

# SCHEDULES

## SCHEDULE [X]

### PROTECTIVE PROVISIONS

#### PART ~~7~~ [X]

FOR THE PROTECTION OF CADENT GAS ~~LTD AS GAS UNDERTAKER~~ LIMITED

##### *Application*

1. ~~55~~ For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

##### *Interpretation*

2. ~~58~~—(1) 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 a third party liability insurance effected and maintained by the undertaker to a level of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance must be maintained for the construction and use period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy must include (but without limitation):

(a) Cadent as a Co-Insured;

(b) a cross liabilities clause;

(c) a waiver of subrogation in favour of Cadent; and

(d) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

(a) evidence provided to Cadent’s reasonable satisfaction that the Undertaker has a tangible net worth of not less than £50,000,000.00 (Fifty Million Pounds (or an equivalent financial measure);

(b) a parent company guarantee from a parent company in favour of Cadent to cover the undertaker’s liability to Cadent to a cap of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Cadent and where required by Cadent, 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

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

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

“apparatus” means any gas mains, pipelines, pipes, pressure governors, ventilators, cathodic protections (including transformed rectifiers and any associated groundbeds or cables), cables, marker posts, block valves, hydrogen above ground installations or other apparatus belonging to, or maintained by, Cadent for the purposes of Cadent’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent’s undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised ~~development works~~” has the same meaning as is given to the term “authorised development” in article ~~2(1)(x)~~ of the 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 ~~development works~~ and construction of any works authorised by this Schedule;

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Cadent’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

“commence” and “commencement” ~~means carry out a material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or for the purposes of the authorised development including (but not limited to) include~~ any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, ~~other than erection of fencing to site boundaries or marking out of site boundaries, installation of amphibian and reptile fencing, or environmental mitigation measures, and “commencement”, “commenced” and cognate expressions are to be construed accordingly; and non-intrusive investigations for the purpose of assessing ground conditions;~~

“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;

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (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 must~~ require the undertaker to submit for Cadent’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” [have effect as if Cadent’s existing apparatus was authorised development and as if the term maintain includes protect and use; / will include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus];

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

“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;

~~“protective works” means the underpinning, strengthening and any other works the purpose of which is to prevent damage to or interference with Cadent’s apparatus that may be caused by the carrying out, maintenance or use of the authorised development;~~

“rights” includes rights and restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised ~~development works~~ or activities (including maintenance) undertaken in association with the authorised ~~development 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 sub-paragraph 627(2) of this Part of this Schedule or otherwise; ~~or~~
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 627(2) of this Part of this Schedule or otherwise; or

(c) include any of the activities that are referred to in CD/SP/SSW/22 Cadent's policies for safe working in proximity to gas apparatus Specification for safe working in the vicinity of Cadent Assets

"undertaker" means the undertaker as defined in article 2 of this Order.

#### *On Street apparatus*

~~3. 59.~~ (1)(1) This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

(a) paragraphs ~~60~~4, ~~649~~10 and ~~66 of this Part of this Schedule~~11; and

(b) where sub-paragraph (2) applies, paragraphs ~~62~~ and ~~73 of this Part of this Schedule~~.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) Notwithstanding article [x] or any other powers in the Order generally, s85 of the 1991 Act in relation to cost sharing and the regulations made thereunder will not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

(4) (3) The Protective Provisions in this Part of this Schedule apply and take precedence over article ~~33 (statutory undertakers)~~[x] of the Order which ~~shall~~do not apply to Cadent.

#### *Apparatus of Cadent in stopped up streets*

~~4. 60.~~ (1)(1) Where any street is stopped up under article ~~13 (temporary closure or restriction of streets and~~[x] (permanent stopping up of ~~public rights of way~~streets), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent 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 ~~60 shall affect~~ any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph ~~62 of this Part of this Schedule~~.

(2) (2) ~~Subject to sub-paragraph (3), and notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 13[x] (temporary prohibition, restriction and diversion of use of streets and public rights of way) or Schedule 4 (alteration stopping up of streets), Cadent will be at liberty at all times and at Cadent's own risk to take reasonable all necessary access across any such street and to execute and execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that street.~~

~~(3) In taking access pursuant to sub-paragraph (2), Cadent must—~~

~~(a) comply with any plans produced by the undertaker pursuant to its obligations under the Construction (Design and Management) Regulations 2015; and~~

~~(b) comply with all relevant health and safety legislation, guidance, protocols and procedures.~~

#### *Protective works to buildings*

~~5. 61.~~ (1)(1) The undertaker ~~must exercise, in the case of~~ the powers conferred by article ~~20[x] (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 Cadent ~~(such consent not to be unreasonably withheld or delayed)~~ and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in ~~the~~ view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2) ~~shall, will—~~

(a) pay compensation to Cadent for any ~~reasonable~~ loss sustained by it; and

(b) indemnify Cadent against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent, by reason of any such damage or interruption.

(2) (2) Nothing in this paragraph ~~61~~ imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent or its contractors or workmen; and Cadent will give to the undertaker reasonable notice of any claim or demand as

aforesaid and no settlement, ~~admission of liability~~ or compromise thereof shall be made by Cadent, save in respect of any payment requirement under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

#### 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 appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure and/or secure the consent to 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) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation 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 Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(4) Any agreement or consent granted by Cadent under paragraph 8 or any other paragraph of this Part of this Schedule, will be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and/or other interest of Cadent in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 6 do not apply, the undertaker must—

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

#### *Removal of apparatus*

7. ~~62.~~ (1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 5, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable-satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) ~~(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 Cadent advance written notice of that requirement, together with a plan and section 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 Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its reasonable-satisfaction (taking into account paragraph ~~63~~7(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) ~~(3)~~ If 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, Cadent ~~must~~may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation ~~shall~~will not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) ~~(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 ~~position~~line or situation as may be agreed between Cadent and the undertaker or settled by arbitration.

(5) ~~(5)~~ Cadent must, after the alternative apparatus to be provided or constructed has been agreed or settled, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to Cadent to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

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

8. 63. ~~(1)~~ (1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent ~~(in Cadent's reasonable opinion)~~ than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) ~~(2)~~ If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) 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 Cadent ~~(in Cadent's reasonable opinion)~~ than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed ~~(in Cadent's reasonable opinion)~~, then the terms and conditions to which those facilities and rights are subject may in the matter will be referred to arbitration in accordance with paragraph ~~69~~14 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### *Retained apparatus: protection of Cadent*

9. 64. ~~(1)~~ (1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) ~~(2)~~ The plan to be submitted to Cadent 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) ~~(3)~~ The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) ~~(4)~~ Any approval of Cadent given under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and
- (b) must not be unreasonably withheld or delayed ~~and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).~~



(5) For the purposes of sub-paragraph (4)(b) it will be deemed to be reasonable for any approval to be refused if Cadent considers that the specified works would:

- (a) cause interference with or risk of damage to its apparatus; or
- (b) prevent access to its apparatus at any time.

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

(7) ~~(6)~~ Specified works to which this paragraph applies must only be executed in accordance with—

- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and
- (b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

(8) ~~(7)~~ Where Cadent ~~reasonably~~ 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 ~~64~~, must be carried out to Cadent's ~~reasonable~~ satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(9) ~~(8)~~ If Cadent, 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 ~~57~~ 1 to ~~59~~ 3 and ~~62 to 64 of this Part of this Schedule~~ 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 62(2) ~~of this Part of this Schedule~~.

(10) ~~(9)~~ Nothing in this paragraph ~~64~~ 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 ~~64~~ will apply to and in respect of the new plan.

(11) ~~(10)~~ As soon as reasonably practicable after any ground subsidence event attributable to the authorised ~~development~~ works (including such an event attributable to its maintenance)—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) Cadent retains the right to carry out any further necessary protective works ~~(in Cadent's reasonable opinion)~~ for the safeguarding of its apparatus and can recover any such costs ~~associated with the further protective works~~ in line with paragraph ~~65 of this Part of this Schedule~~ 9.

(12) ~~(11)~~ The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) Sub-paragraph (14) at all times.

(13) ~~(12)~~ In this paragraph ~~64~~, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

(14) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent's policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of Cadent Assets CAD//SP/SSW/22” and HSE’s “HS(~G)47 Avoiding Danger from underground services

#### *Expenses*

10.65. ~~(1)~~ (1) Subject to the following provisions of this paragraph ~~65~~, the undertaker must pay to Cadent on demand, ~~all documented~~ charges, costs and expenses ~~reasonably~~ anticipated or ~~reasonably and properly~~ incurred by Cadent 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 ~~development~~ works as are referred to in this Part of this Schedule including without limitation—

- (a) ~~(a)~~ any costs reasonably ~~and properly~~ incurred by or compensation properly paid by Cadent in connection with the negotiation and/or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all ~~reasonable~~ costs (including professional fees) incurred by Cadent as a consequence of Cadent—;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 62(3) ~~of this Part of this Schedule~~ if it elects to do so; and/or
  - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;
- (b) ~~(b)~~ in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) ~~(c)~~ the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) ~~(d)~~ the approval of plans;
- (e) ~~(e)~~ the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) ~~(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; ~~and~~
- (g) ~~(g)~~ any watching brief pursuant to sub-paragraph 649(6) ~~of this Part of this Schedule~~.

#### Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) 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 the undertaker) 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 development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
  - (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs incurred by, paid by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.
- (2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed. The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability 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. sub-paragraph (1) unless Cadent 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) 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 article 42 (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 Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess.~~

~~(3) (4) For the purposes of~~ Nothing in sub-paragraph ~~(31)~~ imposes any liability on the undertaker in respect of—

- ~~(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) An amount which apart from this sub-paragraph would be payable to Cadent 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 Cadent 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.~~

~~(6) Where Cadent demands payment of reasonably anticipated charges, costs and expenses pursuant to sub-paragraph (1), Cadent must provide the undertaker with an itemised invoice or claim detailing such charges, costs, and expenses reasonably anticipated to fall due within the following three months of such a demand. The undertaker shall pay the reasonably anticipated costs set out in the itemised invoice to Cadent on demand in accordance with sub-paragraph (1). To the extent that this sum paid in advance has not been expended by Cadent before three months after payment by the undertaker of that sum, the undertaker may demand the unspent balance remaining to be repaid by Cadent and Cadent shall repay that unspent balance within 30 days (unless otherwise agreed in writing between the parties).~~

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any part of the authorised works carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article [x] (consent to transfer benefit of the Order) of the Order.

(4) Cadent must:

- (a) 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) The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised works on any land owned by Cadent or in respect of which Cadent has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of Cadent's apparatus until the following condition are satisfied:

- (a) unless and until Cadent 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 will 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 Cadent has confirmed the same to the undertaker in writing; and
- (b) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Cadent 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 Cadent has confirmed the same in writing to the undertaker.

(6) In the event that the undertaker fails to comply with 10(5) of this Part of this Schedule, nothing in this Part of this Schedule prevents Cadent from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

#### *Enactments and agreements*

**12.66-** Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent 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*

**13.67. —(1) —(1)** Where in consequence of the proposed construction of any part of the authorised ~~development~~ works, the undertaker or Cadent requires the removal of apparatus under paragraph 62(2) ~~of this Part of this Schedule~~ or Cadent makes requirements for the protection or alteration of apparatus under paragraph ~~64 of this Part of this Schedule~~ 8, the undertaker must use its ~~reasonable~~ best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised ~~development~~ works and



taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

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

#### *Access*

~~14.68.~~ If in consequence of any agreement reached in accordance with paragraph 5(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction ~~(in Cadent's reasonable opinion). For the avoidance of doubt, where the undertaker cannot grant such alternative rights and means of access to such apparatus by virtue of not being in possession of the requisite land rights, the undertaker shall use reasonable endeavours to assist in the securing of the requisite rights and means of access.~~

#### *Arbitration*

~~15.69.~~ Save for differences or disputes arising under sub-paragraphs 62(2) and 62(4) ~~of this Part of this Schedule~~ any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 42[x] (arbitration).

#### *Notices*

~~16.70.~~ Notwithstanding article 44[x] (service of notices) any plans submitted to Cadent by the undertaker pursuant to ~~sub~~-paragraph 648(1) ~~of this Schedule~~ must be sent via email to:

Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com copied by e-mail to [REDACTED]@cadentgas.com and sent to the General Counsel Department at Cadent's registered office [INSERT];

or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

<b>Summary report:</b> <b>Litera Compare for Word 11.8.0.56 Document comparison done on</b> <b>24/09/2025 12:05:39</b>	
<b>Style name:</b> CMNO - Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> DCO PPs(713530724.1).docx	
<b>Modified filename:</b> Great North Road DCO - Protective Provisions(712995095.1).docx	
<b>Changes:</b>	
<u>Add</u>	234
<del>Delete</del>	190
<del>Move From</del>	5
<u>Move To</u>	5
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	434