
- 1.4. **Bank:** this definition has been omitted because it is not used in either the Applicant's or CATS' preferred protective provisions following previous amendments made as a result of the bilateral engagement between the parties during the examination.
- 1.5. **CATS Owners:** the definition of CATS Owners from CATS' preferred protective provisions has been inserted subject to a minor reformat to comply with SI validation requirements. However, see also Issue 8 below in relation to the scope of the protective provisions.
- 1.6. **ground mitigation scheme:** following further useful technical and commercial engagement between the Applicant and CATS, the inclusion of ground monitoring arrangements has been agreed by the Applicant. A new paragraph has been inserted in order to deal with this (see Issue 2 below), including the incorporation of provisions as to the grant of CATS' consent in respect of any such schemes.

2. Issue 2 – ground monitoring (paragraphs 3 and 8)

- 2.1. Following further useful technical and commercial engagement between the Applicant and CATS, the inclusion of ground monitoring arrangements has been agreed by the Applicant. This has been achieved through the insertion of a new paragraph 8 and consequential amendments to paragraph 3.
- 2.2. The substance of the Applicant's preferred protective provisions (including the scope of the relevant defined terms for ground monitoring scheme, ground mitigation scheme and ground subsidence event) mirrors those contained in CATS' preferred protective provisions [REP5-072], save for the following points:

- 2.2.1. CATS' preferred protective provisions included a requirement for the undertaker to provide a ground monitoring scheme for approval if requested by CATS under paragraph 3(1). This is uncertain and no mechanism was proposed as to how such a request is to be made or when.
- 2.2.2. The Applicant's preferred protective provisions have adopted a different approach by including the draft ground monitoring scheme in paragraph 3(2)(f). This means that it is treated consistently with all of the other works details which are required to be submitted for CATS' approval prior to the specified works being undertaken.
- 2.2.3. CATS' position is still protected because consent is required for the scheme. If no scheme is submitted, but CATS considers that one is warranted in a particular case, then CATS also has the ability to refuse consent for the specified works on this basis. This will then require the undertaker either to resubmit the plan under paragraph 3(1) with an additional ground monitoring scheme included or, if there is a difference of professional judgment between CATS' and the undertaker's technical advisors as to whether this is reasonably necessary then the matter can be referred to an independent arbiter for a final decision under paragraph 14.
- 2.2.4. Paragraph 8 also incorporates a process whereby, if a ground subsidence event occurs, the undertaker must (a) submit a ground mitigation scheme to CATS for approval as soon as reasonably practicable and (b) implement the approved mitigation scheme. This corrects an omission from CATS' preferred protective provisions, and the Applicant considers that it gives effect to the underlying practical intention i.e. that mitigation measures should be both approved and then carried out.
- 3. Issue 3 – parties to act reasonably (paragraph 2(2))**
- 3.1. CATS' preferred protective provisions [REP5-072] contained a number of instances whereby CATS is required not to unreasonably with-hold or delay giving sundry consents.
- 3.2. Due to the number of instances where this requirement appears the Applicant's preferred protective provisions have incorporated a general duty in paragraph 2(2) to the same effect. This provides clarity, removes duplication and is also expressed in reciprocal terms i.e. both the undertaker and CATS must act reasonably.
- 4. Issue 4 – duty to have regard (paragraph 2(3))**
- 4.1. CATS' preferred protective provisions [REP5-072] do not contain any requirement for CATS to act with regard to the interests of safety, or to have regard to the wider public interest in the Proposed Development coming forward.
- 4.2. Whilst the Applicant acknowledges and agrees that appropriate protective provisions should be incorporated within the Order in respect of CATS' apparatus, it is also vital that these do not operate in practice in such a manner as would delay or frustrate the realisation of the significant public benefits of the Proposed Development.
- 4.3. With the controls in place in the Applicant's preferred form of protective provisions in respect of controlling the impacts of works across CATS' apparatus, the impacts to CATS' assets are able to be controlled. The Applicant's preferred form of protective provisions strikes an appropriate balance in this regard.
- 4.4. It should be noted that paragraph 2(3) does not mandate that CATS (or an arbitrator) reach any particular substantive decision when consent is required under the Schedule. It simply requires that the wider public interest issues are taken into account when decisions are made.
- 5. Issue 5 – mechanism for grant of consent**
- 5.1. In the interest of reducing the outstanding points of difference between the Applicant's and CATS' preferred protective provisions, the Applicant has conceded the prior notification

period of 56 days in paragraph 3(1) sought by CATS in its preferred protective provisions [REP5-072].

- 5.2. This is notwithstanding the fact that it is significantly longer than is typical (28, 30 or 45 days is more usual) and that it represents a departure from the equivalent provisions in favour of CATS set out in the NZT DCO.
- 5.3. However, by extending the timeframe for CATS to review and approve matters, this has potential programme implications – especially if consent is refused and the matter has to be referred to an independent arbiter for determination (see Issue 10 below). This would have the effect of delaying the programme for construction of the Proposed Development, increase costs and delay the achievement of the significant public benefits of the project.
- 5.4. In these circumstances, in order to mitigate this risk, the Applicant's preferred protective provisions incorporate the following provisions where CATS' consent, approval or other input is required:
 - 5.4.1. a clearly defined target decision period: the exact number of days proposed in each has been selected with due regard to the matter in question e.g. for detailed works packages under paragraph 3 then 56 days are allotted, whereas in paragraph 6 a shorter period of 7 days is included because (a) the repairs only require inspection after completion and (b) CATS has a general right to have an independent engineer observe the construction phase, which will enable any snagging issues or concerns to be addressed whilst works are in progress.
 - 5.4.2. provision for deemed consent to be granted: this only applies if CATS does not reply to the undertaker's request at all i.e. if CATS does not engage then the deemed consent provision will ensure that unnecessary delay to the Proposed Development does not arise as a result.
 - 5.4.3. the ability for CATS to refuse consent or impose conditions: in both cases, CATS must tell the undertaker of the reasons why it has determined the request in that way. This provides certainty and clarity for the undertaker, and should there be a dispute then it will also facilitate effective and prompt resolution by an independent arbiter under paragraph 14.
 - 5.4.4. where works have already commenced, a modified procedure in paragraph 4 to enable a revised or replacement plan to be submitted for approval. It is clearly not possible for such a plan to be submitted prior to commencement of construction in those circumstances because the specified works would already have started. This flexibility is important because once works commence the undertaker may encounter unforeseen issues which necessitates revisions to the detailed design, whether on the grounds of safety, efficiency or otherwise, but CATS' consent is still required in respect of those amended arrangements.
- 5.5. It should be noted that the Applicant's preferred protective provisions do not in any way require CATS to grant consent: CATS remains at liberty to refuse consent should it have any substantive concerns, as long as it acts reasonably.
- 5.6. This is also part of the reason why the general restriction on the use of the DCO powers set out in paragraph 8 of CATS' preferred protective provisions [REP5-072] has not been included. The Applicant strongly refutes the inclusion of such a general restriction. This would impose unreasonable restrictions on the Applicant as it would jeopardise the delivery of the authorised development, including in terms of programme, constructability and funding drawdown. These powers are required to ensure the authorised development can be constructed, operated and maintained and also to ensure that the authorised development's nationally significant public benefits can be realised, including supporting the Government's

policies in relation to the timely delivery of new generating capacity and achieving ambitious net zero targets.

- 5.7. With the controls in place in the Applicant's preferred form of protective provisions in respect of controlling the impacts of works across CATS' land and apparatus, the impacts to CATS' assets are able to be controlled.
 - 5.8. This includes the provisions in the Applicant's proposed paragraph 3 which provides that details of the undertaker's proposals must be submitted to CATS for review and approval, and the undertaker must then implement the approved details. Similarly, the undertaker must monitor the CATS pipelines for any damage or subsidence, and take appropriate steps to make good and mitigate any issues that arise. This is supplemented by the requirement for the undertaker to compensate CATS for any losses arising as a result of such damage or interference (see Issue 8 below).
 - 5.9. With these measures in place, the Applicant ensures that there is no realistic prospect that the exercise of the DCO powers would have a detrimental impact on the ability of CATS to continue to operate the CATS system, or for CATS' apparatus to be protected.
 - 5.10. The Applicant's preferred form of protective provisions strikes an appropriate balance and accords with the position adopted by the Secretary of State in the recent NZT DCO for the protection of CATS (see Part 6 of Schedule 12 to the NZT DCO).
 - 5.11. Whilst CATS' preferred protective provisions seek to depart from that recently approved position, no technical rationale or justification for such departure has been forthcoming, and CATS has confirmed in bilateral discussions with the Applicant's technical team that there is none. CATS' only rationale is, effectively, that it wants something different. It does not arise from and has no basis in any substantive hazard, risk or concern posed by the current Proposed Development compared to the NZT project which, as far as the CATS system is concerned, is functionally the same.
 - 5.12. CATS' preferred protective provisions are accordingly unsupported by any technical analysis or rationale, depart from the clearly expressed position of the Secretary of State in the NZT DCO and would pose a disproportionate interference with the ability to bring forward the significant public benefits of the Proposed Development. The Applicant's preferred form of protective provisions should therefore be adopted.
- 6. Issue 6 – emergency works (paragraph 3(11) and (12))**
- 6.1. The Applicant's preferred protective provisions with respect to emergency works are in substance the same as those sought by CATS in its preferred protective provisions [REP5-072].
 - 6.2. However, the Applicant has proposed a minor amendment to clarify that this is relevant only where the emergency works incorporate "specified works" (as defined). If so, the requirement for CATS' consent in respect of those specified works will still apply in the usual way, once the emergency situation has been abated.
 - 6.3. The Applicant has also incorporated a specific obligation for the undertaker to give notice where it is relying on this emergency works carve-out to ensure transparency.
- 7. Issue 7 – protective works (paragraph 5)**
- 7.1. The Applicant's preferred protective provisions with respect to protective works are in substance the same as those sought by CATS in its preferred protective provisions [REP5-072], subject to the following points.
 - 7.2. Where the Applicant has itself proactively incorporated protective works within its proposed works package submitted for CATS' approval under paragraph 3(1), these form part of the consent and the Applicant is accordingly automatically required to implement them in accordance with the approval (including any approved programme).

- 7.3. However, it is possible for CATS to grant approval subject to a condition requiring that further protective works are implemented (see paragraph 3(6)). In those circumstances, an additional obligation is required in order to ensure that those additional protective works are completed prior to the specified works to which they relate being commenced. This is secured by the Applicant's proposed paragraph 5(2).
- 7.4. In addition, as the additional protective works did not form part of the Applicant's original request for approval, the Applicant's preferred protective provisions include a mechanism to enable the undertaker to obtain confirmation that they have been implemented satisfactorily (see paragraph 5(3) et ff., and also Issue 5 above in terms of a summary of how this process works).

8. Issue 8 – reimbursement of reasonable costs and expenses (paragraph 12)

- 8.1. The Applicant's preferred drafting in paragraph 12 of Schedule 33 to the dDCO provides sufficient protection to CATS as it covers the scope of the damage, service interruption or other interference that CATS is most likely to suffer as a result of the specified works (as defined).
- 8.2. The Applicant should not be responsible for paying for any unreasonable costs incurred by CATS, hence the inclusion of a 'reasonableness' standard in paragraphs 12(1) and (3). This is also consistent with paragraph 12(8) of the protective provisions. The inclusion of this 'reasonableness' standard is precedented in various bespoke protective provisions, including those which apply expressly and specifically for the benefit of CATS (see, for example paragraphs 56 (Air Products PLC), 68 (CATS North Sea Limited), 86 (CF Fertilisers UK Limited), 94 (Exolum Seal Sands LTD and Exolum Riverside LTD), 102 (Ineos Nitriles (UK) Limited), 141 (National Powergrid (Northeast) PLC), 157 (NPL Waste Management Limited), 208 (Sabic Petrochemicals UK Limited), 224 (Sembcorp Protection Corridor), 255 (Suez Recycling and Recovery UK Limited), 268 (South Tees Development Corporation), 295 (The Breagh Pipeline Owners), 304 (Teesside Windfarm Limited), 327 (Huntsman Polyurethanes (UK) Limited), 348 (Northumbrian Water Limited), 361 (Northern Gas Networks Limited), 371 (NT Group) and 400 (TGLP, TGPP and NGPL) of Parts 5-9, 12-13, 16-17, 19-23 and 25-28 respectively of Schedule 12 to the NZT DCO).
- 8.3. The scope of compensation included in paragraph 12(3)(b) is broad enough to cover the types of expenses, losses etc. CATS is likely to suffer as a result of the damage, service interruption or interference contemplated by paragraph 12(3)(a). This is consistent with the protective provisions for the benefit of CATS in the NZT DCO (see paragraph 68 in Part 6 of Schedule 12) as well as the examples listed in the preceding paragraph of these submissions.
- 8.4. Conversely, the scope of compensation sought by CATS goes far beyond this and is unreasonable. The Applicant should not be liable for consequential loss, indirect loss or loss of profits as these losses are far too remote from, and lack a causal link to, the damage or interruption to service or supply of goods contemplated by paragraph 12. As such, the exclusion in paragraph 12(4)(b) is appropriate. Paragraph 12(4)(b) is precedented in the protective provisions in the NZT DCO (see paragraphs 338(2)(b) (Navigator Terminals), 109(2)(b) (Marlow Foods Limited), 125(3) (Railway Interests), 255(2)(b) (Suez Recycling and Recovery UK Limited), 295(2)(b) (The Breagh Pipeline Owners) and 361(4)(b) (Northern Gas Networks Limited) in Schedule 12 to the NZT DCO).
- 8.5. The Applicant should not be liable for any act, neglect or default of CATS and therefore the inclusion of paragraph 12(4)(a) is appropriate.
- 8.6. Paragraphs 12(2) and (5) balance the need between the Applicant approving claims or demands it is going to pay for, and any burden imposed on CATS for seeking such approvals from the Applicant. It is appropriate for CATS to seek give Applicant reasonable notice

before it incurs an expense, or settles or makes any compromise of any claim or demand, given the Applicant is the party that is ultimately going to pay for such claim or demand.

- 8.7. The Applicant also requires oversight of and a level of control over claims to be able to manage its liability. Paragraph 12(5) avoids any additional burden placed on CATS by having to continually seek the Applicant's consent before settling or making any compromise, as in the event the Applicant withholds its consent, the Applicant is from then on responsible for resolving the claim or demand. This also enables the Applicant to have the possibility of minimising its liability, whereas CATS would have no commercial incentive to do so because it would expect any claim to be paid by the undertaker. This is consistent with various bespoke protective provisions, including in favour of CATS (see for example paragraphs 26(4) (National Grid Electricity Transmission), 41(4) (National Gas Transmission PLC), 56(3) (Air Products PLC), 68(3) (CATS North Sea Limited), 86(3) (CF Fertilisers UK Limited), 94(3) (Exolum Seal Sands LTD and Exolum Riverside LTD), 102(3) (Ineos Nitriles (UK) Limited), 109(3) (Marlow Foods Limited), 141(3) (Northern Powergrid (Northeast) PLC), 157(3) (NPL Waste Management Limited), 170(3) (PD Teesport Limited), 208(4) (Sabic Petrochemicals UK Limited), 224(3) (Sembcorp Protection Corridor), 240(3) (Anglo American), 255(3) (Suez Recycling and Recovery UK Limited), 268(3) (South Tees Development Corporation), 295(3) (The Breagh Pipeline Owners), 304(3) (Teesside Windfarm Limited), 327(4) (Huntsman Polyurethanes (UK) Limited), 348(3) (Northumbrian Water Limited), 361(5) (Northern Gas Networks Limited) and 400(3) (TGLP, TGPP and NGPL) of Parts 3, 4-10, 12-14, 16-23, 25-26 and 28 respectively of Schedule 12 to the NZT DCO).
- 8.8. Paragraph 12(6) requires CATS to use reasonable endeavours to mitigate its loss, costs etc. This is not an onerous standard and simply involves CATS taking reasonable steps, where it is appropriate to do so, in order to reduce the scale of any losses. This is a standard approach in the industry and more widely in commercial arrangements. Paragraph 12(6) merely requires CATS to take common sense steps to mitigate both parties' financial exposure.
- 8.9. It is also clearly appropriate for CATS to take reasonable steps to mitigate or minimise part of its losses, even if the whole of the loss in question cannot be avoided completely, as proposed in the Applicant's preferred protective provisions.
- 8.10. The Applicant's preferred wording of paragraph 12(6) is also consistent with other statutory liabilities of this nature under various bespoke protective provisions, including specifically in favour of CATS (see for example paragraphs 14(4) (Operators of Electronic Communications Code Networks), 26(5) (National Grid Electricity Transmission), 41(5) (National Gas Transmission PLC), 56(4) (Air Products PLC), 86(5) (CF Fertilisers UK Limited), 94(4) (Exolum Seal Sands LTD and Exolum Riverside LTD), 102(4) (Ineos Nitriles (UK) Limited), 109(4) (Marlow Foods Limited), 141(4) (Northern Powergrid (Northeast) PLC), 157(4) (NPL Waste Management Limited), 170(5) (PD Teesport Limited), 185(4) (Redcar Bulk Terminal Limited), 208(7) (Sabic Petrochemicals UK Limited), 224(4) (Sembcorp Protection Corridor), 240(5) (Anglo American), 255(4) (Suez Recycling and Recovery UK Limited), 268(4) (South Tees Development Corporation), 295(4) (The Breagh Pipeline Owners), 304(5) (Teesside Windfarm Limited), 327(7) (Huntsman Polyurethanes (UK) Limited), 338(4) (Navigator Terminals Seal Sands Limited), 348(4) (Northumbrian Water Limited), 361(3) (Northern Gas Networks Limited), 371(4) (NT Group), 400(4) (TGLP, TGPP and NGPL) of Parts 2-10, 12-28, respectively of Schedule 12 to the NZT DCO).

- 8.11. Where CATS is under a duty to mitigate its loss, costs etc. per paragraph 12(6), it is also reasonable and proportionate for CATS to be required to show the Applicant how it has complied with this duty by minimising any claim, if requested by the Applicant, per the requirement in paragraph 12(7). This is consistent with various bespoke protective provisions, including those applicable specifically to CATS (see for example paragraphs 26(5) (National Grid Electricity Transmission), 41(5) (National Gas Transmission PLC), 56(4) (Air Products PLC), 68(4) (CATS North Sea Limited), 86(5) CF Fertilisers UK Limited, 94(4) (Exolum Seal Sands LTD and Exolum Riverside LTD), 102(4) (Ineos Nitriles (UK) Limited), 109(4) (Marlow Foods Limited), 141(4) (Northern Powergrid (Northeast) PLC), 157(4) (NPL Waste Management Limited), 170(5) (PD Teesport Limited), 208(7) (Sabic Petrochemicals UK Limited), 224(4) (Sembcorp Protection Corridor), 240(5) (Anglo American), 255(4) (Suez Recycling and Recovery UK Limited), 268(4) (South Tees Development Corporation), 295(4) (The Breagh Pipeline Owners), 304(5) (Teesside Windfarm Limited), 327(7) (Huntsman Polyurethanes (UK) Limited), 348(4) (Northumbrian Water Limited), 361(3) (Northern Gas Networks Limited) and 371(4) (NT Group) of Parts 3-10, 12-14, 16-23, 25-27 respectively of Schedule 12 to the NZT DCO).
- 8.12. The principal remaining point of difference between the Applicant's and CATS' preferred protective provisions relates to the involvement of the CATS Owners and CATS' attempted expansion of the compensation provisions to cover the entire CATS system. The Applicant submits that both of these proposed expansions are clearly inappropriate.
- 8.13. As far as the CATS system is concerned, the only parts which will have interactions with the Proposed Development are the CATS pipelines – the majority of the CATS system is located elsewhere, including offshore.
- 8.14. The Applicant's preferred protective provisions accordingly focus on ensuring that damage to this apparatus is prevented from the outset through the submission of works details for approval prior to the commencement of construction, as well as the provision of protective works which are reasonably necessary to mitigate any residual risks.
- 8.15. Nevertheless, if an unforeseen interruption to CATS' operations occurs or there is damage, the Applicant is then required:
- 8.15.1. to cease carrying out the specified works until the situation has been dealt with (paragraph 10);
 - 8.15.2. to repair the damage or reimburse CATS for the cost of repairing it (paragraphs 9 and 12(3)(a));
 - 8.15.3. to pay for the cost of an independent engineer to oversee those works and ensure safety (paragraphs 9(11) and 12(1)(b)); and
 - 8.15.4. to pay reasonable compensation for any other losses which arise in consequence of that damage or interruption (paragraph 12(3)(b)).
- 8.16. Taken together, this means that if damage does occur to the CATS pipelines (which, as set out above, are the only parts of the CATS system with which the Proposed Development will interact) then the undertaker is 'on the hook' to make good, and if there is a wider effect on the CATS system or the CATS Owners as a result then this would be compensated.
- 8.17. The Applicant's proposed approach also accords with the protective provisions in favour of CATS adopted by the Secretary of State in the NZT DCO (see paragraphs 68 and 69 of Part 6 of Schedule 12 to the NZT DCO). The Secretary of State was satisfied that the cost recovery and compensation provisions included therein were satisfactory and sufficiently protected CATS, the CATS pipelines, the wider CATS system and the interests of the CATS owners. CATS submissions in favour of something broader (which they now repeat in the present examination) were ultimately not accepted.

8.18. Since the interactions with CATS' apparatus (i.e. the CATS pipelines) are functionally the same between the two projects, there is no reason why a different approach is warranted now, and CATS has provided no reasoned explanation as to why the examining authority or the Secretary of State should depart from this settled position.

9. Issue 9 – insurance (paragraph 13)

- 9.1. The Applicant's preferred protective provisions with respect to insurance are in substance the same as those sought by CATS in its preferred protective provisions [REP5-072]. This includes the specifications as to the limits and scope of cover.
- 9.2. However, they have been set out in a standalone paragraph for clarity, together with the following two minor amendments:
 - 9.2.1. inclusion of the words "or any contractor carrying out such works on behalf of the undertaker" in paragraph 13(6). This minor amendment does not prejudice CATS' level of protection, but provides a degree of flexibility by confirming that the approved policy of insurance can be taken out by the relevant contractor rather than necessarily in the undertaker's own name. The practical effect in terms of the protection afforded to CATS is no different: the insurance will still be on the approved terms and will still be in place at the relevant times. The Applicant's preferred drafting accords with similar protective provisions in the NZT DCO on this point (see paragraph 206 in Part 16 of Schedule 12 to the NZT DCO).
 - 9.2.2. removal of the reference to an "acceptable credit provider". This was no longer included as a defined term in CATS preferred protective provisions [REP5-072], so reference has instead been inserted to the insurance being maintained with a "reputable insurer" (see paragraph 13(7)). CATS' consent is still required in respect of the insurance policy, and consideration of the soundness of the insurer and any underwriter would be relevant to whether CATS may reasonably with-hold such consent.

10. Issue 10 – dispute resolution mechanism (paragraph 14)

- 10.1. The parties are agreed that arbitration is an appropriate form of dispute resolution.
- 10.2. However, in order to address and mitigate the potential risk of programme delays should recourse to arbitration be required (see Issue 5 above), the Applicant's preferred form of protective provisions include in addition:
 - 10.2.1. a clear process and timeline for the arbitration to be completed (paragraph 14(4)); and
 - 10.2.2. provision setting out how the parties should proceed if the appointed arbiter fails to comply with that process (paragraph 14(5)). This is in order to avoid unnecessary delays to programme as a result of the dispute resolution process.
- 10.3. The mechanism in sub-paragraph (5)(b) entails, effectively, the referral of the dispute to a new arbitrator to whom copies of the existing documents will be provided so as to enable the new arbitrator to proceed straight to a decision. This avoids the need for the parties to incur the cost and inconvenience of re-litigating the entire arbitration process as a result of the arbitrator's failure to issue his decision timeously.
- 10.4. Sub-paragraph (5)(a) is justified because it will only be engaged if the arbitrator has failed to comply with his statutory duty to issue a decision timeously. There is no reason why CATS or the undertaker should be obliged to pay the arbitrator's fees in those circumstances i.e. where the arbitrator has quite simply failed to deliver the service required.