

**SCHEDULE 11
DELAY AND FORCE MAJEURE**

**Part 1
Delay Events**

1. Subject to paragraph 2 below, each of the following shall be a Delay Event:
 - 1.1 the occurrence of an event of Force Majeure;
 - 1.2 a Department's Change (including a Department's Change in accordance with Clause 17.4 (Fossils and Antiquities) and any Department's Change issued in respect of a Deemed Department's Change);
 - 1.3 an event within Clause 25.5.3 (Step-In Rights);
 - 1.4 delay in works carried out by a Relevant Authority provided such delay does not arise out of a late instruction or order given by or other act or omission of the DBFO Co;
 - 1.5 failure by the Secretary of State to issue the Commencement Certificate on or before the date determined in accordance with Clause 7.3.1;
 - 1.6 material breach by the Secretary of State of the provisions of Clause 8.1 (Access for DBFO Co);
 - 1.7 any act of God (including exceptional adverse weather conditions and earth tremors) in excess of the conditions required to be designed against in accordance with the Construction Requirements;
 - 1.8 a Relevant Change in Law;
 - 1.9 the activities of Protestors on the Site or Adjacent Areas, provided that the DBFO Co has complied and is complying with its obligations under Clause 9 (including the exercise of rights by the DBFO Co in the name of the Secretary of State);
 - 1.10 loss or damage to the Works as a result of fire, lightning, explosion or aircraft or other aerial devices or articles dropped from them or accidental loss or damage to any completed Works caused by third parties, provided that there shall be excluded from any of the foregoing any loss or damage caused by the DBFO Co, the DBFO Co's Representative, the Designer, the Contractor or any other person for whom the DBFO Co is responsible; and
 - 1.11 breach by the Secretary of State of any of his obligations under this Agreement, provided that where such an obligation is expressed as an obligation to take an action "as soon as practicable" or "as soon as possible" but in any event within a specified time period, then only a failure by the Secretary of State to take that action within the relevant specified time period shall be treated as a breach for the purpose of this Delay Event.

2. In order to constitute a Delay Event, an event referred to in paragraph 1 above must cause a material delay to or materially impede completion of the Works in time for the Date for Completion.

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**Part 2
Force Majeure**

1. **"Force Majeure"** means:

- 1.1 Eligible Force Majeure;
- 1.2 pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- 1.3 any unforeseeable accidental event causing catastrophic physical damage to the Project Facilities which was uninsurable at reasonable commercial rates at the date of the event, which event is not caused or contributed to by an act, omission or default of the DBFO Co, its servants, agents or contractors; or
- 1.4 any act of terrorism causing physical damage to the Project Facilities,

but in any such case excluding any act by or damage by or caused by any Protestor or Trespasser or by the presence on or around or entry onto or around the Site or Adjacent Areas of, or any other interference with or affecting the Site or Adjacent Areas or the vicinity of them or the Operations by or caused by, any Protestor or Trespasser.

2. **"Eligible Force Majeure"** means:

- 2.1 war, hostilities (whether declared or undeclared), invasion, armed conflict or act of foreign enemy (but for the avoidance of doubt not including terrorism) in each case within and involving either or both of England and Wales;
- 2.2 rebellion, revolution, civil war, riot or insurrection (but for the avoidance of doubt not including terrorism) which causes physical damage and long term disruption to the Project Facilities, in each case within either or both of England and Wales; or
- 2.3 nuclear explosion, combustion of nuclear fuel, radioactive or chemical contamination or ionising radiation unless the source or cause of the contamination or radiation is brought to or near the Site or the Project Facilities by the DBFO Co, the DBFO Co's Representative, the Designer, the Checker, the Testing Contractor, the Contractor, the Operator, the Archaeologist the Landscape Architect, the Landscape Manager, the Ecologist or any other person for whom the DBFO Co is responsible,

but in any such case excluding any act by or damage by or caused by any Protestor or Trespasser or by the presence on or around or entry onto or around the Site or Adjacent Areas of, or any other interference with or affecting the Site or Adjacent Areas or the vicinity of them or the Operations by or caused by, any Protestor or Trespasser.