

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—

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

- (a) will or may be situated within 50 metres in any direction of the CATS system, or
- (b) 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;
- (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.

(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.

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.

(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.

(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

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

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.

(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

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).