

**Dated 13 June 2025**

**APPLICATION BY RWE RENEWABLES UK DOGGER BANK SOUTH (WEST) LTD AND RWE  
RENEWABLES UK DOGGER BANK (EAST) LIMITED FOR AN ORDER GRANTING  
DEVELOPMENT CONSENT FOR THE DOGGER BANK OFFSHORE WIND SCHEME**

**PLANNING INSPECTORATE REFERENCE NUMBER: EN010125**

**REGISTRATION IDENTIFICATION NUMBER: 20050035**

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**WRITTEN REPRESENTATION**  
**submitted on behalf of National Gas Transmission plc**  
**at Deadline 6**

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## 1 Introduction

- 1.1 This submission is made at Deadline 5 on behalf of National Gas Transmission plc (**NGT**) in connection with the application by RWE Renewables UK Dogger Bank South (West) Limited and RWE Renewables UK Dogger Bank South (East) Limited (**Applicant**) for the Dogger Bank South Offshore Wind Farms Development Consent Order (**Draft Order**) to enable the construction of the Dogger Bank South Offshore Wind Farm (**Dogger Bank South Project**) (defined in the Draft Order as the **Authorised Development**).
- 1.2 It provides an update on the matters referred to in NGT's submissions to the Examination, being:
- (a) The written representation dated 29 January 2025 (**NGT's Written Representation**) [**REP1-078**];
  - (b) Update on NGT's Written Representation dated 29 April 2025 submitted at Deadline 4 (**D4 Submission**) [**REP4-112**]; and
  - (c) Written Representation dated 23 May 2025 [**REP5-063**],
- (together the **NGT Submissions**).
- 1.3 It also provides NGT's response to the various points concerning protective provisions raised in the Planning Inspectorate's Rule 17 letter dated 9 June 2025.
- 1.4 As the Examining Authority is aware, NGT has requested that the set of protective provisions that it has put forward for the benefit of its undertaking (**NGT PPs**, a copy of which are included at **Appendix 1**) should be included in the Draft Order. NGT's Written Representation sets out why the NGT PPs are necessary: to ensure that NGT's existing apparatus and interests in the vicinity of the Dogger Bank South Project are adequately protected.
- 1.5 To this end, NGT's solicitors (Addleshaw Goddard LLP) have been engaging with the Applicant's solicitors.
- 1.6 Whilst discussions between the parties are ongoing and NGT would not expect the inclusion of NGT's PPs in the Draft Order to be contentious given their purpose and precedent in other development consent orders, an agreed position has not yet been reached with the Applicant.
- 1.7 NGT is concerned about the adequacy of the protective provisions proposed by the Applicant in its Deadline 3 submission [**REP3-034**] (**D3 PPs**). NGT considers that the D3 PPs would cause serious detriment to NGT's undertaking.

## 2 Summary of NGT's position

- 2.1 NGT's position has been clear and unchanged throughout the Examination. It requires the NGT PPs to be included in the Order for the reasons set out in the NGT Submissions detailed further below:
- (a) NGT requires the NGT PPs to be put in place to provide for an appropriate level of control and protection for all retained assets and assurance that industry standards will be complied with in connection with works to and in the vicinity of the same.
  - (b) Maintaining appropriate property rights to support its assets and protecting these from compulsory acquisition and related powers in the Order is a fundamental safety issue. Failure in this regard could lead to:

- (i) personnel being unable to access assets for maintenance repair and inspection;
- (ii) risk of strike to buried assets if development occurs within the easement zone week seeks to protect such buried assets; and
- (iii) risk of inappropriate development within the vicinity of the assets, thereby increasing the risk of damage to the asset and to the integrity of the gas transmission network.

### **3 Section 127 and section 138 Planning Act 2008 (PA 2008)**

- 3.1 With regards to the ExA's request in the Rule 17 Letter that Statutory Bodies provide their case in relation to section 127 and section 138 PA 2008, NGT is a statutory undertaker within the meaning of section 127(8) PA 2008.
- 3.2 In these circumstances, section 127(2) and (5) provide that any order granting development consent for the Project may only include provision authorising the compulsory acquisition of NGT's land or rights therein if this can be done without serious detriment to the carrying on of NGT's undertaking (whether by the provision of replacement land or otherwise) or if any detriment in consequence of the acquisition of a right can be made good.
- 3.3 Section 138 of PA 2008 applies where an Order authorises the acquisition of land (compulsorily or by agreement) and there subsists over the land a relevant right or there is on, under or over the land relevant apparatus.
- 3.4 S138(4) provides that an Order may include provision for the extinguishment of the relevant right or the removal of relevant apparatus only if the Secretary of State is satisfied that the extinguishment, or removal, is necessary for the purpose of carrying out the development to which the Order relates.
- 3.5 With regards to the Applicant's intention to compulsorily acquire NGT land or rights, NGT's position is that serious detriment would be caused to its undertaking unless the NGT PPs are included in the Order. NGT requires controls over works in proximity to or affecting its apparatus or rights to ensure the safety of the apparatus and the integrity of the network.
- 3.6 The Applicant has not sufficiently demonstrated how it would ensure that the tests under section 127 and section 138 PA 2008 would be met, particularly given the deficiencies in the D3 PPs discussed below.

### **4 Outstanding points on protective provisions**

- 4.1 The D3 PPs deviate from the NGT PPs in a number of key respects and provide inadequate protection for the NGT infrastructure within the vicinity of the Dogger Bank South Project.
- 4.2 A comparison between the D3 PPs and the NGT PPs is included at Appendix 2 to illustrate the outstanding points between the parties. NGT's concerns with these differences are as follows:

#### Omission of 'acceptable security' and 'acceptable insurance' provisions

- 4.3 Whilst the Applicant has agreed to the concept of indemnification of NGT, the Applicant has omitted the 'acceptable security' and the 'acceptable insurance' provisions. NGT requires that both 'acceptable security' and 'acceptable insurance' be provided for within its protective provisions and the principle of inclusion of both is well established in protective provisions.

There are multiple precedents in existing DCOs - for example in the recently granted Viking CCS Development Consent Order. The principle is also well established in other forms of infrastructure agreements, for example, highways agreements anticipate statutory highways authorities having recourse to both insurance and a form of security.

- 4.4 Both insurance and security are required on the basis that not including one or the other would leave NGT open to irrecoverable liabilities and losses. Insurance may not cover all losses and liabilities anticipated under the indemnity, particularly as NGT has no right to review or approve the terms of the insurance to ensure that it has sufficient levels of coverage for all risks. It is therefore appropriate that NGT should have recourse to a parent company or bond to recover relevant costs and losses.

Amendment to 'authorised works'

- 4.5 'any associated development authorised by the Order' and 'use and maintenance of the authorised works and construction of any works authorised by this Schedule' have been removed from the definition of 'authorised works'. Protective provisions are intended to cover more than the initial construction of works and when considering impacts on assets and interests, NGT will consider beyond initial construction. As such, the additional wording must be retained.

Amendment to 'commence' and 'commencement'

- 4.6 The definition has been amended to refer to 'intrusive surveys' rather than 'below ground' surveys. Given the type of assets and interests that NGT has, below ground is more appropriate; intrusive surveys would usually relate to existing buildings which is clearly not relevant here.

Amendment of paragraph 6 (Acquisition of land)

- 4.7 Paragraph 6 has been amended so as to remove the restriction on the Applicant's powers under the Order without NGT agreement and removal of the clarificatory provisions in sub-paragraphs 6(3) and (4).
- 4.8 A restriction on the Dogger Bank South Project's powers of compulsory acquisition is absolutely necessary and a standard provision included for the benefit of statutory undertakers. It has multiple precedents in existing DCOs. This provision is one of the core elements of protective provisions to ensure that NGT has control in relation to its existing apparatus and interests.
- 4.9 Any suggestion that these powers may not be utilised is not sufficient; they are provided for under the Order and therefore need to be protected against. This is a standard position across statutory undertakers.

Amendment of paragraphs 7(2) and 7(3) (Removal of apparatus)

- 4.10 At paragraph 7(2), the Applicant has included reference to NGT being able to use its permitted development rights as a gas undertaker where the Applicant is unable to secure consents for alternative apparatus. Paragraph 7(3) has been amended with the effect that, in circumstances where the Applicant could not secure facilities and rights for alternative apparatus, NGT 'must' take such steps as are reasonable to assist the Applicant. This has changed from a 'may in [NGT's] sole discretion' obligation.
- 4.11 The extent to which NGT is able to provide assistance and what that assistance would look like is dependent on the circumstances. The introduction of an absolute obligation suggests that

NGT may be required to facilitate the securing of facilities and rights itself if the Applicant is unable to do so. This goes beyond what is anticipated by this provision.

Amendment of paragraphs 9(4)(a) and 9(5) (Retained apparatus)

- 4.12 The Applicant has inserted timescales into paragraph 9(5)(a) with the effect that any conditions NGT may have in relation to the proposed specified works must be communicated to the Applicant within 42 days of submission of plans. The same timescales have been inserted in paragraph 9(6) in relation to modifications that NGT may require for the provision of protective works.
- 4.13 NGT cannot be tied to such timescales in case it is unable to meet them; this is possible given the nature of NGT as a large organisation with multiple projects taking place concurrently. It is also unclear as to what the effect of not meeting such timescales would be: would NGT approval be deemed to be given and therefore the specified works could take place without NGT having provided commentary or required conditions in the interests of safety. NGT would always act reasonably to ensure that comments were provided expeditiously given its obligations as a statutory undertaker.

Amendment of paragraph 10 (Expenses)

- 4.14 The Applicant has sought to exclude consequential and indirect losses from the scope of recoverable expenses. Exclusion of these losses would preclude NGT's ability to recover costs, losses, etc arising from penalties or fines that have been incurred as a result of, for example damage caused to apparatus by the authorised works. NGT cannot agree to this and it is not equitable that it should be liable for such costs and losses as a result of a third party project

Amendment of paragraph 11 (Indemnity)

- 4.15 The Applicant has made a number of amendments to paragraph 11:
- (a) Removal of Network Code Claims in paragraph 11(1)(b): This removal means that NGT would not be able to seek to recover losses where claims are made by third parties for NGT's failure to supply as a result of the Dogger Bank South Project. The Network Code Claims regime is one that NGT adheres to as a condition to its Network Licence and its inclusion in protective provisions is well established.
  - (b) Conduct of third party claims in paragraph 11(4): NGT cannot agree to the Applicant taking control of claims against NGT due to the potential for any reputation damage if they are not dealt with in a reasonable manner or in such a way as takes account of NGT's interests. There is a requirement on NGT at paragraph 11(5) to act reasonably and it will consult with the Applicant and consider their representations prior to any action being taken.
  - (c) Best endeavours obligation in paragraph 11(6): A requirement to mitigate losses using 'best endeavours' is an excessive requirement which could require NGT to act against its own interests in order to fulfil. NGT considers that reasonable endeavours is sufficient.

Amendments to paragraph 15 (Arbitration)

- 4.16 The Applicant has sought to remove references to paragraphs 12(2), 12(4), 13(1) and 14 so that any disputes between the parties would be settled by arbitration. NGT considers that these paragraphs deal with technical issues on which NGT must retain absolute authority. A third party

arbitrator would not be able to sufficiently determine the extent of the impact on NGT's gas transmission network arising from these issues.

- (a) Paragraph 12(2) deals with the provision of necessary rights and facilities for alternative apparatus by the Applicant to NGT's reasonable satisfaction. NGT must be satisfied that what is being proposed by the Applicant for alternative apparatus is suitable and safe for the purposes of its undertaking. NGT is the expert in this regard and this should not be the subject of third-party arbitration.
- (b) Paragraph 12(4) deals with the way that alternative apparatus is constructed. Again NGT is the expert in this regard and a third-party arbitrator would not be able to determine what is suitable for NGT's undertaking.
- (c) Paragraph 13(1) deals with the facilities and rights afforded to NGT as a result of alternative apparatus being constructed. NGT must be assured that what is being proposed would not be less favourable than previously enjoyed so as to protect its undertaking sufficiently.
- (d) Paragraph 14 deals with the protection of retained apparatus and the approvals process for specified works. The extent and type of technical detail that is being considered here would not be suitable for third party arbitration and NGT must be absolutely satisfied that what is being proposed by the specified works would not adversely affect their apparatus and interests to ensure the safety of its assets and integrity of the national grid.

#### Amendments replacing 'authorised works' with 'specified works'

- 4.17 Throughout the D3 PPs, the Applicant has sought to replace 'authorised works' with 'specified works'. 'Specified works' is a term that is only intended to be used in reference to certain provisions within the protective provisions e.g. in relation to the approval mechanisms under the Retained Apparatus paragraph. As a general principle, NGT should not be liable for costs or losses incurred as a result of the Dogger Bank South Project; reference to 'specified works' indicates a narrowing of this principle which is a standard principle under protective provisions with statutory undertakers.
- 4.18 In addition, the use of 'specified works' within the context of paragraphs 10 and 11 is not correct when considered within the meaning of the whole, particularly where assets are not being retained in situ and are instead being removed under paragraph 7(2). 'Specified works' excludes apparatus which has been removed as a result of paragraph 7(2). Referring only to 'specified works' and not 'authorised works' within paragraph 10 (Expenses) and paragraph 11 (Indemnity) would preclude costs or losses associated with this removal which the remaining drafting (e.g. paragraph 10(1)) clearly anticipates being covered. Similarly, reference to authorised works at paragraph 11 clearly anticipates coverage in relation to these removal works

#### Other amendments

- 4.19 The Applicant has sought to amend other provisions throughout the D3 PPs to allow for arbitration. NGT does not consider these amendments necessary given that paragraph 15 provides for this. The Applicant has also sought to include reasonableness qualifications and obligations not to unreasonably withhold or delay. NGT does not consider these necessary given its status as a statutory undertaker and its obligations to act reasonably.

- 4.20 There are other amendments to the NGT PPs altering or inserting timescales to which NGT cannot agree to on the basis that the timescales proposed could not realistically be complied with.
- 4.21 NGT is keen to avoid inconsistencies with its precedent protective provisions to avoid diluting the protective provisions over time; promoters of development consent orders often refer to examples of other orders where there are minor differences. NGT is seeking to avoid this by not agreeing to amendments where they are not necessary.
- 4.22 The net effect of all of the above is that the D3 PPs are inadequate to avoid serious detriment to NGT's undertaking.
- 4.23 The net effect of all (or any) of the above is that the D3 PPs are inadequate to avoid serious detriment to NGT's undertaking.

## **5 Status of negotiations**

- 5.1 Based on its discussions with the Applicant, it is NGT's understanding that the Applicant is continuing to reserve its position on the NGT protective provisions until agreement is reached between the parties. NGT notes the position set out by the Applicant at Deadline 3 (in relation to the D3 PPs) that if bespoke protective provisions cannot be agreed prior to the close of Examination, the D3 PPs form of protective provisions will be included in an updated version of the DCO at Deadline 8 of the Examination (**the Final Draft DCO**).
- 5.2 Since an agreed position has not yet been reached, NGT must continue to maintain the position as set out throughout the NGT Submissions and request that NGT PPs should be included in the DCO in place of the Applicant's D3 PPs.
- 5.3 NGT will continue to engage with the Applicant to negotiate and agree the protective provisions for the benefit of NGT before the close of the Examination. It requests that the Applicant actively engages with issues raised by NGT to reach a resolution as swiftly as possible. This is necessary to ensure that not only are NGT's existing apparatus and interests are protected but that the future infrastructure and interests required by NGT to facilitate the connection of the Applicant's project into the National Grid are not adversely affected.

## **6 Summary of NGT's position**

- 6.1 In light of the above, NGT's position remains as set out in NGT's Written Representation.
- 6.2 NGT's Written Representation provides both NGT's PPs and the explanation as to why these protective provisions are necessary. In summary, NGT has existing infrastructure located within or in close proximity to the Dogger Bank South Project that needs to be protected via the protective provisions that NGT is proposing be included in the final form of the Draft Order. NGT's PPs will ensure that NGT's existing gas transmission assets and interests are adequately protected, as well as compliance with relevant safety standards.
- 6.3 Since an agreed position has not been reached with the Applicant, NGT must continue to maintain the position set out in NGT's Written Representation and requests that NGT's PPs should be included in the Draft Order accordingly.

**Addleshaw Goddard LLP**

**For and on behalf of National Gas Transmission plc**

**13 June 2025**



## **Appendix 1**

### **NGT PPs**

# NATIONAL GAS TRANSMISSION PLC

## SCHEDULE [●] PROTECTIVE PROVISIONS

### PART [●]

#### FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

##### Application

1.(1) For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 5 (*benefit of Order*) –

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas (but without prejudice to 11(3)b).

##### Interpretation

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

(a) a parent company guarantee from a parent company in favour of National Gas to cover the undertaker's liability to National Gas to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas and where required by National Gas, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Gas to cover the undertaker's liability to National Gas for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1)(interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” has the same meaning as in article 2(1) (interpretation) of this Order save that for the purposes of this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus 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 National Gas's 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;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas, including to construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Gas” means National Gas Transmission plc (Company Number 02006000) whose registered office is at National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Network Code” means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter's Licence, which incorporates the Uniform

Network Code, as defined in Standard Special Condition A11(6) of National Gas's Gas Transporters Licence, as both documents are amended from time to time;

"Network Code Claims" means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

"plan" or "plans" include 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;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Gas acting reasonably;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which:

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or

(c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties".

"undertaker" means the undertaker as defined in article 2(1) of this Order;

## **On Street Apparatus**

3. Except for paragraphs 4 (*apparatus in streets subject to temporary closure*), [9] (*retained apparatus: protection of National Gas as gas undertaker*), 10 (*expenses*) and 11 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 of the 1991 Act.

## **Apparatus of National Gas in streets subject to temporary closure**

4.—(1) Where any street is stopped up under article 10 (*temporary closure of streets*), if National Gas has any apparatus in the street or accessed via that street National Gas has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Gas, or procure the granting to National Gas of, legal easements reasonably satisfactory to National Gas in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Gas to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 10 (*temporary closure of streets*), National Gas is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

## **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article 17 (*protective work to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas

## **Acquisition of land**

6. (1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or ((b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Gas and the undertaker the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Gas under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

## **Removal of apparatus**

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Gas to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas 56 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Gas to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Gas may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Gas to use its compulsory purchase powers to this end unless it elects to so do.

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

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Gas of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

#### **Facilities and rights for alternative apparatus**

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Gas facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Gas and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 15 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Retained apparatus: protection of gas undertaker**

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) In relation to specified works the plan to be submitted to National Gas 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, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(4) Any approval of National Gas required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6); and,

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(7) Where National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Gas' satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (11) at all times;

(11) At all times when carrying out any works authorised under the Order National Gas must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

## **Expenses**

**10.(1)** Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an itemised invoice or claim from National Gas all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly

incurred by National Gas in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National



Gas any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

### Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Gas, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and
- (b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party and including Network Code Claims other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Gas fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (*consent to transfer benefit of Order*) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) National Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Gas’s reasonable ability and control to do so and which expressly excludes any

obligation to mitigate liability arising from third parties which is outside of National Gas's control and if reasonably requested to do so by the undertaker National Gas must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas's apparatus until the following conditions are satisfied:

- (a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same to the undertaker in writing; and
- (b) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with Paragraph 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Gas from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

### **Enactments and agreements**

12. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

13.(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Gas requires the removal of apparatus under paragraph 7(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Gas's undertaking and National Gas shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

14. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

15. Save for differences or disputes arising under paragraph 7(2), 7(4) 8(1) and 9 any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must,

unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 47 (*arbitration*).

## **Notices**

**16.** Notwithstanding article 46 (*service of notices*), any plans submitted to National Gas by the undertaker pursuant to paragraph 9 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **Appendix 2**

### **NGT PPs and D3 PPs comparison**

# NATIONAL GAS TRANSMISSION PLC

## SCHEDULE [●] PROTECTIVE PROVISIONS

### PART [●]

#### FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

##### Application

1. 1. (1) For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) ~~(2)~~ Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 5 (*benefit of Order*) –

(a) ~~(a)~~ any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and

(b) ~~(b)~~ written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) ~~(3)~~ Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas (but ~~without prejudice to~~ see paragraph 11(3)b).

##### Interpretation

2. In this Part of this Schedule—

~~“1991 Act” means the New Roads and Street Works Act 1991;~~

~~“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;~~

~~“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):~~

~~(a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas~~

~~(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;~~

~~“acceptable security” means either:~~

~~(a) a parent company guarantee from a parent company in favour of National Gas to cover the undertaker’s liability to National Gas to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas and where required by National Gas, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or~~

~~(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Gas to cover the undertaker’s liability to National Gas for an amount of not less than £10,000,000.00 (ten million pounds) per~~

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~~asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas);~~

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) (interpretation) of this Order and ~~includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;~~

“commence” and “commencement” has the same meaning as in article 2(1) (interpretation) of this Order save that for the purposes of this Part of this Schedule shall include any ~~below ground~~intrusive surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus 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 National Gas's 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;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” ~~shall include~~includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas, including to construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Gas” means National Gas Transmission plc (Company Number 02006000) whose registered office is at National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

~~“Network Code” means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter's Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas's Gas Transporters Licence, as both documents are amended from time to time;~~

~~“Network Code Claims” means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;~~

“plan” or “plans” include 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;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Gas acting reasonably;

“specified works” means any of the authorised works or ~~activities~~intrusive surveys undertaken in

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association with the authorised works which:

(a) ~~(a)~~ will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or

(b) ~~(b)~~ may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; ~~and/or~~

~~(c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties".~~

~~"undertaker" means the undertaker as defined in article 2(1) of this Order;~~

## On Street Apparatus

3. Except for paragraphs 4 (*apparatus in streets subject to temporary closure*), ~~9~~ (*retained apparatus: protection of National Gas as gas undertaker*), 10 (*expenses*) and 11 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 of the 1991 Act.

## Apparatus of National Gas in streets subject to temporary closure

4. — ~~a~~(1) Where any street is ~~stopped-up~~closed under article 10 (*temporary closure of streets*), if National Gas has any apparatus in the street or accessed via that street National Gas has the same rights in respect of that apparatus as it enjoyed immediately before the ~~stopping-up~~closure and the undertaker must grant to National Gas, or procure the granting to National Gas of, legal easements reasonably satisfactory to National Gas in respect of such apparatus and access to it prior to the ~~stopping-up~~closure of any such street ~~or highway~~ but nothing in this paragraph affects any right of the undertaker or National Gas to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

~~(1)~~(2) Notwithstanding the temporary ~~stopping-up~~closure or diversion of any ~~highway~~street under the powers of article 10 (*temporary closure of streets*), National Gas is at liberty at all times to take all necessary access across any such ~~stopped-up highway~~closed street and to execute and do all such works and things in, upon or under any such ~~highway~~street as may be

reasonably necessary or desirable to enable it to maintain any apparatus which at the time of ~~the stopping-up~~closure or diversion was in that ~~highway~~street.

## Protective works to buildings

5. The undertaker, ~~in the case of~~must exercise the powers conferred by article 17 (*protective work to buildings*), ~~must exercise those powers~~ so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas (such consent not to be unreasonably withheld or delayed).

## Acquisition of land

~~6. (1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas otherwise than by agreement.~~

6. (2) As a condition of ~~an agreement between the parties in sub-paragraph (1)~~any approval under paragraph 9 of this Part of this Schedule, prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

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~~(3) Save where otherwise agreed in writing between National Gas and the undertaker the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.~~

~~(4) Any agreement or consent granted by National Gas under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).~~

#### Removal of apparatus

7. — ~~b)(1)~~ If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Gas to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas in accordance with sub-paragraph (2) to (5).

~~(2) (1)~~ If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas ~~56 days~~ Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3) and where National Gas is unable to use its permitted development rights as a gas undertaker, secure any necessary consents for the alternative apparatus and afford to National Gas to its reasonable satisfaction (taking into account paragraph 8(1) ~~below~~) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

~~(3) (2)~~ If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Gas ~~may in its sole discretion~~ must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation ~~shall~~ does not extend to the requirement for National Gas to use its compulsory purchase powers to this end unless it elects to so do.

~~(4) (3)~~ Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Gas and the undertaker or in default of agreement settled by arbitration in accordance with this Order.

~~(5) (4)~~ National Gas must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with this Order, and subject to a written diversion agreement having been entered into between the parties (on reasonable terms with both parties acting reasonably) and the grant to National Gas of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

#### Facilities and rights for alternative apparatus

8. — ~~e)(1)~~ Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Gas facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Gas and must so far as possible be no less favourable on the whole to National Gas than the facilities and rights as enjoyed by ~~it~~ National Gas in respect of the apparatus to be removed unless otherwise agreed by National Gas, acting reasonably.

~~(2) Where the terms and conditions referred to in sub-paragraph (1) cannot be agreed between the undertaker and National Gas or where the facilities and rights to be granted to National Gas are less favourable on the whole to National Gas than the existing facilities and rights enjoyed by it, the matter will be settled by arbitration in accordance with paragraph 15 (Arbitration) of this Part of the Schedule.~~

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~~(3) (4)~~ If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject ~~the matter may be referred to arbitration in accordance with paragraph 15 (Arbitration) of this Part of this Schedule and~~, the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Retained apparatus: protection of gas undertaker**

9. —(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) In relation to specified works the plan to be submitted to National Gas 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, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(4) Any approval of National Gas required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or ~~(6)~~ and,  
(6) provided that any conditions are communicated to the undertaker within a period of 28 days beginning with the date on which a plan is submitted to National Gas in accordance with sub-paragraph (1); and
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any ~~works~~ specified works to which ~~sub-paragraphs~~ sub-paragraph s (1) and/or (2) ~~apply~~ applies, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus and National Gas must notify the undertaker of such modifications within a period of 28 days beginning with the date on which the plan required under sub-paragraph (2) has been submitted to National Gas.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(7) Where National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National ~~Gass~~ Gas reasonable satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within ~~42~~ 28 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in [section 52 of the 1991 Act](#) but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (11) at all times;

(11) At all times when carrying out any works authorised under the Order National Gas must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

### Expenses

10. ~~4~~—(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an itemised invoice or claim from National Gas all charges, costs and expenses [\(but always excluding any consequential or indirect loss\)](#) reasonably anticipated within the following three months or reasonably and properly incurred by National Gas in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any ~~authorised~~[specified](#) works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a

placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Gas any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## Indemnity

11. — ~~e)~~(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the ~~authorised~~specified works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the ~~authorised~~specified works) or property of National Gas, or there is any interruption in any service ~~provided, or in the supply of any goods or energy;~~gas provided by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and
- (b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, ~~penalty~~penalties or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party ~~and including Network Code Claims~~as aforesaid other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas or under its supervision this will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Gas fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) ~~shall impose~~imposes any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, servants, contractors or agents;
- (b) any ~~authorised~~specified works and/or any other works authorised by this Part of this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article ~~8-5~~ (~~consent to transfer benefit of Order~~) subject to the proviso that once such works become apparatus ("new apparatus"), any ~~authorised~~specified works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) National Gas must give the undertaker reasonable written notice of any such third party claim or demand as soon as reasonably practicable after National Gas became aware of any such claims or demands, and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without ~~first consulting the prior consent of~~ the prior consent of the undertaker ~~and considering their representations (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).~~

(5) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use its ~~reasonable~~best endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies, where it is within National Gas's reasonable ability and control to do so and which expressly excludes any obligation to mitigate

liability arising from third parties which is outside of National Gas's control and if reasonably requested to do so by the undertaker, National Gas must provide an explanation of how the claim has been minimised, where relevant. The undertaker will only be liable under this paragraph for claims reasonably and properly incurred by National Gas.

~~(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas's apparatus until the following conditions are satisfied:~~

~~(a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same to the undertaker in writing; and~~

~~(b) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same in writing to the undertaker.~~

~~(8) In the event that the undertaker fails to comply with Paragraph 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Gas from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.~~

### Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### Co-operation

13. (1) Where in consequence of the proposed construction of any part of the ~~authorised~~specified works, the undertaker or National Gas requires the removal of apparatus under paragraph ~~76~~76(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph ~~98~~98, the undertaker ~~shall~~must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the ~~authorised~~specified works and taking into account the need to ensure the safe and efficient operation of National Gas's undertaking and National Gas ~~shall~~must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

## Access

14. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

## Arbitration

15. ~~Save for differences or disputes arising under paragraph 7(2), 7(4) 8(1) and 9 any~~Any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 47 (*arbitration*).

## Notices

16. Notwithstanding article 46 (*service of notices*), any plans submitted to National Gas by the undertaker pursuant to paragraph 9 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.