

**Dated**

**27 August 2025**

**APPLICATION BY RWE RENEWABLES UK SOLAR AND STORAGE LIMITED FOR AN ORDER  
GRANTING DEVELOPMENT CONSENT FOR THE PEARTREE HILL SOLAR FARM ORDER 202[ ]**

**PLANNING INSPECTORATE REFERENCE NUMBER: EN010157**

**REGISTRATION IDENTIFICATION NUMBER: F8304D287**

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**WRITTEN REPRESENTATION**  
**submitted on behalf of National Gas Transmission plc**

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## **1 Introduction**

- 1.1 This written representation is submitted on behalf of National Gas Transmission plc (**NGT**) in response to the application by RWE Renewables UK Solar and Storage Limited (**Promoter**) for the Peartree Hill Solar Farm Development Consent Order (**Draft Order**) to enable the construction of the Peartree Hill Solar Farm and collated Battery Energy Storage System (defined in the Draft Order as the **Authorised Development**).

## **2 NGT infrastructure**

- 2.1 As set out in NGT's relevant representation dated 12 May 2025 [**RR-009**], NGT has a number of assets that form an essential part of the gas transmission network in England, Wales and Scotland either within, or in close proximity to, the Peartree Hill Solar Farm. These include the transmission pipelines set out below and shown on the plans at Appendix 1 (**NGT Assets Plans**):

(a) Feeder 29 – Ganstead to Asselby (**NGT Assets**).

- 2.2 In respect of the NGT Assets (and any other NGT infrastructure located within the current Draft Order limits or in close proximity to the proposed Authorised Development and associated works), NGT will require protective provisions to be put in place to ensure that:

(a) all NGT interests and rights, including rights of access both to the NGT Assets and any other NGT apparatus, are unaffected by the powers of compulsory acquisition, temporary possession, and the grant and/or extinguishment of rights as set out in the Draft Order; and

(b) appropriate protection for the NGT Assets and any other retained apparatus is maintained during and after construction of the Authorised Development in accordance with the Protective Provisions and the relevant safety standards as set out below.

- 2.3 Discussions regarding site-specific interactions and impacts are ongoing between NGT and the Promoter and NGT reserves the right to raise further issues as these discussions progress.

## **3 NGT Regulatory Framework**

- 3.1 Relevant guidance in respect of standards and protocols for working in the vicinity of high pressure gas pipelines applies in the form of National Gas Transmission Guidance for Safe Working in the vicinity of High Pressure Pipelines T/SP/SSW/22 which is aimed at parties carrying out work in the vicinity of high pressure gas pipelines and associated installations and is provided to ensure that those planning and undertaking work take appropriate measures to prevent damage.

- 3.2 The requirements in T/SP/SSW/22 are in accordance with IGEM (Institution of Gas Engineers and Managers) technical standard IGEM/SR/18 Edition 3 – Safe Working Practices to Ensure the Integrity of Gas Pipelines and Associated Installations and HSE's guidance document HS (G) 47 Avoiding Danger from Underground Services.

- 3.3 NGT requires specific protective provisions to be put in place to provide for an appropriate level of control and protection for all retained assets (including the NGT Assets) and assurance that industry standards will be complied with in connection with works to and in the vicinity of the same.

## 4 Property issues

- 4.1 NGT asserts that maintaining appropriate property rights to support its assets and protecting these from compulsory acquisition and related powers in the Draft Order is a fundamental safety issue.
- 4.2 Insufficient property rights would have the following safety implications:
- (a) inability for qualified personnel to access apparatus for its maintenance, repair and inspection;
  - (b) risk of strike to buried assets if development occurs within the easement zone which seeks to protect such buried assets; and
  - (c) risk of inappropriate development within the vicinity of the assets, thereby increasing the risk of unacceptable electrical interference to transmission pipelines, the risk of damage to the asset and to the integrity of the gas transmission network.
- 4.3 Due to the interaction between the NGT Assets and the Authorised Development, as shown on the NGT Assets Plans, there is a significant risk of increased electrical interference to transmission pipelines, traffic loading and pipeline vibrations during construction of the Authorised Development. These significant risks have the potential to result in safety limits being breached. NGT requires specific electrical impact assessments to fully evaluate the risks posed by the Authorised Development. Given the potential significant safety implications of electrical interference, securing sufficient property rights is essential to ensuring the safety and integrity of the gas transmission network.

## 5 Protective provisions

- 5.1 NGT seeks to protect its statutory undertaking, and insists that in respect of connections and work in close proximity to its apparatus (including the NGT Assets) as part of the Authorised Development the following procedures are complied with by the Promoter:
- (a) NGT is in control of the plans, methodology and specification for works within 15 metres of any retained Apparatus; and
  - (b) works in the vicinity of NGT's apparatus are not authorised or commenced unless protective provisions are in place preventing compulsory acquisition of NGT's land or rights or the overriding or interference of the same. Any acquisition of rights must be subject to NGT's existing interests and rights and not contradict with or cut across such rights, including pipeline easements restricting development.
- 5.2 In particular, NGT has concerns arising from the nature of the Authorised Development as solar photovoltaic installations can cause significant risk to NGT assets and appropriate steps must be taken to ensure that these risks are mitigated.
- 5.3 In light of the above, NGT require protective provisions to be included within the Draft Order to ensure that its existing assets and interests are adequately protected, as well as to ensure compliance with relevant safety standards (**NGT Protective Provisions**). For completeness, we include a copy of NGT Protective Provisions at Appendix 2.
- 5.4 We note that the Draft Order does not yet contain protective provisions expressed to be for the protection of NGT, making it deficient from NGT's perspective. The Draft Order does contain generalised protective provisions for the protection of electricity, gas, water and sewage

undertakers at Part 1 Schedule 12 (**General Protective Provisions**) but NGT does not consider that these are sufficiently precise as to protect NGT's interests and have identified a number of shortcomings:

#### Approval Process

- 5.5 The General Protective Provisions do not provide a detailed process for the approval of works that affect NGT apparatus and the setting out of requirements to enable development to take place. It is sensible to set out this process at the earliest opportunity to allow parties to build approvals in programmes. It also ensures consistency of approach with other development schemes, as referred to above. Further, the General Protective Provisions allow for a 'deemed approval' mechanism in the event that NGT does not confirm its position on the proposed works within a set timescale of 28-days. This deemed approval mechanism is not appropriate for gas undertakers due to the safety-critical nature of their infrastructure. Any approval process must allow sufficient time for thorough review and consultation, ensuring that all proposed works meet safety, operational, and regulatory requirements.

#### Indemnities, expenses and costs

- 5.6 The General Protective Provisions do not provide an indemnity for the benefit of gas undertakers, instead it provides for the making of reasonable compensation. This is not sufficient or appropriate. Given the specific way that the gas industry obtains its funds, it has no way to recoup costs beyond passing onto consumers. Given the important role NGT plays in the operation and maintenance of the National Transmission System, which is responsible for the transportation of gas across the country, it is not appropriate that NGT would only be able to recover reasonable expenses. NGT should have the benefit of a full indemnity to ensure that it is not adversely penalised by a third-party project interacting with its apparatus. NGT should therefore have the benefit of a full indemnity to ensure that it is not adversely penalised by a third-party project interacting with its apparatus.
- 5.7 In addition, the General Protective Provisions do not provide for the provision of insurance or security prior to the commencement of the development. NGT (along with many other statutory undertakers) require that both acceptable insurance and acceptable security are put in place to ensure that NGT is not unduly financially burdened as a result of a development. The NGT Protective Provisions included at Appendix 2 contain the standard definitions but they are replicated below for ease:

*"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<sup>1</sup> 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).*

- 5.8 Both acceptable security and acceptable insurance provide different, complimentary, purposes. Whilst Acceptable Insurance protects NGT against losses caused by the proposed development ensuring that there are sufficient funds available to rectify damage to NGT interests or apparatus, Acceptable Security provides additional protection as it insofar as it provides that the guarantor will be required to step in to fulfil obligations if the applicant fails to do so. This provides protection to NGT in circumstances where the applicant becomes the subject of an event of insolvency / financial default and otherwise materially reducing the risk exposure caused by non-compliance with the relevant requirements of the protective provisions.
- 5.9 The drafting of the definitions of Acceptable Insurance and Acceptable Security is predicated on both being provided and this is evidenced by the fact that NGT has no right to review or approve the terms of insurance to ensure that it has sufficient levels of coverage for all risks, such as event of insolvency or financial default as this is dealt with under Acceptable Security. It is therefore appropriate that NGT should have recourse to a parent company or bond in these circumstances.
- 5.10 The principle of inclusion of 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 three recently granted DCOs: Byers Gill Solar Farm DCO (granted 23 July 2025), East Yorkshire Solar Farm DCO (granted 9 May 2025) and Viking CCS Pipeline DCO (granted 9 April 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: West Burton Solar Project DCO (granted 25 January 2025), Mona Offshore Wind Farm DCO (granted 4 July 2025) and Oaklands Farm Solar Park (granted 19 June 2025).
- 5.11 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.

#### Physical access to apparatus

- 5.12 The General Protective Provisions ensure that where works are near or affecting apparatus, access arrangements are provided for, but no more than that. However, it is entirely conceivable that the undertaker's works are not near the apparatus and do not in the normal sense of the word affect it. Access must be maintained at all times to ensure consistency of gas supply to customers and to enable NGT to remedy issues in an emergency.

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<sup>1</sup> "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

### Consistency

- 5.13 Notwithstanding the merits of the NGT Protective Provisions, it is important when operating a large network that the legal environment in which operatives are asked to work is largely the same. It is impossible to operate a large network with the efficiency that bill-payers are entitled to expect if operatives are required to check the exact terms of any relationship with third parties each time they carry out an activity. To that end, an efficient operator will always seek to keep the broad terms of such relationships the same. It is for this reason that NGT seeks to achieve through the inclusion of the NGT Protective Provisions: (1) consistency of terms; and (2) consistency of process.

### Consistency of terms

- 5.14 NGT seeks to keep the protective provisions for Development Consent Orders, Transport and Works Orders, and local or private Acts of Parliament:
- substantially the same as protective provisions applied to other Development Consent Orders, Transport and Works Orders, and local or private Acts of Parliament; and
  - broadly the same as the relationship with landowners and developers generally.

This is particularly pertinent here given that the NGT Assets proposed to be affected by the Authorised Development are also affected by another development consent project further to the west (being the Dogger Bank South Offshore Wind Farm). NGT has sought the same form of protective provisions to be included in the Dogger Bank South Offshore Wind Farm project as are being sought here and there is no reason to depart from this approach given it is the same apparatus being affected.

### Consistency of process

- 5.15 Many of the activities forming an interface between NGT and the undertaker that are envisaged by the Development Consent Order replicate rights that are given to landowners and developers by statute in any event. In order to process the application of those rights efficiently, the specific protective provisions seek to channel undertakers towards using those processes where appropriate.

## **6 Status of negotiations**

- 6.1 While discussion remains ongoing, as noted above the Draft Order does not yet contain protective provisions expressed to be for the protection of NGT, making it deficient from NGT's perspective.
- 6.2 NGT's solicitors Addleshaw Goddard LLP have been engaging with the Promoter's solicitors and provided them with a set of NGT Protective Provisions on 14 March 2025. It is noted that the Promoter's solicitors changed during this period and NGT Protective Provisions were recirculated on 20 June 2025. Discussions are ongoing to be able to agree a set of protective provisions to be included in the draft Order.
- 6.3 Until satisfactory agreement has been reached with the Promoter, NGT must continue to reserve its right to make further submissions to the Examination at a later date, including appearance at any hearings in due course.

- 6.4 Should it not be possible to reach agreement with the Promoter, NGT reserves the right to attend any Compulsory Acquisition Hearing or Issue Specific Hearing to address the required format of the protective provisions and any necessary amendment to the Draft Order.
- 6.5 If this is necessary, NGT also reserves the right to provide further written information in advance in support of any detailed issues remaining in dispute between the parties at that stage.
- 6.6 For current purposes, and in the absence of an agreed form of protective provisions containing all necessary (and usual) safeguards, NGT must continue to object to what would otherwise amount to an unfettered ability for the Promoter to exercise powers of compulsory acquisition and/or temporary possession in respect of NGT's Assets, land or rights over its land.

**Addleshaw Goddard LLP**

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

**27 August 2025**

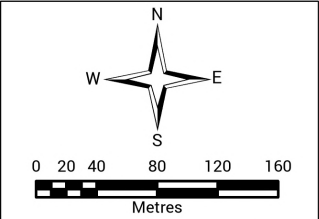
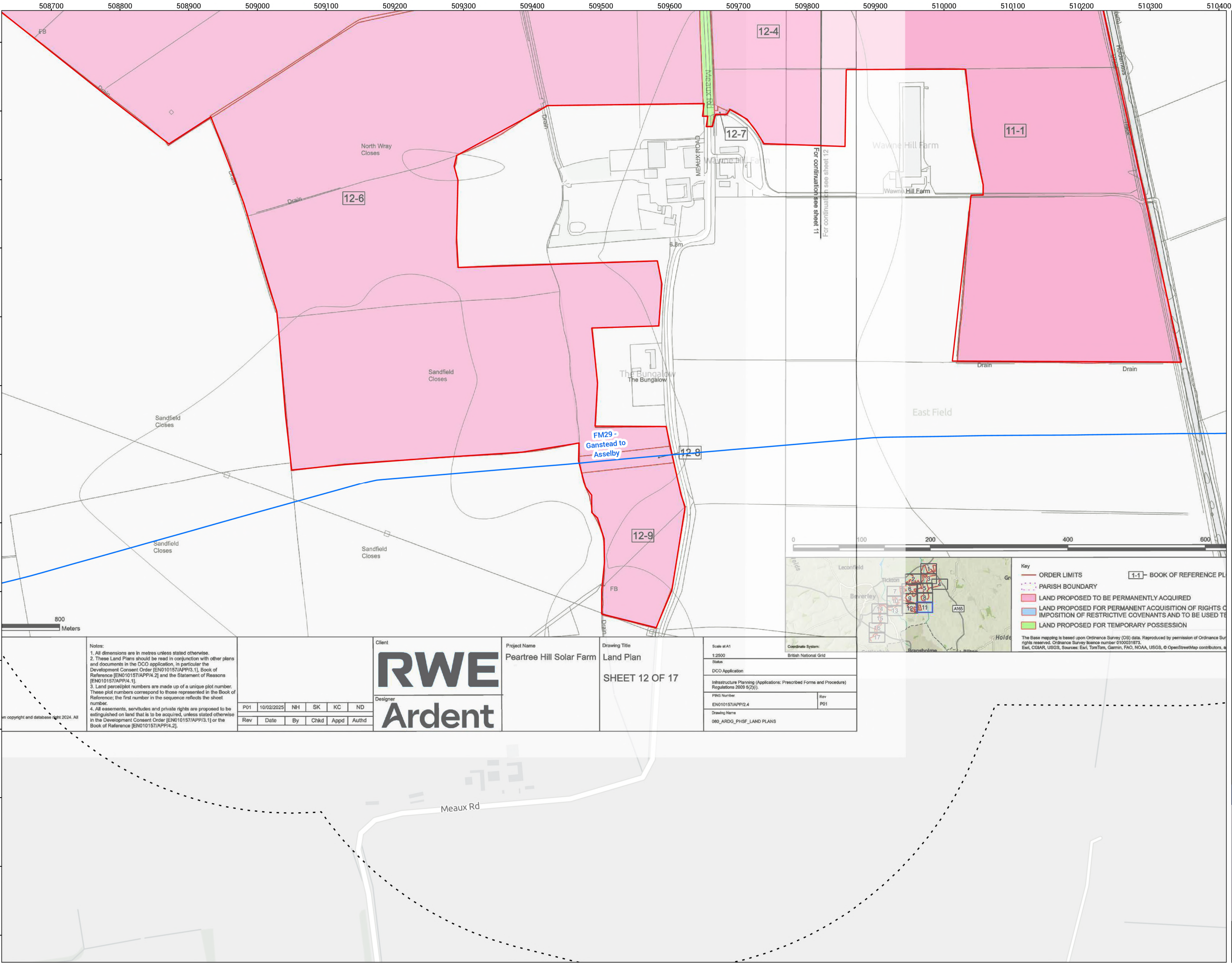
## **APPENDIX 1**

### **NGT Assets Plan**









- LEGEND:
- TR Location
  - NGT Pipeline
  - Site Boundary
  - Site Boundary 500
  - Buffer
  - NG Leasehold
  - NG Freeholds

REVISION: C

CLIENT:

SCHEME: Peartree Hill Solar Farm

TITLE: Interaction Plan

FP: 105183-066

SCALE: 1:5,000 @ A3  
DATE: 28/03/2025

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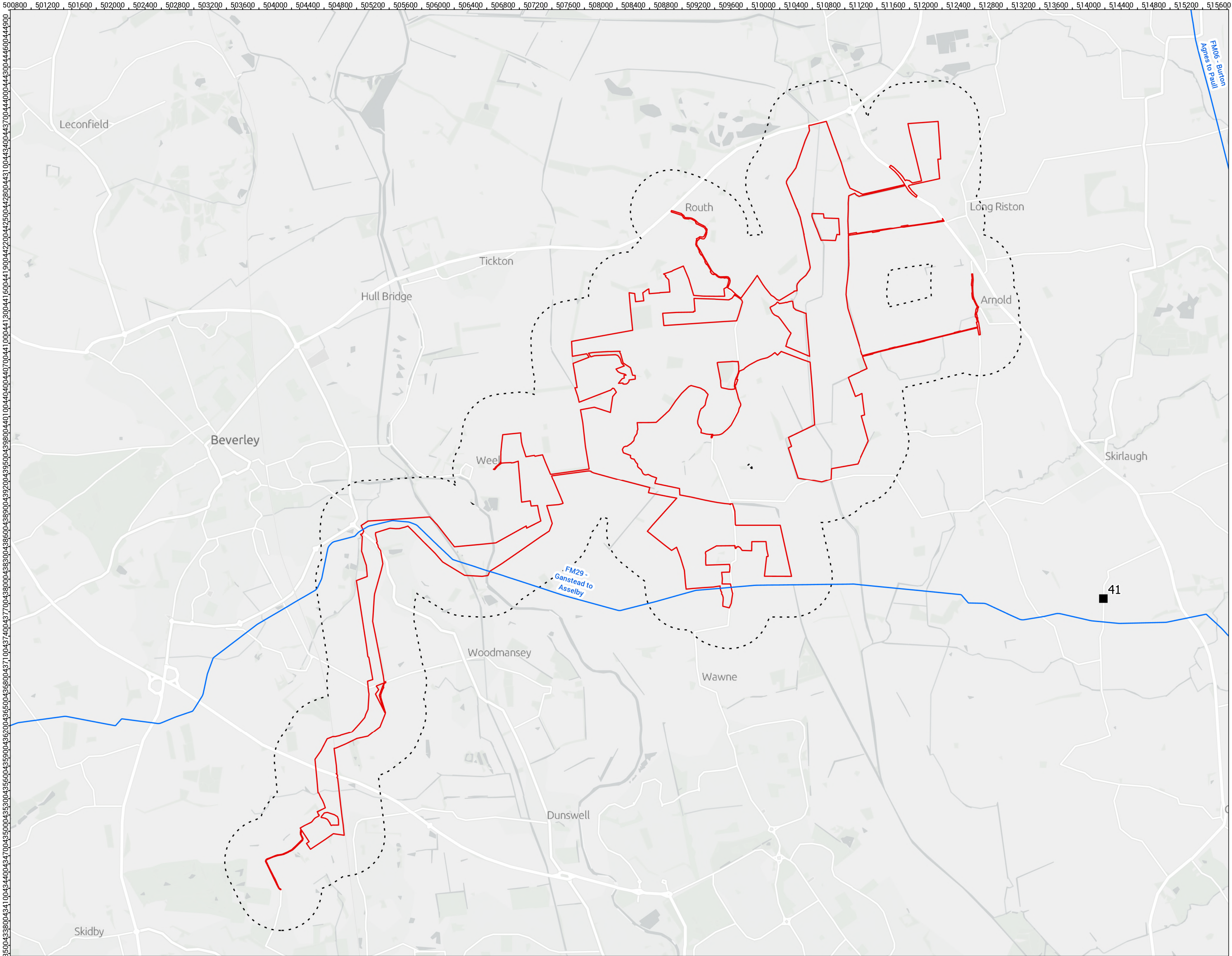


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DRAWING REF:  
NG-2024-03-EP-IP-PEARTREE HILL  
SOLAR FARM\_2





0

165

330

660

990

1,320

Metres

OVERVIEW WINDOW

LEGGEND:

TR Location

NGT Pipeline

Site Boundary

Site Boundary 500 Buffer

NG Leasehold

NG Freeholds

REVISION: C

CLIENT:

SCHEME:  
Peartree Hill Solar Farm

TITLE:  
Interaction Plan

FP. 105183-066

SCALE: 1:42,000 @ A3  
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SOLAR FARM  
OVERVIEW

## **APPENDIX 2**

### **NGT Protective Provisions**

# NATIONAL GAS TRANSMISSION PLC

## SCHEDULE [●] PROTECTIVE PROVISIONS

### PART [●] FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

#### Application

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

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article [●] (*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 11(3)b).

#### Interpretation

2. In this Part of this Schedule—

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

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

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

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

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

“acceptable security” means either:

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

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

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

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

“authorised works” has the same meaning as is given to the term “authorised development” in article [●] (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 [●] (interpretation) of this Order save that for the purposes of this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

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

“functions” includes powers and duties;

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

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Gas's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

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

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

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

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

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

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

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

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

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

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

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

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

### **On Street Apparatus**

3. Except for paragraphs [●] (*apparatus in stopped up streets*), [●] (*retained apparatus: protection*), [●] (*expenses*) and [●] (*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.

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



## **Protective works to buildings**

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

## **Acquisition of land**

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

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

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

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

## **Removal of apparatus**

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

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas 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 8(1) below) the necessary facilities and rights



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

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

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

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

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

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

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

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

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

(2) In relation to specified works the plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

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

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

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

(b) must not be unreasonably withheld.

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

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

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

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

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

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

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

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

## **Expenses**

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

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

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

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

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

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

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

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

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

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

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

### **Indemnity**

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

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

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

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

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

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

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

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

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

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

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

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

### **Enactments and agreements**

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

### **Co-operation**

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

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

### **Access**

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

### **Arbitration**

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

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

## **Notices**

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