

## SCHEDULE 3

### PROTECTIVE PROVISIONS

#### PART 3

##### For protection of Harwich Haven Authority

**11.** For the protection of the Authority, the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Company and the Authority, apply and have effect.

**12.** In this Part of this Schedule—

“the Authority” means Harwich Haven Authority;

“the Harbour” means Harwich Harbour as described in section 4(1)(a) of the Harwich Harbour Act 1974<sup>(1)</sup> (which defines the area of Harwich Harbour);

“the Haven” means the waters over which the Authority exercises jurisdiction as harbour authority;

“plans” includes sections, drawings, descriptions, specifications, programmes and method statements;

“work” means any work authorised by article 3.

**13.** The Company shall provide the Authority’s harbour master with details of any operations (including programmes of construction), proposed in connection with the construction of any of the authorised works, which will or may create such conditions in the waters of the Haven that the passage of any vessel navigating outside the limits of deviation may be significantly impeded; and before any such operation commences the Company shall agree with the harbour master any special measures which are to be taken to avoid obstructing vessels navigating in the Haven.

**14.** The Company shall appoint the Authority to be the Company’s agents for the purpose of carrying out all environmental monitoring reasonably required as a result of the construction and operation of the authorised works.

**15.** The Authority shall keep separate accounts of any expenditure which it incurs in connection with environmental monitoring undertaken by the Authority as the Company’s agents pursuant to paragraph 14.

**16.—(1)** Not less than 56 days before commencing the construction of any tidal work the Company shall supply to the Authority plans of that work—

Provided that in the case of any work to be carried out under article 5, being a work which is required in an emergency, the Company shall not be required to submit plans of that work before its commencement but shall—

(a) give immediate notice of that work to the Authority; and

(b) submit plans of that work to the Authority as soon as reasonably practicable after its commencement.

(2) Whenever plans are submitted to the Authority under sub-paragraph (1) the Company shall also submit such further particulars by way of clarification of what is proposed as the Authority may, within 21 days from the day on which the plans are submitted under this paragraph, reasonably require.

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(1) 1974 c.i.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(3) The Authority may approve plans submitted to it in accordance with this Part of this Schedule or may disapprove them or approve them subject to conditions and, if the Authority does not within 56 days of the submission to it of—

- (a) plans under sub-paragraph (1); or
- (b) the provision of any information required under sub-paragraph (2);

notify the Company in writing of its approval of those plans (with or without conditions), or its disapproval of those plans, the Authority shall be deemed to have approved the plans.

(4) Tidal works shall not be constructed except in accordance with such plans as may have been approved (with or without conditions) by the Authority under this Part of this Schedule or deemed to have been approved in accordance with sub-paragraph (3) or settled as provided in paragraph 21.

(5) The Company shall give to the Authority not less than 28 days' notice of the commencement of any tidal work.

(6) Plans of a tidal work shall not be submitted by the Company to the Secretary of State for approval under section 11 (tidal works not to be executed without approval of Secretary of State) of the 1983 Act until plans of that work have been approved by the Authority or deemed to have been approved in accordance with sub-paragraph (3) or settled as provided in paragraph 21; and if, on the submission of plans to the Secretary of State, the Secretary of State requires the alteration of the plans of any work so approved or settled, the Company shall, not less than 28 days before commencing the work, notify the Authority of the alteration.

(7) Subject to sub-paragraph (6), if there is any inconsistency between the plans of any tidal work approved or deemed to be approved under this paragraph or settled as provided in paragraph 21 and the plans approved by the Secretary of State under section 11 of the 1983 Act, the work shall be constructed in accordance with the plans approved by the Secretary of State.

(8) The exercise by the Company of the powers of article 6 for the purpose of improving access to and from any work shall not, for the purpose of section 19 (restriction on works, dredging and moorings) of the Harwich Harbour Act 1974, be taken to be specifically authorised by any enactment.

**17.** The Company shall carry out any tidal work with all reasonable dispatch and to the reasonable satisfaction of the Authority (and shall promptly remove all temporary works as soon as they are no longer required), so that traffic in the Haven does not suffer more interference than is reasonably necessary, and the Authority shall be entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey any tidal work.

**18.—(1)** If any tidal work is abandoned or falls into decay, the Authority may by notice in writing to the Company require it either to repair and restore the work or any part of it or (if the Company no longer requires the work) to remove the work and restore the site to its former condition to such extent as the Authority reasonably requires.

(2) If a work which consists of a tidal work and a non-tidal work is abandoned or falls into decay and the non-tidal work is in such condition as to interfere with navigational safety, a notice under this paragraph may include the non-tidal work, or any part of it.

(3) In sub-paragraph (2), “non-tidal work” means so much of any authorised work as is on or over land above the level of high water.

(4) If after such reasonable period as may be specified in a notice under this paragraph the steps specified in that notice have not been taken, the Authority may take those steps and the Company shall pay the amount of any expenditure reasonably incurred by the Authority in so doing.

**19.—(1)** If any berth approach within the Harbour becomes subject to sedimentation, scouring, currents or wave action which is wholly or partly caused by the construction or carrying on of the tidal works (including any temporary works) and which occurs during the period beginning with the commencement of the construction or carrying on of the tidal works and ending with the expiration

of five years after the date on which the last of those works is completed or the removal of such temporary works, as the case may be, the Company shall either—

- (a) pay to the Authority any additional expense which the Authority may reasonably incur for the preservation of proper maintenance of the berth approach—
  - (i) in dredging the Harbour to remove the sedimentation;
  - (ii) in taking such action as the Authority considers to be necessary for the purpose of making good such scouring or the effects of such currents or wave action; or
  - (iii) as a result of the increased frequency of maintenance dredging; or
- (b) take the necessary action at its own cost subject to prior approval of the Authority, such prior approval not to be unreasonably withheld or delayed.

(2) Where dredging is undertaken under sub-paragraph (1) the Company shall pay for or carry out such dredging as may be necessitated by further sedimentation, scouring or wave action occurring within five years after completion of the dredging undertaken under sub-paragraph (1).

**20.**—(1) The Company shall be responsible for and make good to the Authority all financial losses which may be reasonably incurred or suffered by the Authority by reason of the construction, maintenance or operation of any work or the failure of any work or by reason of any act or omission of the Company, its employees, contractors or agents or others whilst engaged in the construction or maintenance of any work or dealing with any failure of any such work.

(2) The Company shall indemnify the Authority from and against all claims and demands arising out of or in connection with any work or any such failure, act or omission, and the fact that any act or thing may have been done by the Authority on behalf of the Company or by the Company, its employees, contractors or agents with plans or particulars submitted to or modifications or conditions specified by the Authority, or in a manner approved by the Authority, or under its supervision or the supervision of its duly authorised representative shall not (if it was done or required without negligence on the part of the Authority or its duly authorised representative, employee, contractor or agent) excuse the Company from liability under the provisions of this sub-paragraph.

(3) The Authority shall give the Company reasonable notice of any such loss, claim or demand as is referred to in sub-paragraphs (1) and (2), and no settlement or compromise of any such loss, claim or demand shall be made without the prior consent of the Company which shall not be unreasonably withheld.

**21.** Any difference between the Company and the Authority arising out of any provisions of this Part of this Schedule shall be determined by arbitration.