



EAST PARK ENERGY

East Park Energy

EN010141

**Applicant Response to Deadline 3 Submission
made by National Gas Transmission**

Document Reference: EN010141/DR/8.60

Infrastructure Planning (Examination Procedure) Rules 2010

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1.0 INTRODUCTION

1.1 Purpose of this Document

- 1.1.1 This document provides a response to the **Deadline 3 submission made by National Gas Transmission [REP3-081]**.

2.0 RESPONSE TO NATIONAL GAS TRANSMISSION'S COMMENTS ON DEADLINE 2 SUBMISSIONS

Our Ref.	Ref.	NGT Comments	Applicant Response
NGT-D3-01	2.4	Any interference with, damage to, or restriction of access to the NGT Assets would present an unacceptable risk to public safety and network integrity. Consequences of such interference etc. may include, but would not be limited to: failure of the pipeline, through leak or rupture, leading to loss of containment of gas, risk of fire or explosion, interruption to gas supply, and consequent risks to public safety, security of energy supply and environmental harm. Therefore, in respect of the NGT Assets (and any other NGT infrastructure located within the Order Limits or in close proximity to the proposed authorised development), NGT will require protective provisions to be put in place to ensure that: (a) all NGT interests and rights, including rights of access to the NGT Assets and any other NGT apparatus, are unaffected by powers of compulsory acquisition, temporary possession, and the grant and/or extinguishment of rights as set out in the proposed Order; and (b) appropriate protection for the NGT Assets and any other retained apparatus is maintained during construction and throughout operation of the proposed	Introduction The Applicant recognises the importance of protecting National Gas Transmission's (NGT) assets and has been in discussion with NGT regarding bespoke protective provisions since the pre-application stage. The Applicant included its preferred form of protective provisions for the benefit of NGT at Part 4 of Schedule 13 to the draft DCO [REP3-009]. The Applicant and NGT have been in active discussion regarding the form of these bespoke protective provisions, which have progressed from the form currently set out in the draft DCO [REP3-009], but are not yet fully agreed. The Applicant has included a copy of its preferred protective provisions, which take into account the matters that have been agreed, at Appendix A of this submission. A comparison between these preferred protective provisions and NGT's preferred protective provisions that were appended to their Deadline 3 submission [REP3-081] is included at Appendix B of this submission. The Applicant wishes to note that this comparison shows a number of points that are understood to be agreed, at least in principle, between the parties (e.g. such as the removal of the provision dealing with apparatus in permanently stopped up streets as no streets will be permanently stopped up as part of the Scheme). The key points that remain outstanding between the parties are addressed below.

Our Ref.	Ref.	NGT Comments	Applicant Response
		authorised development in accordance with the protective provisions, and the relevant safety standards as set out below.	As explained in further detail below, the Applicant has agreed, at least in principle, to accept NGT's position on many of the matters raised in their written representation [REP3-081] in order to focus negotiations between the parties and facilitate agreement. For the avoidance of doubt, the protective provisions included at Appendix A reflect the Applicant's current preferred protective provisions, and do not include the matters that have been agreed in principle. Once these matters are fully agreed the protective provisions can be updated to reflect this. In summary, the principle matters that have not been fully agreed at this stage are as follows: • Provision of security (see NGT-D3-05); • Use of "authorised works" and "specified works" (see NGT-D3-03); and • Arbitration and dispute resolution (see NGT-D3-07). Compulsory acquisition and NGT's land Interests The Applicant would first like to deal with point (a) of NGT-D3-01 and NGT's comments regarding the powers of compulsory acquisition and temporary possession included in the draft DCO [REP3-009]. Further information on point (b) of NGT-D3-01 can be found in the Applicant's responses to NGT-D3-02 to NGT-D3-10 below. The Applicant understands that NGT has a category 2 interest (rights/apparatus) over a single plot identified for compulsory acquisition of new rights in the Book of Reference [REP3-017] and Land Plan [REP3-004]. This is plot 6-1 which is described in the Book of Reference as the "<i>Acquisition of rights over 5206 square metres of public road and verges (Little Staughton Road), public footpath (no. Little Staughton 4), access splays and drains, Little Staughton</i>".

Our Ref.	Ref.	NGT Comments	Applicant Response
			The top part of plot 6-1 relates to a publicly adopted highway, Little Staughton Road. The Applicant is proposing to acquire new rights in respect of the subsoil interest for internal cabling and access over plot 6-1 but is not proposing to extinguish any of NGT's interests or divert any of NGT's apparatus. On this basis the Applicant maintains that the Scheme and NGT's apparatus/associated rights can co-exist. Moreover, paragraph 33(1) of the Applicant's preferred protective provisions included at Part 4 of Schedule 13 to the draft DCO [REP3-009] prevents the Applicant from appropriating, acquiring, or taking temporary possession of any land or apparatus, or appropriating, acquiring, extinguishing, interfering with or overriding any easement, other interest or right and/or apparatus of NGT otherwise than by agreement (such agreement not be unreasonably withheld or delayed). Given the minor interest with NGT's land interest, that there is currently no intention to acquire or extinguish NGT's land interests, and that the Applicant would be prevented from doing so without NGT's agreement under the terms of the protective provisions in any event, the Applicant's position is that the acquisition of new rights sought under the DCO will not cause a serious detriment to NGT's undertaking in accordance with the test set out in section 127 of the Planning Act 2008. Additionally, further protections for NGT's apparatus is provided in the protective provisions included at Part 4 of Schedule 13 to the draft DCO [REP3-009] and as updated in the version included at Appendix A to this document.
NGT-D3-02	3.1	In light of the above, NGT requires its standard form of protective provisions ("Protective Provisions") to be included on the face of the proposed Order to ensure that the NGT Assets are adequately protected, and to ensure compliance with relevant	As noted in the Applicant's response to NGT-D3-01 above, the Applicant remains in discussion with NGT regarding the form of bespoke protective provisions to be included in the DCO.

Our Ref.	Ref.	NGT Comments	Applicant Response
		safety standards. A copy of the Protective Provisions can be found at the Appendix.	
NGT-D3-03	4.1.1- 4.1.2	The Applicant has deleted drafting within the definition of ‘authorised works’ that ensures that various protections and requirements contained within the Protective Provisions are required in connection with the use and maintenance of the same (rather than just the construction). NGT’s position is that the protections and requirements contained within the Protective Provisions must be in place in connection with the construction, use and maintenance of the proposed authorised development. This is particularly important in relation to solar projects (such as the proposed authorised development) as there are significant concerns regarding electromagnetic interference. If the definition of ‘authorised works’ were to exclude use and maintenance, the risks arising would include (but not be limited to) uncontrolled electromagnetic interference during operation, adversely affecting Cathodic Protection Systems; degradation of corrosion protection over time, increasing the risk to pipeline integrity; maintenance or operational activities undertaken without NGT oversight, creating a risk of damage to pipelines and associated apparatus; restrictions on NGT’s ability to access, monitor and maintain its assets; and an increased likelihood of asset deterioration or failure over time, with consequent risks to public safety and security of gas supply.	The Applicant’s original preferred protective provisions, which are included at Part 4 of Schedule 13 to the draft DCO [REP3-009] utilised a narrower definition of “authorised works” in line with the definition included in the main body of the DCO, as this was considered to be sufficiently defined. The Applicant has since agreed, in principle, to use the definition of authorised works sought by NGT in the protective provisions contained within the draft DCO. This is subject to the use of the term “specified works” in place of “authorised works” in a number of places in the protective provisions where the term “authorised works” is considered to be too broad, and the provisions should relate to works that are actually taking place within 15m of NGT apparatus, may adversely affect any NGT apparatus, or include activities referred to in paragraph 8 of T/SP/SSW/22. This is reflected in the Applicant’s proposed protective provisions included at Appendix A of this document. The Applicant understands that NGT had some concerns around the use of the term “specified works” and its potential to exclude apparatus that is subject to removal. The Applicant has therefore expanded the definition of “specified works” in its preferred protective provisions to ensure that such works would be covered where appropriate. The Applicant will continue to discuss the use of the term “authorised works” and “specified works” with NGT with the aim of reaching agreement.

Our Ref.	Ref.	NGT Comments	Applicant Response
NGT-D3-04	4.1.3- 4.1.4	The Applicant is attempting to limit the extent of the area surrounding NGT's Assets in relation to which NGT will have control over the plans, methodology and specification for works, and in relation to which the Applicant must secure 'acceptable insurance' and 'acceptable security', to 12m (as opposed to 15m, which is contained within the Protective Provisions). NGT's position is that this 15m 'control' strip/distance is required to ensure that emergency works, which invariably involve large scale equipment, can be carried out by NGT. This has been accepted across numerous development consent orders (DOCs) and is non-negotiable.	The Applicant has agreed, in principle, to use a distance of 15m in the definition of "specified works" in the protective provisions contained within the draft DCO, as requested by NGT. The Applicant had originally proposed the use of a 12m distance in the definition of "specified works" as the Applicant is intending to apply an off-set of 12.2m either side of NGT's pipelines as detailed at paragraph 3.4.4 of the outline LEMP [REP3-056]. The Applicant's position remains that it would be reasonable for NGT's engineers to consider whether fencing that lies between 12m and 15m of NGT's assets would need to be treated as a specified work on a case-by-case basis.
NGT-D3-05	4.1.3- 4.1.11	The Applicant continues to resist the requirement in NGT's standard Protective Provisions for the provision of both 'acceptable security'¹ and 'acceptable insurance'². The Applicant's position is that insurance coupled with the indemnity provisions should be sufficient, and that security represents unnecessary duplication. NGT's position is that both acceptable security and acceptable insurance are proportionate and complimentary protections which act to incentivise a promoter to manage project risk prudently, with the promoter knowing both are in play to protect NGT's	The main issue outstanding between the parties, that the Applicant is not prepared to concede, is NGT's request that the Applicant provides "acceptable security" in addition to the requirement to provide insurance and an indemnity. In summary, the protective provisions sought by NGT include a requirement for the Applicant to provide all three of the following: "acceptable insurance" meaning 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

¹ The provision of either a parent company guarantee or a bank bond or letter of credit covering the Applicant's liabilities to NGT up to a specified cap.

² Public liability insurance in connection with the elements of the proposed authorised development which interface with NGT's Assets.

Our Ref.	Ref.	NGT Comments	Applicant Response
		critical gas transmission infrastructure should that become necessary. Whilst acceptable insurance protects NGT against losses effected by the proposed authorised development in the event of damage to NGT interests or apparatus, acceptable security provides additional protection to NGT as the guarantor will be required to step in to fulfil obligations if there are gaps in the cover provided by the insurance policy provided by the Applicant. This distinction is particularly important where, as here, the development is promoted through a special-purpose vehicle. It should also be noted that NGT has no right to review or approve the terms of the insurance to be put in place by the Applicant to ensure that it provides sufficient coverage. The principle of including both acceptable security and acceptable insurance is well established within statutory undertaker protective provisions for DCOs. This wording has been included for the benefit of NGT (and National Grid Electricity Transmission plc (NGET) in a number of recently granted DCOs including The Byers Gill Solar Order 2025, The East Yorkshire Solar Farm Order 2025 and The Viking CCS Carbon Dioxide Pipeline Order 2025. The wording was also included for the benefit of NGET in the following DCOs (noting that NGT did not have apparatus affected by these projects and so protective provisions were not sought) demonstrating the acceptability of the principle: The	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 NGT (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” meaning either: (a) a parent company guarantee from a parent company in favour of NGT to cover the undertaker’s liability to NGT to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to NGT and where required by NGT, 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 NGT to cover the undertaker’s liability to NGT for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event

Our Ref.	Ref.	NGT Comments	Applicant Response
		West Burton Solar Project Order 2025, The Mona Offshore Wind Farm Order 2025 and The Oaklands Farm Solar Park Order 2025. The principle is also well established in other forms of infrastructure agreement, for example, highways agreements anticipate statutory highway authorities having recourse to both insurance and a form of security. Failure to provide for coverage of both acceptable security and acceptable insurance could potentially leave NGT open to irrecoverable liabilities and losses and insufficient certainty in the event of an insolvency or financial default, which would leave it exposed to significant losses that would then rest with NGT and its customers, and ultimately commercial and residential consumers (through no fault of their own).	up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to NGT); An indemnity as set out in paragraph 11(1) of NGT's proposed protective provisions. The Applicants position is that, in the context of the specific interactions between NGT's apparatus and the Scheme, such measures are unnecessary and disproportionate. The Applicant is willing to provide the insurance requested by NGT alongside an indemnity, but the Applicant maintains that it is not proportional or reasonable to provide £50 million of security on in addition to the securities already within the draft (i.e. acceptable insurance and indemnity). There are two key reasons for this: the excessive nature of this security in relation to the Scheme's interaction with, and likely risk to, NGT's assets; and the inflexibility of the security obligation. In terms of the interaction between the Scheme and NGT's assets, the request for £50m security is considered to be excessive because of the low risk of interference. Where NGT pipelines pass through proposed solar areas, 24.4 m wide corridors have been accommodated where no development will take place, with the exception of road and cable crossings where necessary. Road and cable crossings will be carried out according to NGT's required practices. Furthermore, no diversion or relocation of NGT assets is proposed. Additionally, the Applicant views that this requirement is unreasonably onerous and commercially unpalatable, considering that a suitable insurance policy is to be readily provided.

Our Ref.	Ref.	NGT Comments	Applicant Response
			The Applicant notes that NGT's representation refers to the possibility that the insurance policy may contain gaps in the cover provided, and that NGT has no right to review or approve the terms of the insurance to be put in place by the Applicant. The Applicant would find it helpful if NGT could identify the particular gaps in insurance cover that NGT has in mind so that the Applicant can better understand when NGT expects the indemnity or security (if provided) would need to be called upon. The Applicant would welcome further discussions with NGT on this matter to see if this can be addressed in the insurance cover provided. <u>Additional comments</u> The Applicant notes that guidance from MHCLG and DLUHC "Content of a Development Consent Order required for Nationally Significant Infrastructure Projects" (April 2024) provides that: <i>"Most statutory undertakers have now developed their own preferred form of protective provisions which is very helpful to the preparation of the Draft DCO. However, these must be adapted as necessary, so they accurately reflect the proposed development. They should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers' land."</i> <i>"Examining Authorities are expected to ensure that the final form of a recommended DCO contains protective provisions which are bespoke to the application under consideration."</i> The Applicant considers that the removal of the security provision would be in line with this guidance, as it would ensure that the protective provisions included in the final DCO are appropriate to both this Scheme and the undertaker, whilst still protecting NGT adequately.

Our Ref.	Ref.	NGT Comments	Applicant Response
			In their written representation NGT refer to a number of points that the Applicant has included in the bespoke protective provisions contained within the draft DCO [REP3-009], which NGT state make the protective provisions “deficient” from NGT’s perspective. The Applicant accepts that many of these points are likely to be material to NGT and it is reasonable for NGT to seek its preferred wording; however, as noted at NGT-D3-10 below, NGT has pushed back on a number of “Various Stylistic or Clarificatory Amendments” where the Applicant’s preferred protective provisions differ from those requested by NGT. The Applicant wishes to note that several of the amendments sought by the Applicant have been very minor, such as including express wording requiring NGT to act reasonably. However, the Applicant has received pushback on almost all changes of this nature and it this inflexible approach which the Applicant considers does not accord with the guidance from MHCLG and DLUHC referenced above. Additionally, the Applicant wishes to draw the Examining Authority’s attention to the Rampion 2 DCO decision, which provides justification as to why both security and insurance are unnecessary and excessive (albeit in the context of protective provisions for National Grid). At paragraph 7.6.24 of the recommendation report, the Examining Authority states that- <i>“National Grid considers that the security and insurance provisions are required to back up the indemnity provided as both are required to prevent a situation arising where losses are not recoverable under the insurance policy. Here, the ExA agrees with the Applicant and finds that the additional requirements sought by National Grid represent “overkill”; in effect an insurance to protect against the insurance.”</i> In the unlikely event that liabilities are irrecoverable via the undertaker’s third party liability insurance cover of not less than £50m, as required by

Our Ref.	Ref.	NGT Comments	Applicant Response
			the proposed protective provisions, then NGT would still have recourse via the indemnity. The Applicant's position is therefore that the Applicant's preferred protective provisions would ensure there would be no serious detriment to NGT's undertaking. The Applicant notes that there are a number of recent DCOs that have proceeded without the exact form of protective provisions sought by NGT. Moreover, a number of these DCOs have <u>not included provision for acceptable security</u> on the face of the DCO including Heckington Fen Solar Park Order 2025; A122 (Lower Thames Crossing) Development Consent Order 2025, Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024, A66 Northern Trans-Pennine Development Consent Order 2024, Net Zero Teesside Order 2024. On this basis the Applicant considers that it is unreasonable for NGT to make a blanket demand for its preferred form of protective provisions without making reasonable amendments to account for the specific circumstances of this Applicant and this Scheme. For the reasons set out above, the Applicant submits that the protective provisions included with this submission at Appendix A are comprehensive and sufficient to ensure that there is no serious detriment to the undertaking of NGT.
NGT-D3-06	4.1.12-4.1.14	Another critical issue concerns the scope of the indemnity, specifically the inclusion of Network	In respect of Network Code Claims and the exclusion of consequential or indirect losses, the Applicant had excluded such liabilities from its original preferred protective provisions, which are included at Part 4 of Schedule 13 to the draft DCO [REP3-009], on the basis that these liabilities were otherwise construed too widely amongst other reasons.

Our Ref.	Ref.	NGT Comments	Applicant Response
		Code Claims³ and consequential or indirect losses. The Applicant disputes that the indemnity should extend to such claims and has relied on examples of other DCOs in which Network Code Claims are excluded, however, these examples are drawn from National Highways' DCOs, in relation to which NGT have a separate arrangement (which is not unusual between organisations of this size and nature) and so those examples are therefore not relevant to the proposed Order. As a licensed gas transporter, NGT is legally required to comply with the Network Code and may incur charges, losses or liabilities where damage to, or restriction of, its network results in the failure to accept or deliver gas. Where such consequences arise as a direct or indirect result of a third-party development, NGT does not consider it reasonable or appropriate for those liabilities to sit with it rather than the Applicant if these types of losses are caused by the proposed authorised development. Additionally, the Applicant is attempting to insert drafting into the Protective Provisions excluding liability for consequential or indirect losses in connection with the indemnity contained therein. Similarly to Network Code Claims, NGT's position is that the Applicant should be liable for any and all losses in connection with the proposed authorised	The Applicant has since agreed to use NGT's preferred wording in respect of Network Code Claims and the exclusion of consequential or indirect losses. The Applicant has requested that NGT provide information on how responsibility for Network Code Claims would be attributed to the Applicant in practice and would welcome further discussion with NGT in respect of this matter.

³ Claims under the Network Code arising out of or in connection with any failure by NGT to make gas available for offtake at, or to accept gas tendered for delivery from, any entry or exit point on the national gas transmission system, with such recoverable losses to include costs incurred in taking action such as the purchase or buy-back of capacity to manage constraint on the system.

Our Ref.	Ref.	NGT Comments	Applicant Response
		development, and therefore is not prepared to accept this amendment.	
NGT-D3-07		The Protective Provisions deliberately exclude certain matters from the operation of the Dispute Resolution provision. These matters relate to: (a) whether existing gas apparatus must be removed to facilitate the authorised development; (b) how and where any replacement apparatus is to be designed and constructed; (c) the adequacy and terms of the land rights required for the installation, maintenance and protection of such replacement apparatus; and (d) the protective regime governing works carried out in proximity to retained apparatus. The Applicant has objected to this approach on the basis that it leaves the above matters to NGT's sole determination with no third party dispute resolution process available in the event that agreement cannot be reached. The Applicant has proposed that disputes could instead be resolved via third-party expert determination, and has asked NGT to agree to that. NGT's position is that, as the statutory undertaker responsible for the safe and efficient operation of the national gas transmission system, it is the ultimate authority in this regard and that the	The Applicant, in its original preferred protective provisions included at Part 4 of Schedule 13 to the draft DCO [REP3-009], had sought to include the matters listed at (a) to (d) of NGT-D3-07 within the scope of the arbitration provisions of the DCO. The Applicant's key concern is that in absence of an arbitration or expert determination mechanism, any dispute over these matters would need to be resolved through the Courts with significant time and cost implications for the parties. The Applicant has since agreed, in principle, to use NGT's preferred wording in respect of this matter. This is subject to a request that the Applicant has made to NGT asking that they provide information on how a dispute would be resolved in practice. Consequently, the Applicant considers that this issue is close to being resolved.

Our Ref.	Ref.	NGT Comments	Applicant Response
		exclusions from dispute resolution (arbitration) contained within the Protective Provisions are crucial in ensuring its retention of control over decisions affecting its apparatus. NGT also considers that decisions pertaining to the excluded matters cannot properly be delegated to third-party experts, and in any event, in practice, it is likely that they would need to rely on NGT's own technical expertise. Additionally, any suitably qualified and experienced expert would likely already be in NGT's employ.	
NGT-D3-08	4.1.18-4.1.19	The Applicant has also proposed amendments to the Protective Provisions which would require NGT to seek the Applicant's consent before settling any third party claims which fall within the scope of the indemnity, and where the Applicant refuses to consent to such settlement then it would take control of conduct of such claim/settlement. NGT's position is that it must retain control of all third-party claims which affect its network given the associated risk of reputational and operational impact upon its statutory undertaking. In any event, the Protective Provisions already contain a requirement for NGT to act reasonably at all times and in the same manner as it would as if settling third party claims on its own behalf from its own funds in connection with any matter covered by the indemnity given by the Applicant, as well as a requirement for NGT to consult with the Applicant in relation to the settlement of any claims. As such, NGT's view is that the existing drafting provides	The Applicant has agreed to use NGT's preferred wording in respect of this matter. This is reflected in the Applicant's preferred protective provisions included at Appendix A of this submission. Consequently, the Applicant considers that this issue is resolved.

Our Ref.	Ref.	NGT Comments	Applicant Response
		sufficient protection and comfort to the Applicant that claims will be appropriately handled, thereby negating the need to transfer control of any claims to the Applicant.	
NGT-D3-09	4.1.20	The Applicant has proposed amendments to the Protective Provisions that would limit NGT's ability to recover third party costs under the indemnity to those that are "reasonably and properly incurred". NGT's position is that this is inappropriate as NGT has no control over the nature of third party costs, and it would be inequitable for NGT to risk being left out of pocket in respect of third party liabilities caused by the proposed authorised development.	The Applicant has agreed to use NGT's preferred wording in respect of this matter. This is reflected in the Applicant's preferred protective provisions included at Appendix A of this submission. Consequently, the Applicant considers that this issue is resolved.
NGT-D3-10	4.1.21	The Applicant has suggested a number of clarificatory amendments to the Protective Provisions. NGT's position is that these changes introduce unnecessary deviation from the Protective Provisions and would interfere with NGT's need to retain consistency regarding the Protective Provisions that it agrees across all of the DCO projects it is impacted by, and thus increases the likelihood of disputes arising across its national network. Therefore, these amendments are not acceptable.	As noted above at NGT-D3-05, the Applicant wishes to note that several of the clarificatory amendments sought by the Applicant, and which NGT have pushed back on, have been very minor and have included a request for express wording requiring NGT to act reasonably. The Applicant notes that NGT may wish to retain consistency across its protective provisions but considers that this unduly inflexible approach is out of step with the guidance from MHCLG and DLUHC referenced at NGT-D3-05 above.

Appendix A: Applicant's Preferred Protective Provisions

PART 4

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

40.—(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 (consent to transfer 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 50(3)b).

Interpretation

41. In this Part of this Schedule—

“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;

“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 (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 (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 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 46(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus subject to (i) and (ii):
 - (i) in the case of paragraph 48 reference to “specified works” shall exclude apparatus the removal of which has been required by the undertaker under paragraph 46(2) or otherwise; and
 - (ii) all other references to “specified works” shall include apparatus where the removal of such apparatus has been required by the undertaker under paragraph 46(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

42. Except for paragraphs 43 (apparatus of National Gas in stopped up streets), 48 (retained apparatus: protection), 49 (expenses) and 50 (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 stopped up streets

43. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (temporary stopping up of streets and public rights of way), 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

44. The undertaker, in the case of the powers conferred by article 19 (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

45.—(1) Regardless of any provision in this Order or anything shown on the land plan 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 specified 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 specified 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 48 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

46.—(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 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), secure any necessary consents for the alternative apparatus and afford to National Gas to its satisfaction (taking into account paragraph 47(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 or in default of agreement settled by arbitration in accordance with this Order.

(5) 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 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

47.—(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 54 (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

48.—(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) provided that National Gas uses reasonable endeavours to communicate any conditions to the undertaker as soon as reasonably practicable and in any event National Gas must communicate any conditions to the undertaker within a period of 56 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.

(2) In relation to any specified 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 and National Gas must use reasonable endeavours to notify the undertaker of such modifications as soon as reasonably practicable and in any event National Gas must notify the undertaker within a period of 56 days beginning with the date on which the plan required under sub-paragraph (2) has been submitted to National Gas.

(5) 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.

(3) 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 satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must use reasonable endeavours to give notice of its requirement for such works as soon as reasonably practicable and in any event National Gas must give such notice 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 40 to 42 and 45 to 47 apply as if the removal of the apparatus had been required by the undertaker under paragraph 46(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 the undertaker 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 49.

Expenses

49.—(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 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 46(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 53 (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

50.—(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 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 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, 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 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 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus (“new apparatus”), any 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 50; 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 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) The undertaker must not 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 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 50(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

51. 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

52.—(1) Where in consequence of the proposed construction of any part of the specified works, the undertaker or National Gas requires the removal of apparatus under paragraph 46(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 48, 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 specified 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 AND any reference to National Gas' satisfaction is to be construed as requiring reasonable satisfaction.

Access

53. If in consequence of the agreement reached in accordance with paragraph 45(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

54. 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 43 (arbitration).

Notices

55. Notwithstanding article 40 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 48 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 B: Comparison Between Applicant's Preferred Protective Provisions and NGT's Preferred Protective Provisions included in REP3-081

~~NATIONAL GAS TRANSMISSION PLC~~
~~SCHEDULE [●]~~

~~PROTECTIVE PROVISIONS~~

PART [●]4

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS
UNDERTAKER

Application

40. ~~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 (consent to transfer 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 ~~1~~50(3)b).

Interpretation

41. ~~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 ~~42~~ (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 ~~42~~ (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~~ 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 ~~74~~6(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus subject to (i) and (ii):

(i) in the case of paragraph 48 reference to “specified works” shall exclude apparatus the removal of which has been required by the undertaker under paragraph 46(2) or otherwise; and

(ii) ~~(b) may in any way adversely affect any~~ all other references to “specified works” shall include

apparatus where the removal of ~~which~~such apparatus has ~~not~~ been required by the undertaker under paragraph 746(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~~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

~~42. 3.~~ Except for paragraphs ~~[●]~~43 (apparatus of National Gas in stopped up streets), ~~[●]~~48 (retained apparatus: protection), ~~[●]~~49 (expenses) and ~~[●]~~50 (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 stopped up streets

~~4. — (1) Where any street is stopped up under article [●] (permanent stopping up, restriction of use and construction of streets, public rights of way and private means of access), 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.~~

~~43. (2)~~ Notwithstanding the temporary stopping up or diversion of any highway under the powers of article ~~[●]~~15 (temporary stopping up ~~and restriction of use~~ of streets and public rights of way), 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

~~44. 5.~~ The undertaker, in the case of the powers conferred by article ~~[●]~~19 (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

~~45. 6.~~ (1) Regardless of any provision in this Order or anything shown on the land ~~plans~~plan 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~~specified 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~~specified 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 [948](#) or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

~~46.~~ ~~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 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), secure any necessary consents for the alternative apparatus and afford to National Gas to its satisfaction (taking into account paragraph [847](#)(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 [or in default of agreement settled by arbitration in accordance with this Order](#).

(5) 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 and the grant to National Gas of any such facilities and rights as are referred to in ~~sub-paragraph~~[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

~~47.~~ ~~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 ~~155~~[54](#) (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

~~48.~~ ~~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) provided that National Gas uses reasonable endeavours to communicate any conditions to the undertaker as soon as reasonably practicable and in any event National Gas must communicate any conditions to the undertaker within a period of 56 days beginning with the date on which a plan is submitted to National Gas in accordance with sub-paragraph (1); and,

~~(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)~~ (2) In relation to any specified 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; and National Gas must use reasonable endeavours to notify the undertaker of such modifications as soon as reasonably practicable and in any event National Gas must notify the undertaker within a period of 56 days beginning with the date on which the plan required under sub-paragraph (2) has been submitted to National Gas.

(5) ~~(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)~~ (3) 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's satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must use reasonable endeavours to give notice of its requirement for such works as soon as reasonably practicable and in any event National Gas must give such notice 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 ~~140~~ to ~~342~~ and ~~645~~ to ~~847~~ apply as if the removal of the apparatus had been required by the undertaker under paragraph ~~746~~(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 the undertaker 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 ~~1049~~.

Expenses

~~49.~~ ~~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~~ 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 ~~746~~ (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 ~~1553~~ (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

~~50. 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~~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, 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~~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 (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~~sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph ~~11.50~~50; 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 and no settlement, admission of liability or compromise must, unless payment is required in connection with

~~(4)~~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~~

(7) (b) The undertaker must not 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 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 ~~14~~50(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

~~51. 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

~~52. 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 ~~74~~6(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph ~~94~~8, 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~~specified 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 AND any reference to National Gas' satisfaction is to be construed as requiring reasonable satisfaction.

Access

~~53. 14.~~ If in consequence of the agreement reached in accordance with paragraph ~~64~~5(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

~~54. 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 ~~14~~43 (arbitration).

Notices

~~55. 16.~~ Notwithstanding article ~~14~~40 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph ~~94~~8 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.