

**SCHEDULE 22**  
**SECURITY OF THE SITE**

**Part 1**  
**Security Measures**

**1. MEASURES TO DEAL WITH PROTESTORS AND TRESPASSERS**

- 1.1 Without prejudice to the DBFO Co's obligations under Clause 10.7 (Site Safety and Security), the DBFO Co shall at its own expense promptly take all necessary lawful measures to remove from, and prevent entry on to, the Site and the Adjacent Areas any Protestors and Trespassers at times when, and at locations where, access thereto is needed by the DBFO Co, and further to prevent any material interference of any kind with the Operations by such persons, provided that the DBFO Co shall not be in breach of this paragraph 1.1 if, in spite of complying with its obligation to remove Protestors and Trespassers, such persons nonetheless enter on to or re-enter the Site and/or Adjacent Areas or cause material interference of any kind with the Operations.
- 1.2 The measures referred to in paragraph 1.1 shall include taking legal proceedings and enforcing Court orders, including, where authorised by the Secretary of State in accordance with this paragraph 1, legal proceedings in the name of and on behalf of the Secretary of State for the enforcement of all such rights as are vested in, or enjoyed by, him in or over the Site and Adjacent Areas, including but not limited to all rights of ownership, leasehold tenure, possession and occupation and all easements. Any reference in this Part 1 of Schedule 22 to legal proceedings includes counterclaims, third party claims and contribution claims.
- 1.3 If it appears to the DBFO Co that the legal rights which are necessary to enable the DBFO Co to take the measures referred to in paragraph 1.1 are not vested in or available to the DBFO Co but are vested in the Secretary of State, the DBFO Co may from time to time give notice to that effect to the Department's Nominee, specifying the relevant legal rights and requesting authority for the DBFO Co to commence and conduct legal proceedings (including discontinuing or compromising the same) in the name of and on behalf of the Secretary of State for the enforcement of, or authority otherwise to enforce on behalf of the Secretary of State, any such legal rights as are vested in, or enjoyed by, him in or over the Site and Adjacent Areas, including but not limited to all rights of ownership, leasehold tenure, possession and occupation and all easements. Any notice given by the DBFO Co in accordance with this paragraph 1.3 shall clearly specify the relevant circumstances, including any circumstances which under administrative law principles are or might be material to the decision to institute proceedings or enforce such rights, the measures which the DBFO Co proposes to take if such authority is granted, the nature of any legal proceedings and (if identified by the DBFO Co) the defendants to any proposed legal proceedings, and the reasons why the DBFO Co considers it would be unable to take such measures unless the Secretary of State grants the authority requested.
- 1.4 If it appears to the DBFO Co that the legal rights which are necessary to enable the DBFO Co to take the measures referred to in paragraph 1.1 are not vested in or available to either the DBFO Co or the Secretary of State, but are vested in some other relevant highway authority, the DBFO Co may from time to time give notice to that effect to the Department's Nominee, specifying the relevant legal rights and requesting the Secretary of State to use reasonable endeavours to procure such assistance and co-operation of the relevant highway authority as is necessary for the effective pursuit by the DBFO Co of such measures as are specified in paragraph 1.1.

- 1.5 The Department's Nominee may within 5 Working Days of receiving notice of a request under paragraph 1.3 or paragraph 1.4 request from the DBFO Co such further information as the Secretary of State may reasonably require, and the DBFO Co shall promptly provide such information.
- 1.6 Forthwith upon receipt of a notice given in accordance with paragraph 1.3 or paragraph 1.4, the Department's Nominee and the DBFO Co shall consult with each other with regard to the measures which the DBFO Co proposes to take (or the measures which the DBFO Co considers should be taken, where notice is given in accordance with paragraph 1.4). As soon as reasonably practicable having regard to the urgency and circumstances of the case, and in any event within 5 Working Days after receipt of a request given in accordance with paragraph 1.3 or paragraph 1.4 (or, if later, within 5 Working Days of receiving all further information requested under paragraph 1.5):
- 1.6.1 in the case of a request given in accordance with paragraph 1.3, the Secretary of State shall give notice to the DBFO Co either granting the authority so requested in whole or in part (which grant may be subject to such reasonable conditions as are not inconsistent with the provisions of this Part 1 of Schedule 22) or refusing to grant such authority (and stating the reasons for such refusal); or
- 1.6.2 in the case of a request given in accordance with paragraph 1.4, the Secretary of State shall commence using his reasonable endeavours as so requested (but without any obligation on him as to the outcome).
- 1.7 The Secretary of State shall consider on its merits in accordance with his relevant statutory duties any request for authority contained in a notice given in accordance with paragraph 1.3. Without in any way limiting the discretion of the Secretary of State in responding to any such request, the Secretary of State shall, in reaching any such decision, give consideration, inter alia, to the matters set out in paragraph 1.8. The decision of the Secretary of State on the merits of the request shall not be subject to review under the Disputes Resolution Procedure.
- 1.8 The considerations referred to in paragraph 1.7 are the following:
- 1.8.1 whether the legal rights in question are vested in the Secretary of State;
- 1.8.2 the measures which the DBFO Co intends to take if authority is granted, and the rights of persons affected;
- 1.8.3 the desirability of maintaining public order and minimising the risk of personal injury;
- 1.8.4 whether there is any alternative course available to the DBFO Co which it would be reasonable for it to pursue and which would not require authority from the Secretary of State;
- 1.8.5 the desirability of enabling the DBFO Co to carry out the Works in an orderly and uninterrupted manner in accordance with this Agreement and of the timely issue of the Permit to Use; and
- 1.8.6 any circumstances relevant in terms of administrative law principles to the decision whether to grant the authority.

- 1.9 Where authority is granted by the Secretary of State in accordance with paragraph 1.6.1, the DBFO Co may in the name of and for and on behalf of the Secretary of State take the measures which have been authorised, subject always to paragraph 1.11 and to the following provisions:
- 1.9.1 the DBFO Co shall in doing anything in the name of or on behalf of the Secretary of State act in accordance with the terms of the relevant authority and in accordance with all relevant legal and procedural requirements to which the Secretary of State is subject (including requirements imposed by administrative law) and all in a manner so as not to cause the Secretary of State to be in breach of any such requirement or any duty upon him;
  - 1.9.2 the DBFO Co shall indemnify and keep indemnified the Secretary of State in respect of any Claims or Losses suffered by the Secretary of State which may arise out of or in the course of or in connection with the taking of any measures authorised by the Secretary of State pursuant to this paragraph 1, including without limitation the taking of any legal proceedings, enforcement of any Court order or enforcement of legal rights without a Court order or the doing of anything whatsoever taken, enforced or done or purported to be taken, enforced or done in the name of or on behalf of the Secretary of State;
  - 1.9.3 the DBFO Co shall keep the Department's Nominee fully informed of the progress of all measures being planned or taken by the DBFO Co pursuant to this paragraph 1, and shall promptly provide the Department's Nominee with all information (including copies of any documents or evidence of any kind) reasonably requested by it concerning such measures and proposed measures;
  - 1.9.4 the DBFO Co shall give at least 3 Working Days' notice to the Department's Nominee (or in the case of urgency, such shorter period as is reasonably practicable) of any action which has been planned in advance to remove Protestors or Trespassers from the Site or Adjacent Areas or otherwise to deal with Protestor and Trespasser action; and
  - 1.9.5 the DBFO Co shall liaise fully with the police in accordance with the Liaison Procedures in taking action against Protestors and Trespassers and, whenever there is reasonable cause to anticipate disorder or violence, the DBFO Co shall inform the police, giving (so far as practicable) sufficient notice to enable the police to attend the anticipated incident in such numbers as they deem appropriate.
- 1.10 The Liaison Procedures developed in accordance with Parts 1 and 2 of Schedule 16 shall provide for regular meetings, exchange of information, co-ordination and co-operation between the DBFO Co, the Department's Nominee, the police, affected Interested Parties and others as appropriate in connection with activities of and measures being taken to deal with Protestors and Trespassers, and for the DBFO Co to take into account any comments of the Department's Nominee concerning Protestors and Trespassers.
- 1.11 Subject to paragraph 4, the Secretary of State shall be entitled at any time in his absolute discretion to revoke (in whole or in part including without limitation as to any specific proceedings) any authority granted pursuant to this paragraph 1 by giving notice to that effect (which may be given by the Department's Nominee) to the DBFO Co and thereupon in respect of the relevant measures:

- 1.11.1 the authority of the DBFO Co to continue taking the measures in the name of or on behalf of the Secretary of State shall cease;
- 1.11.2 the Secretary of State shall take over the conduct of any relevant legal proceedings or other matter being conducted in his name or on his behalf and shall be entitled to conduct, compromise or discontinue the same as he sees fit in his absolute discretion;
- 1.11.3 the DBFO Co shall promptly take all steps necessary to transfer the conduct of such matter to the Secretary of State and shall give to the Department's Nominee all documents in the DBFO Co's possession relating to any such legal proceedings or the enforcement of any rights or Court order and shall provide such further assistance as the Department's Nominee may reasonably require to effect an orderly transfer of the conduct of such matters to the Secretary of State; and
- 1.11.4 the DBFO Co shall be released from its indemnity under paragraph 1.9.2 save to the extent of any accrued or contingent liability thereunder which has arisen before the date of the revocation of authority and to the extent of any liability which arises as a result of:
  - 1.11.4.1 a breach by the DBFO Co of its obligations under this paragraph 1 before or after the date of revocation of authority; or
  - 1.11.4.2 the manner in which the DBFO Co has exercised the authority granted (whether or not in breach of such obligations) where such liability ought reasonably to have been avoided by the DBFO Co.
- 1.12 A decision by the Secretary of State to revoke any authority pursuant to paragraph 1.11 shall not be subject to review under the Disputes Resolution Procedure.
- 1.13 The grant of any authority by the Secretary of State in accordance with this paragraph 1 shall not preclude the Secretary of State from taking any action whether by way of proceedings or otherwise in connection with Protestors or Trespassers or any other matter.
- 1.14 As between the Secretary of State and the DBFO Co, the DBFO Co shall not by the grant of any authority in accordance with this paragraph 1 acquire any greater rights than the rights of access to the Site or Adjacent Areas given by Clauses 6 (Pre-Commencement Period) and 8 (Land), and the qualifications, exceptions and limitations to such rights provided in those Clauses shall continue to apply.

## 2. JUDICIAL REVIEW AND COLLATERAL CHALLENGE

- 2.1 In this paragraph 2:
  - 2.1.1 "**Judicial Review**" shall have the meaning given to it in Clause 1.1 and shall not include Collateral Challenge;
  - 2.1.2 "**Collateral Challenge**" means any issues or matters raised by way of defence to proceedings brought by the DBFO Co on behalf of the Secretary of State against Protesters or Trespassers which concern the legality of any acts, orders or omissions by or on behalf of the Secretary of State.

- 2.2 Where any application for Judicial Review is made against the Secretary of State or any other person in connection with or arising out of the Operations or the Orders, the Secretary of State shall be entitled to defend, compromise or take any other steps in relation to such application as he shall think fit notwithstanding that proceedings taken or contemplated against Protesters or Trespassers on his behalf by the DBFO Co may be delayed or otherwise affected. Further, for the avoidance of doubt, such matters shall not be deemed to be a revocation of any authority previously granted pursuant to paragraph 1.3, and the provisions of paragraph 4 shall not apply thereto.
- 2.3 In the event that a Judicial Review application is made arising out of or in connection with any grant of authority by the Secretary of State pursuant to paragraph 1 or any act or omission of the DBFO Co in relation to Protestors or Trespassers in connection with the Project, the DBFO Co shall:
- 2.3.1 at the request of the Secretary of State, provide to the Secretary of State all such evidence and information as is available to the DBFO Co; and
- 2.3.2 co-operate in the provision of witnesses and the drafting and swearing of any affidavit evidence,
- which, in either such case, is necessary for the effective defence of the Judicial Review proceedings.
- 2.4 In the event that a Collateral Challenge is made, the DBFO Co shall forthwith inform the Secretary of State and supply the Secretary of State with copies of the documents in which it is raised. The Secretary of State and the DBFO Co shall thereupon take all such steps by way of co-operation, liaison and exchange of information as are reasonably necessary in order to deal effectively with the Collateral Challenge. The DBFO Co shall take into account and give due weight to all advice and representations made concerning the Collateral Challenge by or on behalf of the Secretary of State and shall keep the Secretary of State well informed of the progress and resolution of the Collateral Challenge.
- 2.5 Without limitation to the generality of paragraph 1.9.2, in the event that an application for Judicial Review or a Collateral Challenge is made arising out of or in connection with any grant of authority by the Secretary of State pursuant to paragraph 1 or any act or omission of the DBFO Co in relation to Protestors or Trespassers in connection with the Project, the DBFO Co shall indemnify and keep indemnified the Secretary of State against all costs, liabilities and expenses (including liabilities under any orders against the Secretary of State for costs, damages or interest) incurred by the Secretary of State in defending such application or taking such reasonable steps as may be necessary in connection with such application if the application is made or proceeds or is determined on grounds which result from a challenge to the legality of any proceedings brought by the DBFO Co in the name of or on behalf of the Secretary of State against Protestors or Trespassers.

### **3. PROOF OF TITLE AND OTHER ASSISTANCE**

- 3.1 The Secretary of State shall provide to the DBFO Co such proof of his title to or legal rights to ownership, leasehold tenure, occupation, or possession of, or to easements over, those parts of the Site and Adjacent Areas to or over which he has title or a right to possession or easements (excluding any parts of them which constitute highway) as the DBFO Co may reasonably request for the purpose of any legal proceedings authorised by the Secretary of State under paragraph 1, and shall provide the same in a form appropriate for use in such proceedings as reasonably requested by the DBFO Co.

- 3.2 Subject to paragraphs 1 and 2, the DBFO Co may request the Secretary of State to provide such evidence and information as is available to the Secretary of State and as is necessary for the effective pursuit of legal proceedings authorised by the Secretary of State under paragraph 1. The Secretary of State shall not be under any obligation to comply with such a request if he considers there are proper reasons for not doing so, having regard to all the circumstances (including without limitation that to comply with the request may infringe any person's legal rights). In the event that the Secretary of State considers that the legal rights of any person may be infringed by the disclosure of such evidence and information, he shall use his reasonable endeavours to secure the permission of the relevant person to the release of such information and evidence.
- 3.3 Without limitation to the generality of paragraph 1.9.2, the DBFO Co shall indemnify and keep indemnified the Secretary of State against all costs and expenses properly incurred by him in providing assistance under paragraphs 3.1 and 3.2.

#### 4. **REQUEST FOR AUTHORITY REFUSED**

Where prior to the issue of the Completion Certificate and in accordance with paragraph 1 the DBFO Co has requested authority to enforce legal rights in the name of or on behalf of the Secretary of State and the Secretary of State has refused to grant such authority, or has revoked authority previously granted, and providing:

- 4.1 it is substantially more onerous due to the presence or activities of Protestors on the Site or Adjacent Areas for the DBFO Co to carry out and complete the Works without the enforcement of legal rights which are vested in the Secretary of State to remove and exclude such persons (and which the DBFO Co requested authority to enforce in the relevant request) and the Secretary of State is not himself taking steps to enforce such rights;
- 4.2 the DBFO Co has taken and continues to take all steps necessary to mitigate the effects of the refusal of the Secretary of State to grant the authority requested under paragraph 1 or (as the case may be) its revocation; and
- 4.3 such refusal or revocation is not the result of any breach by the DBFO Co of its obligations under this Agreement,

then and to that extent only the DBFO Co shall be relieved of its obligations under this Agreement to carry out and complete such Works and the prevention of performance of the DBFO Co's obligations in such manner shall be a Compensation Event and the provisions of Part 4 of Schedule 12 shall apply.

**SCHEDULE 22  
SECURITY OF THE SITE**

**Part 2**

**Not used.**

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