

## SCHEDULES

### SCHEDULE 9

Article 52

#### PROTECTIVE PROVISIONS

#### PART 1

#### FOR THE PROTECTION OF THE HUMBER CONSERVANCY

##### Interpretation

1. In this Part of this Schedule—

“authorised works” means any work, operation or activity that the Harbour Authority is authorised by this Order to construct or carry out;

“environmental document” means—

- (a) the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental statement or other document so prepared by way of clarification or amplification of the environmental statement; and
- (b) any other document containing environmental information provided by the Harbour Authority to the Secretary of State or the Conservancy Authority for the purposes of any tidal works approval under article 23 (tidal works not to be constructed without approval of the Secretary of State) or this Schedule; and

“the river” means the River Humber.

##### *General*

2.—(1) The provisions of this Part of this Schedule, unless otherwise agreed in writing between the Harbour Authority and the Conservancy Authority, have effect for the protection of the Conservancy Authority and the users of the river.

(2) For the purposes of this Part of this Schedule, the definition of “tidal work” is taken to include—

- (a) any projection over the river outside the area of jurisdiction by booms, cranes and similar plant or machinery, whether or not situated within the area of jurisdiction; and
- (b) any authorised work which affects the river or any functions of the Conservancy Authority, whether or not that authorised work is within the limits of the Conservancy Authority.

##### *Tidal Works: approval of detailed design*

3.—(1) Before—

- (a) submitting any plans and sections for any tidal work to the Secretary of State for approval under article 23 (tidal works not to be constructed without approval of the Secretary of State);

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- (b) agreeing a vessel movement management plan with the MMO under paragraph 16 of Schedule 8 (deemed marine licence);
- (c) agreeing a dredge and disposal strategy with the MMO under paragraph 45 of Schedule 8;
- (d) seeking approval from the relevant planning authority for any alteration of the drawings under paragraph 6 of Schedule 11 (requirements) that affects the area below mean high water mark;
- (e) seeking approval from the relevant planning authority for any external lighting details under paragraph 24 of Schedule 11 that affect the area below mean high water mark;
- (f) commencing any operation for the construction of a tidal work where approval of the Secretary of State under article 23 is not required; or
- (g) commencing any operation for the maintenance of a tidal work,

the Harbour Authority must submit to the Conservancy Authority plans and sections of the tidal work or operation and such further particulars as the Conservancy Authority may, within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require.

(2) Before submitting for approval, agreement or otherwise as provided by this Order any document specified in columns (1) and (2) of the following Table, the Harbour Authority must submit a copy to the Conservancy Authority for approval of the matters specified in column (3) of the Table and must consult the Conservancy Authority on the remainder of each such document.

**TABLE**

| <i>(1)</i><br><i>Document</i>                       | <i>(2)</i><br><i>Provision of Order</i> | <i>(3)</i><br><i>Provision requiring Conservancy Authority approval</i> |
|---|---|---|
| Marine environmental management and monitoring plan | Schedule 11, paragraph 19               | Provision relating to monitoring equipment fixed to buoys               |
| Works schedule                                      | Schedule 8, paragraph 24                | None  |
| Active monitoring scheme                            | Schedule 8, paragraph 39                | Provision relating to the locations of active monitoring buoys          |
| Stages of the development scheme                    | Schedule 11, paragraph 3                | None  |
| Code of construction practice                       | Schedule 11, paragraph 22               | None  |

(3) No application for the Secretary of State’s approval under article 23 is to be made in respect of a tidal work until plans and sections in respect of that tidal work submitted under sub-paragraph (1) have been approved by the Conservancy Authority.

(4) Any tidal work not requiring the Secretary of State’s approval under article 23 must not be constructed, and no tidal work is to be maintained, except in accordance with such plans as may be approved in writing by the Conservancy Authority or determined under paragraph 25.

(5) Any approval of the Conservancy Authority required under this paragraph must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the Conservancy Authority may make for the protection of—

- (a) traffic in, or the flow or regime of, the river;
- (b) the use of its operational land or the river for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

- (6) Requirements made under sub-paragraph (5) may include conditions as to—
- (a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work; and
  - (b) the expiry of the approval if the Harbour Authority does not commence construction of the tidal work approved within a prescribed period.
- (7) Subject to sub-paragraphs (8) and (9), any such approval is deemed to have been refused if it is neither given nor refused within 42 days of the specified day.
- (8) Before making a decision on any such approval, the Conservancy Authority must take into account any opinion on plans and sections provided to it by the Environment Agency.
- (9) Accordingly, an approval of the Conservancy Authority under this paragraph is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (7) has not been given pending the outcome of any consultation on the approval in question that the Conservancy Authority is obliged in the proper exercise of its functions to carry out provided that during the course of such consultation, the Conservancy Authority has acted with all due expedition.
- (10) In this paragraph “the specified day” means, in relation to any tidal work—
- (a) the day on which plans of that work are submitted to the Conservancy Authority under sub-paragraph (1); or
  - (b) the day on which the Harbour Authority provides the Conservancy Authority with all such particulars of the work as have been reasonably requested by the Conservancy Authority under that sub-paragraph;

whichever is later.

(11) Whenever the Harbour Authority provides the Secretary of State with an environmental document it must at the same time send a copy to the Conservancy Authority.

4. When submitting any document specified in the Table in paragraph 3(2) to the MMO or the relevant planning authority as the case may be, the Harbour Authority must forward any comments received from the harbour master in response to the consultation undertaken with the harbour master in accordance with that paragraph.

5. Any operations for the construction of any tidal work approved in accordance with this Order, once commenced, must be carried out by the Harbour Authority without unnecessary delay and to the reasonable satisfaction of the Conservancy Authority so that river traffic, the flow or regime of the river and the exercise of the Conservancy Authority’s functions do not suffer more interference than is reasonably practicable, and an officer of the Conservancy Authority is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

*Discharges, etc.*

- 6.—(1) The Harbour Authority must not without the consent of the Conservancy Authority—
- (a) deposit in or allow to fall or be washed into the river any gravel, soil or other material; or
  - (b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise.
- (2) Any consent of the Conservancy Authority under this paragraph must not be unreasonably withheld but may be given subject to such terms and conditions as the Conservancy Authority may reasonably impose.
- (3) Any such approval is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 35 days of the day on which the request for consent is submitted under sub-paragraph (1).

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(4) In its application to the discharge of water into the river, article 20 (discharge of water) has effect subject to the terms of any conditions attached to a consent given under this paragraph.

7. The Harbour Authority must not, in exercise of the powers conferred by article 20 (discharge of water), damage or interfere with the beds or banks of any watercourse forming part of the river unless such damage or interference is approved as a tidal work under this Order or is otherwise approved in writing by the Conservancy Authority.

*Obstruction in river*

8. If any pile, stump or other obstruction to navigation becomes exposed in the course of constructing any tidal work (other than a pile, stump or other obstruction on the site of a structure comprised in any permanent work), the Harbour Authority, as soon as reasonably practicable after the receipt of notice in writing from the Conservancy Authority requiring such action, must remove it from the river or, if it is not reasonably practicable to remove it—

- (a) cut the obstruction off at such level below the bed of the river as the Conservancy Authority may reasonably direct; or
- (b) take such other steps to make the obstruction safe as the Conservancy Authority may reasonably require.

*Removal etc. of the Conservancy Authority moorings and buoys*

9. If—

- (a) by reason of the construction of any tidal work it is reasonably necessary for the Conservancy Authority to incur reasonable costs in temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the Conservancy Authority, or laying down and removing substituted moorings or buoys, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and
- (b) the Conservancy Authority gives to the Harbour Authority not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the Harbour Authority may make in response to the notice within 14 days of the receipt of the notice,

the Harbour Authority must pay the costs reasonably so incurred by the Conservancy Authority.

*Navigational lights, buoys, etc.*

10. In addition to any requirement under articles 26 (lights on tidal works etc. during construction) and 28 (permanent lights on tidal works), the Harbour Authority, at or near every tidal work, and any other work of which the Harbour Authority is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level forming part of the river), must exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Conservancy Authority may from time to time reasonably require.

*Removal of temporary works*

11. On completion of the construction of any part of a permanent authorised work, the Harbour Authority must as soon as practicable remove—

- (a) any temporary tidal work carried out only for the purposes of that part of the permanent work; and

(b) any materials, plant and equipment used for such construction, and must make good the site to the reasonable satisfaction of the Conservancy Authority.

*Protective action*

12.—(1) If any tidal work—

- (a) is constructed otherwise than in accordance with the requirements of this Part of this Schedule or with any condition in an approval given pursuant to paragraph 3(4); or
- (b) during construction gives rise to sedimentation, scouring, currents or wave action detrimental to traffic in, or the flow or regime of, the river,

then the Conservancy Authority may by notice in writing require the Harbour Authority at the Harbour Authority's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

- (a) in the case of a tidal work to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—
  - (i) this Part of this Schedule; or
  - (ii) the condition that has been breached; or
- (b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river.

(3) If the Harbour Authority does not comply with a notice under sub-paragraph (1), or is unable to do so, the Conservancy Authority may in writing require the Harbour Authority to—

- (a) remove, alter or pull down the tidal work, and where the tidal work is removed to restore the site of that work (to such extent as the Conservancy Authority reasonably requires) to its former condition; or
- (b) take such other action as the Conservancy Authority may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If a tidal work gives rise to environmental impacts over and above those anticipated by any environmental document, the Harbour Authority, in compliance with its duties under any enactment and, in particular, under section 48A of the Harbours Act 1964(1), must take such action as is necessary to prevent or mitigate those environmental impacts and in doing so must consult and seek to agree the necessary measures with the Conservancy Authority.

(5) If the Conservancy Authority becomes aware that any tidal work is causing an environmental impact over and above those anticipated by any environmental document, the Conservancy Authority must notify the Harbour Authority of that environmental impact, the reasons why the Conservancy Authority believes that the environmental impact is being caused by the tidal work and of measures that the Conservancy Authority reasonably believes are necessary to counter or mitigate that environmental impact.

(6) The Harbour Authority must implement the measures that the Conservancy Authority has notified to the Harbour Authority or must implement such other measures as the Harbour Authority believes are necessary to counter the environmental impact identified, giving reasons to the Conservancy Authority as to why it has implemented such other measures.

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(1) 1964, c. 40. Section 48A was inserted by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3 para. 6; S.I. 1992/1347, article 2 and Schedule.

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#### *Abandoned or decayed works*

**13.—**(1) If any tidal work or any other work of which the Harbour Authority is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level) is abandoned or falls into decay, the Conservancy Authority may by notice in writing require the Harbour Authority to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as the Conservancy Authority reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river, the Conservancy Authority may by notice in writing require the Harbour Authority to take such reasonable steps as may be specified in the notice—

(a) to repair and restore the work or part of it; or

(b) if the Harbour Authority so elects, to remove the tidal work and (to such extent as the Conservancy Authority reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the Harbour Authority has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, the Conservancy Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the Harbour Authority.

#### *Facilities for navigation*

**14.—**(1) The Harbour Authority must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river without the agreement of the Conservancy Authority, and must ensure that access to such aids remains available during and following construction of any tidal works.

(2) The Harbour Authority must provide at any tidal works, or must afford reasonable facilities at such works (including an electricity supply) for the Conservancy Authority to provide at the Harbour Authority's cost, from time to time, such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation of users of the river in general as the Conservancy Authority may deem necessary by reason of the construction of any tidal works, and must ensure that access remains available to apparatus during and following construction of such works.

(3) The Harbour Authority must comply with the directions of the harbour master from time to time with regard to the lighting on the tidal works or within the harbour, or the screening of such lighting, so as to ensure safe navigation on the river.

#### *Survey of riverbed*

**15.—**(1) Before the commencement of construction of the first tidal work to be constructed following approval under article 23 (tidal works not to be executed without approval of the Secretary of State), the Conservancy Authority may, at the Harbour Authority's reasonable expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of such of the authorised works as would constitute tidal works if they were to be constructed, for the purposes of establishing the condition of the river at that time.

(2) Before the commencement of construction of any other tidal work approved under article 23, the Conservancy Authority may, at the Harbour Authority's reasonable expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action resulting from that tidal work for the purpose of establishing the condition of the river at that time.

(3) The Conservancy Authority may carry out such surveys of the river as are reasonably required during the construction of any tidal work to ascertain the effect of that tidal work on the river and the Conservancy Authority must make available to the Harbour Authority the results of any such survey in electronic and paper format.

(4) After completion of, respectively, any tidal work and all the tidal works constructed under this Order, the Conservancy Authority may, at the Harbour Authority's reasonable expense, carry out a further survey of the parts of the river which were surveyed prior to the construction of that work, or as the case may be a survey of the completed tidal works as so constructed, for the purpose of establishing the condition of the river and the effect that the tidal work is, or as the case may be the tidal works are, having on navigation, the flow and the regime of the river and the exercise of the Conservancy Authority's functions.

(5) The Conservancy Authority must not under this paragraph carry out a survey of any part of the river as respects which the Harbour Authority has provided to the Conservancy Authority survey material which the Conservancy Authority is reasonably satisfied establishes the condition of the river, and in the case of a survey under sub-paragraph (4), the effect of the tidal work, or as the case may be the tidal works.

#### *Sedimentation, etc.: remedial action*

**16.—**(1) This paragraph applies if any part of the river becomes subject to sedimentation, scouring, currents or wave action which—

- (a) is, during the period beginning with the commencement of the construction of that tidal work and ending with the expiration of 10 years after the date on which all the tidal works constructed under this Order are completed, wholly or partly caused by a tidal work; and
- (b) for the safety of navigation or for the protection of works in the river, should in the reasonable opinion of the Conservancy Authority be removed or made good.

(2) The Harbour Authority must either—

- (a) pay to the Conservancy Authority any additional expense to which the Conservancy Authority may reasonably be put in dredging the river to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to the tidal work; or
- (b) carry out the necessary dredging at its own expense and subject to the prior approval of the Conservancy Authority, such prior approval not to be unreasonably withheld or delayed;

and the reasonable expenses payable by the Harbour Authority under this paragraph include any additional expenses accrued or incurred by the Conservancy Authority in carrying out surveys or studies in connection with the implementation of this paragraph.

#### *Indemnity*

**17.—**(1) The Harbour Authority is responsible for and must make good to the Conservancy Authority all reasonable financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by the Conservancy Authority by reason of—

- (a) the construction or operation of the authorised works or the failure of the authorised works;
- (b) anything done in relation to a mooring or buoy under paragraph 9; or;
- (c) any act or omission of the Harbour Authority, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works,

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and the Harbour Authority must indemnify the Conservancy Authority from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.

- (2) The fact that any act or thing may have been done—
- (a) by the Conservancy Authority on behalf of the Harbour Authority; or
  - (b) by the Harbour Authority, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Conservancy Authority, or in a manner approved by the Conservancy Authority, or under its supervision or the supervision of its duly authorised representative,

does not (if it was done or required without negligence on the part of the Conservancy Authority or its duly authorised representative, employee, contractor or agent) excuse the Harbour Authority from liability under the provisions of this paragraph.

(3) The Conservancy Authority must give the Harbour Authority reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the Harbour Authority.

*Entry for survey, etc.*

**18.**—(1) Before exercising the powers conferred by article 22 (authority to survey and enter the land) to enter any land situated below the level of high water the undertaker must provide the harbour master with written particulars of—

- (a) the location of the land (including a plan);
- (b) the nature of the things proposed to be done in that land in exercise of those powers;
- (c) the duration and frequency of the undertaker’s intended presence on the land; and
- (d) any vehicles or equipment proposed to be brought on the land,

and such other details as the harbour master may reasonably request.

(2) The undertaker may not enter any land the subject of written particulars provided under sub-paragraph (1) except in accordance with such conditions as the harbour master may impose, including conditions as to the time of entry and the way in which activities are to be carried out.

*Statutory functions*

**19.**—(1) Subject to article 4(1) (modification of enactments) and this paragraph, any function of the Harbour Authority or any officer of the Harbour Authority, whether conferred by or under this Order or any other enactment, is subject to—

- (a) any enactment relating to the Conservancy Authority;
- (b) any byelaw, direction or other requirement made by the Conservancy Authority or the harbour master under any enactment; and
- (c) any other exercise by the Conservancy Authority or the harbour master of any function conferred by or under any enactment.

(2) The Harbour Authority or dockmaster must not take any action in the river outside the area of jurisdiction under sections 57 and 65 of the 1847 Act as incorporated by article 3 (incorporation of the 1847 Act) except with the consent of the harbour master, which must not be unreasonably withheld.



(3) The dockmaster must not give or enforce any special direction to any vessel under section 52 of the 1847 Act, as incorporated by article 3, if to do so would conflict with a special direction given to the same vessel by the harbour master.

(4) The Conservancy Authority must consult the Harbour Authority before making any byelaw which directly applies to or which could directly affect the construction, operation or maintenance of the Able Marine Energy Park.

(5) The Conservancy Authority or the harbour master (as appropriate) must consult the Harbour Authority before giving any general direction which directly affects the construction, operation or maintenance of the Able Marine Energy Park.

(6) The dockmaster must consult the harbour master in relation to the initiation, operation and any change in the Port Marine Safety Code as having effect in relation to the harbour, and the Harbour Authority must comply with any requirement of the harbour master for the adjustment of the Port Marine Safety Code as affecting the river and the functions of the Conservancy Authority or the harbour master.

#### *Operating procedures*

**20.** Before commencing harbour operations the Harbour Authority must submit to the harbour master for approval a written statement of proposed safe operating procedures for access to and egress from the harbour and must operate the harbour only in accordance with such procedure as approved, including any approved alteration made from time to time.

#### *Consideration for dredged material*

**21.**—(1) Subject to any agreement concluded between the Harbour Authority, the Conservancy Authority and any other party benefiting from material dredged by the Conservancy Authority, the Harbour Authority must pay the Conservancy Authority for material dredged by the Conservancy Authority under this Order from so much of the river as is vested in the Conservancy Authority, consideration calculated at a rate agreed between them and otherwise in accordance with this paragraph.

(2) The Harbour Authority must pay reasonable consideration under sub-paragraph (1) as respects material dredged in the course of the construction of the works authorised by Schedule 8 (deemed marine licence) based on the quantity of such material that—

- (a) is not used for the construction of—
  - (i) the authorised works;
  - (ii) any other works related to the construction of Able Marine Energy Park; or
  - (iii) the related development; and
- (b) is not owned by the undertaker; and
- (c) is sold by the Harbour Authority or by any other person exercising any powers under this Order.

#### *Removal of wrecks and obstructions, etc.*

**22.**—(1) Before exercising any power under section 252 of the Merchant Shipping Act 1995(2) or under section 56 of the 1847 Act, the dockmaster must notify the harbour master.

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(2) 1995 c. 21.

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(2) The dockmaster must comply with any reasonable instructions that the harbour master may give in relation to the exercise of the powers referred to in sub-paragraph (1).

#### *Transfer of benefit of Order*

**23.** Within 14 days after the date of any transfer or grant under article 13 (consent to transfer benefit of Order), the undertaker who made the transfer or grant must serve notice on the harbour master containing the name and address of the transferee or lessee, the territorial extent of the transfer or grant and, in the case of a grant, the period for which it is granted and the extent of benefits and rights granted.

#### *Oil Spillage Plan*

**24.** The Harbour Authority must consult the harbour master before submitting any oil pollution emergency plan to the Maritime and Coastguard Agency and must ensure that any such plan is compatible with the Conservancy Authority’s existing plan known as “Humber Clean” or such other plan as supersedes “Humber Clean”.

#### *Disputes*

**25.** Any dispute arising between the Harbour Authority and the Conservancy Authority under this Part of this Schedule is to be determined by arbitration as provided in article 57 (arbitration).

## PART 2

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

**26.** The following provisions apply for the protection of the Environment Agency (“the Agency”) unless otherwise agreed in writing between the undertaker and the Agency.

**27.** The authorised development must be carried out in a way that ensures minimum obstruction to flows in the watercourse at all times.

**28.** The requirements set out in the Agency’s Pollution Prevention Guideline 5 (Works and Maintenance in or near Water) must be complied with to ensure that the works are carried out in a proper manner and do not adversely affect the watercourse.

**29.** On completion of the works, all debris and surplus material must be removed from the banks of the watercourse so that the banks are left in a stable condition with adequate protection provided to avoid erosion, to the satisfaction of the Agency.

**30.** The undertaker must bring the conditions contained in paragraphs 27 to 29 to the attention of any agent or contractor responsible for carrying out the authorised development.

## PART 3

### FOR THE PROTECTION OF THE HIGHWAYS AGENCY

**31.** For the protection of the Highways Agency, no part of the authorised development is to be occupied until improvements to the following junctions (or alternatives approved in writing by the local planning authority in consultation with the Highways Agency) have been implemented in accordance with details approved by the local planning authority in consultation with the Highways Agency—

- (a) A160/A1173/Humber Road (Manby Road Roundabout),
- (b) A160/Top Road/Habrough Road,
- (c) A160/A1077 Ulceby Road,
- (d) A160/Eastfield Road (signalised junction), and
- (e) A180/A160 Merge/Diverge (Brocklesby Interchange).

## PART 4

### FOR THE PROTECTION OF NETWORK RAIL

**32.** For the protection of Network Rail, the following provisions, unless otherwise agreed in writing between the undertaker and Network Rail, have effect.

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

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held by or used for the benefit of Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

**34.—**(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed but may be subject to reasonable conditions (while recognising that the engineer has sole discretion in matters relating to safety) and is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

**35.—**(1) The undertaker must not exercise the powers conferred by article 22 (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act as applied to this Order by the 2008 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

**36.—**(1) The undertaker, before commencing construction of any specified work, must supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer

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and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker.

(3) If by the end of the further period of 28 days the engineer has not intimated approval or disapproval, the engineer is to be deemed to have approved the plans as submitted.

(4) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph.

(5) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion must be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail but at the expense of the undertaker, or if Network Rail so desires such protective works must be carried out by the undertaker at its own expense without unnecessary delay, and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

**37.—(1)** Any specified work and any protective works to be constructed by virtue of paragraph 36(5), when commenced, must be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 36;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker, regardless of any approval described in sub-paragraph (1)(a), must make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents; or

- (b) any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**38.** The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

**39.** Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**40.**—(1) If any permanent or temporary alterations or additions to railway property, or any protective works under paragraph 36(5), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any part of the authorised development that includes a specified work, in consequence of the construction of that specified work, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker must pay to Network Rail all costs reasonably and properly incurred in constructing those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires that part of the specified work to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker, regardless of any such approval of a specified work under paragraph 36(1), must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**41.** The undertaker must repay to Network Rail all fees, costs, charges and expenses reasonably and properly incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 36(4) or in constructing any protective works under the provisions of paragraph 36(5) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part of this Schedule;
- (c) in respect of the employment or procurement of the services of any inspectors and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

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- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work; and
- (e) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason.

**42.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker, on receipt of such notice, must take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**43.** Any additional expenses which Network Rail may reasonably and properly incur in altering, reconstructing, maintaining or working railway property under any powers existing at the making of this Order by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction, maintenance or working has been given to the undertaker, must be repaid by the undertaker to Network Rail.

**44.—(1)** The undertaker must pay to Network Rail all costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably and properly incurred by Network Rail—

- (a) by reason of the construction, working or maintenance of a specified work, or the failure of such a work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker must indemnify Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision must not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any claim or demand arising out of or in connection with a specified work or any failure act or omission mentioned in sub-paragraph (1) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) may include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs will, in the event of default, be enforceable directly by any train operator concerned to the extent that the relevant costs would be payable to that operator under sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of

Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993(3).

**45.** Network Rail, on receipt of a request from the undertaker, must from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 44) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule (including any claim relating to those relevant costs).

**46.** In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

**47.** The undertaker, no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 55 (certification of plans etc) are certified by the Secretary of State, must provide a set of those plans to Network Rail in the form of a computer disc with read only memory, or equivalent electronic storage medium.

## PART 5

### FOR THE PROTECTION OF C.GEN

**48.** For the protection of C.GEN the following provisions, unless otherwise agreed in writing between the undertaker and C.GEN, have effect.

**49.** The undertaker must not in the exercise of the powers conferred by this Order unreasonably prevent C.GEN's access to the railway crossing the Order land.

**50.** The construction and operation of the authorised development must not cause unreasonable interference with or unreasonably prevent the free, uninterrupted and safe use by C.GEN of the railway crossing the Order land by up to five trains per day.

#### *Rosper Road*

**51.** The undertaker must not in the exercise of the powers conferred by this Order unreasonably prevent C.GEN's access to and use of Rosper Road.

**52.** The construction and operation of the authorised development must not unreasonably interfere with or obstruct the free, uninterrupted and safe use of Rosper Road or any traffic on Rosper Road, unless an alternative access that is suitable and commodious is provided prior to and for the duration of any such interference.

**53.** With the exception of any duty owed by C.GEN to the undertaker which is expressly provided for in this Part of this Schedule, nothing in this Order is to be construed as imposing upon C.GEN either directly or indirectly, any duty or liability to which C.GEN would not otherwise be subject and which is enforceable by proceedings before any court.

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(3) 1993 c.43.

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**54.** Unless otherwise agreed in writing, any dispute arising between the undertaker and C.GEN under this Part of this Schedule must be determined by arbitration as provided in article 57 (arbitration).

**55.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance, operation or failure of the authorised development any damage is caused to any property of C.GEN or C.GEN suffers any loss (including without limitation as a result of the failure by the undertaker to meet its obligations to C.GEN under this Part of this Schedule) the undertaker must—

- (a) bear and pay the cost reasonably incurred by C.GEN in making good such damage; and
- (b) indemnify C.GEN against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it,

by reason or in consequence of any such damage or the exercise by the undertaker of the powers conferred by this Order.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of C.GEN, its officers, servants, contractors or agents.

(3) C.GEN must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand with such assistance from C.GEN as may be reasonably necessary.

## PART 6

### FOR THE PROTECTION OF C.RO

**56.** For the protection of C.RO the following provisions, unless otherwise agreed in writing between the undertaker and C.RO, have effect.

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

“HST” means the harbour established by the Humber Sea Terminal Orders 1994 to 2006 for which C.RO is the statutory harbour authority;

“HST approach channel” means the approach channel and manoeuvring area for HST; and

“the Humber Sea Terminal Orders 1994 to 2006” has the same meaning as in article 1(2) of the Humber Sea Terminal (Phase III) Harbour Revision Order 2006(4).

**58.—**(1) Before—

- (a) submitting any plans and sections for any tidal work in or that may affect the HST approach channel to the Secretary of State for approval under article 23 (tidal works not to be executed without approval of Secretary of State);
- (b) commencing any operation for the construction of a tidal work in or that may affect the HST approach channel where approval of the Secretary of State under article 23 is not required;
- (c) submitting any works schedules to the MMO in accordance with Schedule 8 (deemed marine licence) for works in or that may affect the HST approach channel;

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(4) S.I. 2006/2604.



- (d) submitting any plans and sections for any tidal work or operation in or that may affect the HST approach channel to the Conservancy Authority in accordance with Part 1 (for the protection of the Humber Conservancy) of this Schedule;
- (e) submitting any written scheme or proposed alteration in the design drawings that may affect the HST approach channel to the relevant planning authority in accordance with Schedule 11 (requirements); or
- (f) commencing any operation for the maintenance of a tidal work in or that may affect the HST approach channel

the Harbour Authority must consult C.RO in accordance with the procedure set out in sub-paragraph (2).

(2) The consultation that the undertaker must carry out with C.RO under sub-paragraph (1) is as follows—

- (a) not less than 42 days prior to carrying out any activity to which sub-paragraph (1) applies the undertaker must submit to C.RO plans and sections of any tidal works or any written scheme or proposed alteration to the design drawings to which this paragraph applies and such further particulars as C.RO may, within 14 days from the day on which plans and sections are submitted under this paragraph, reasonably require; and
- (b) the undertaker must allow C.RO a period of 28 days beginning with the date on which the information required under sub-paragraph (2)(a) has been submitted to C.RO for C.RO to respond for the purposes of consultation, or if later a further period of 28 days from when such further particulars as required by C.RO are submitted by the undertaker to C.RO.

(3) The undertaker must have regard to any consultation response received from C.RO under sub-paragraph (2) and must forward a copy of that response as part of the material it submits to the Secretary of State or the MMO or the Conservancy Authority or any written scheme or proposed alteration to the design drawings that it submits to the relevant planning authority, to which this paragraph applies, together with a statement explaining how it has had regard to any consultation response received from C.RO under this paragraph.

**59.** Any operations for the construction of any tidal work approved in accordance with this Order and to which paragraph 58 applies, once commenced, must be carried out by the undertaker so that C.RO does not suffer more interference than is reasonably practicable, and an officer or other appointed person of C.RO is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

**60.** The Harbour Authority must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river relating to HST without the agreement of C.RO, and must ensure that access to such aids remains available during and following construction of any tidal works.

**61.** The undertaker must pay to C.RO the reasonable costs incurred by C.RO of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work or the use of the authorised development, including but without limitation, paying the reasonable costs of C.RO incurred in raising the height of the “IsoGWR.4 s” sector light positioned in the entrance of North Killingholme Haven at HST, in the event that activities related to the construction or operation of the authorised development obscure or obstruct the visibility of this sector light to vessels approaching HST and in its approach channels.

**62.** The undertaker must afford to C.RO such facilities as C.RO may reasonably require for the placing and maintenance on any tidal works of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

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**63.** The undertaker must provide and maintain on any tidal works such fog signalling apparatus as may be reasonably required by C.RO and must properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of the relevant works.

**64.** After the purpose of any temporary tidal work in or that may affect the HST approach channel has been accomplished and after a reasonable period of notice in writing from C.RO requiring it do so, the undertaker, without unnecessary delay, must remove that work or any materials relating to it which may have been placed below the level of high water by or on behalf of the undertaker and, on its failing to do so within a reasonable period after receiving such notice, C.RO may remove the same and charge the undertaker with the reasonable expense of doing so, which expense the undertaker must repay to C.RO.

**65.** If any tidal work is abandoned or falls into decay and is in such a condition so as to interfere or cause reasonable apprehension that it may interfere with navigation in the river so that it may affect HST or access to HST in any way, C.RO may by notice in writing require the undertaker either to repair or to restore the specified work, or any part of it, or to remove the work and restore the site of that work to its condition prior to the construction of the specified work, to such an extent and to such limits as C.RO thinks proper acting reasonably.

**66.—(1)** The undertaker must not allow vessels associated with the construction of the authorised development to obstruct or remain in the approach channel when vessels are arriving at and sailing from HST.

(2) C.RO must provide the undertaker with a schedule of movements to which sub-paragraph (1) applies on a weekly basis and must give the undertaker reasonable notice of any changes to scheduled sailings or other vessel movements of which it has informed the undertaker.

### *Dredging*

**67.—(1)** The undertaker must not dredge in the HST approach channel without prior approval of C.RO and C.RO must not dredge in the turning area without prior approval of the undertaker.

(2) Any dredging that is carried out with C.RO's or the undertaker's approval must be carried out in accordance with any conditions attached to that approval.

(3) C.RO's and the undertaker's approval under sub-paragraph (1) must not be unreasonably withheld or delayed and if by the end of the period of 5 days beginning with the date on which the dredging request has been supplied to C.RO or the undertaker, C.RO or the undertaker, as the case may be, has not intimated its disapproval of the request and the grounds of its disapproval each party may serve upon the other written notice requiring the other to intimate its approval or disapproval within a further period of 5 days beginning with the date upon which it receives written notice from the undertaker.

(4) If by the end of the further period of 5 days the other party has not intimated its approval or disapproval, it is deemed to have approved the request as submitted.

### *Railway*

**68.** The undertaker must not in the exercise of the powers conferred by this Order unreasonably prevent C.RO's access to the railway on the Order land in connection with the use of HST.

**69.** The construction and operation of the authorised development must not cause unreasonable interference with or unreasonably prevent the free, uninterrupted and safe use by C.RO of the railway crossing the Order land in connection with the use of HST.

### *Rosper Road*

70. The undertaker must not in the exercise of the powers conferred by this Order unreasonably prevent C.RO's access to and use of Rosper Road.

71. The construction and operation of the authorised development must not unreasonably interfere with or obstruct the free, uninterrupted and safe use of Rosper Road or any traffic on Rosper Road, unless an alternative access that is suitable and commodious is provided prior to and for the duration of any such interference.

### *Recovery of expenses*

72.—(1) C.RO may recover from the undertaker any reasonable expenses however caused which C.RO incur—

- (a) arising from the approval of plans and the inspection of the construction or carrying out of any tidal work;
- (b) by reason of any act or omission of the undertaker, or of any person in their employ, or of their contractors or workmen whilst engaged upon any tidal work or the construction and operation of the authorised development;
- (c) in dredging away any accumulation consequent upon the execution or maintenance of a tidal work;
- (d) in obtaining and depositing in the river such material as is necessary in the reasonable opinion of C.RO to protect C.RO's operations from the effects of scouring of the river bed consequent upon the execution or maintenance of a tidal work;
- (e) in altering any mooring in any way which in the reasonable opinion of C.RO may be rendered necessary by reason of the execution or maintenance of a tidal work;
- (f) in carrying out reasonable surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river) —
  - (i) to establish the marine conditions prevailing prior to the construction of a tidal work in such area of the river as C.RO have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the undertaker is liable to remedy under this paragraph; and
  - (ii) where C.RO have reasonable cause to believe that the construction of a tidal work is causing or has caused any siltation, scouring or other alteration as mentioned in sub-paragraph (i);
- (g) arising from the carrying out of construction of a tidal work or the failure of a tidal work or the undertaking by C.RO of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such carrying out of construction, exercise or failure.

(2) Subject to sub-paragraph (3), the undertaker is not required to pay any expense unless—

- (a) C.RO has given the undertaker reasonable notice that it intends to incur the expense including details of the works proposed and an estimate for them; and
- (b) the undertaker has given its consent to C.RO incurring that expense, which may include the undertaker offering to carry out any works to which this paragraph applies with the consent of C.RO.

(3) The undertaker's approval under sub-paragraph (2)(b) must not be unreasonably withheld or delayed, and if by the end of the period of 14 days beginning with the date on which the notice has been supplied to the undertaker, the undertaker has not intimated approval or disapproval, the undertaker is deemed to have approved the request as submitted;

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(4) Nothing in this paragraph prevents C.RO from—

- (a) carrying out works to which this paragraph applies without the prior consent of the undertaker; or
- (b) recovering expenses from the undertaker for any such work it has carried out;

where such works are in the reasonable opinion of C.RO urgently necessary to ensure the safe and efficient operation of HST and C.RO must give notice of its intention to carry out such works to the undertaker.

(5) Where C.RO has carried out works under sub-paragraph (4) it must without undue delay submit the expenses for those works including any details of the works to the undertaker for approval and the undertaker’s approval for them must not be unreasonably withheld.

(6) Any amount of expenditure approved by the undertaker under this paragraph must be paid to C.RO by the undertaker within 28 days of a demand for it.

**73.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance, operation or failure of the authorised development any damage is caused to any property of C.RO (including HST) or C.RO suffers any loss (including without limitation as a result of the failure by the undertaker to meet its obligations to C.RO under this Part of this Schedule) the undertaker must—

- (a) bear and pay the cost reasonably incurred by C.RO in making good such damage; and
- (b) indemnify C.RO against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it,

by reason or in consequence of any such damage or the exercise by the undertaker of the powers conferred by this Order.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of C.RO, its officers, servants, contractors or agents.

(3) C.RO must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand with such assistance from C.RO as may be reasonably necessary.

**74.** With the exception of any duty owed by C.RO to the undertaker which is expressly provided for in this Part of this Schedule, nothing in this Order is to be construed as imposing upon C.RO either directly or indirectly, any duty or liability to which C.RO would not otherwise be subject and which is enforceable by proceedings before any court.

**75.** Unless otherwise agreed in writing, any dispute arising between the undertaker and C.RO under this Part of this Schedule is to be determined by arbitration as provided in article 57 (arbitration).

## PART 7

### FOR THE PROTECTION OF PHILLIPS 66 LIMITED

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

“P66” means Phillips 66 Limited (Company number 00529086); and

“the pipelines” means the 4 pipelines crossing the Order land owned and operated by P66 used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus

including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) of the Pipe-Lines Act 1962<sup>(5)</sup>.

**77.** Before commencing any part of the authorised development or the operation of the authorised undertaking which would have an effect on the operation and maintenance of the pipelines and access to them, the undertaker must submit to P66 plans and sections of the proposed works and such further particulars as P66 may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

**78.** No works comprising any part of the authorised development or the operation of the authorised undertaking which would have an effect in full or in part on the operation, maintenance, repair, replacement and abandonment of the pipelines and access to them are to be commenced until plans and sections in respect of those works submitted under paragraph 77 have been approved by P66.

**79.** Any approval of P66 required under paragraph 78 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as P66 may require to be made for—

- (a) the continuing safety and operational viability of the pipelines; and
- (b) the requirement for P66 to have uninterrupted and unimpeded access to the pipelines at all times.

## PART 8

### FOR THE PROTECTION OF NATIONAL GRID

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989<sup>(6)</sup>, belonging to or maintained by National Grid;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

“electric line” has the same meaning as contained in section 64(1) of the Electricity Act 1989;

“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 land;

“National Grid” means National Grid Plc, company number 4031152, registered at Grand Buildings, 1-3 Strand, London, WC2N 5EH, and includes any reference to National Grid Gas Plc.; and

“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 the works to be executed.

**81.** For the protection of National Grid the following provisions, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

**82.—**(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to or in the vicinity of (as defined by reference to the relevant distances contained in the policies applied by National Grid’s ENA43-8 (Electric Lines) and T/SP/SSW/22 (Gas Pipelines) or such other standards as may supersede them from time to time), or will or may

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(5) 1962 c. 58.

(6) 1989 c. 29.

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affect, any apparatus the removal of which has not been required by the undertaker under the Order, the undertaker must submit to National Grid a plan.

(2) In relation to works which will or may be situated within the tolerances set out in ENA 43-8 (Electricity Lines) and T/SP/SSW/22 (Gas Pipelines) respectively from any apparatus measured in any direction the plan to be submitted to National Grid under sub-paragraph (1) must be detailed describing—

- (a) the exact position of the works;
- (b) the level at which these works are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings all proposed works.

(3) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (2) applies until National Grid has given written approval of the plan so submitted.

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

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld; and
- (c) is deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

(5) In relation to a work to which sub-paragraph (2) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order must be executed only in accordance with the plan, submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid is entitled to watch and inspect the execution of those works.

(7) Where National Grid requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's satisfaction prior to the carrying out of works authorised by the Order and National Grid must give 28 days' notice of such works from the date of submission of a plan in accordance with sub paragraph (1) (except in an emergency).

(8) 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 any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(9) The undertaker is not 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 Grid notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable afterwards and must—

- (a) comply with sub-paragraph (6) in so far as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (10) at all times.

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(10) At all times when carrying out any works authorised under this paragraph the undertaker must comply with National Grid's policies for safe working in proximity to electrical or gas apparatus ENA43-8 and T/SP/SSW/22 respectively.

**83.** Subject to the following provisions of this paragraph, the undertaker must repay to National Grid on demand all charges, costs and expenses reasonably incurred by National Grid in connection with, the inspection and protection of any apparatus which may be required in consequence of the execution of any such works as are required under this Part of this Schedule including—

- (a) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works if applicable; and
- (b) 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.

**84.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance, operation or failure of the authorised development any damage is caused to any apparatus or property of National Grid or there is any interruption in any service provided by National Grid or National Grid suffers any loss (including without limitation as a result of the failure by the undertaker to meet its obligations to National Grid under this Part of this Schedule) the undertaker must—

- (a) bear and pay the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it,

by reason or in consequence of any such damage, interruption or the exercise by the undertaker of the powers conferred by this Order.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of National Grid, its officers, servants, contractors or agents.

(3) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand with such assistance from National Grid as may be reasonably necessary.

**85.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on or after the date on which this Order is made.

**86.** If in consequence of the exercise of any powers 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 Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

#### *General*

**87.** Any dispute arising between the undertaker and National Grid under this Schedule is to be determined by arbitration as provided in article 57 (arbitration).

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## PART 9

### FOR THE PROTECTION OF E.ONUKPLC

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

“the outfall and intake” means that part of the pipelines which are located in the river at grid references (517455.3871, 419565.3965) and (517396.2407, 419527.8371) respectively;

“the pipelines” means the intake and outfall pipelines situated within plots 04023, 04024, 04027, 04028, 04029, 05003 to 05016 (inclusive), 05019, 05026, 05027, 05028, 05036, 05037, 05038, 05044, and 06006 which are the subject of a Deed of Easement dated 9th July 2004 between Able UK Limited and E.ON; and

“the river” means the River Humber.

**89.** For the protection of E.ON the following provisions, unless otherwise agreed in writing between the undertaker and E.ON, have effect.

**90.** Before extinguishing any existing rights for E.ON to keep, inspect, renew and maintain its infrastructure on or in the Order land, the undertaker, with the agreement of E.ON, must create a new right to keep, inspect, renew and maintain the infrastructure in the same location that is reasonably convenient for E.ON, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 57 (arbitration).

#### *The pipelines*

**91.**—(1) No stage of the authorised development is to commence until a construction method statement to protect the pipelines (offshore and onshore) and intake and outfall has been prepared by the undertaker and submitted to and agreed with E.ON.

(2) The construction method statement must include provisions in respect of—

- (a) the location and methods of reinforcement of crossing points over the pipelines;
- (b) a mechanism for the enforcement of the undertaker’s use of designated crossing points over the pipelines and the agreed reinforcement methods; and
- (c) adoption of a prior notification and consent regime which would require the undertaker to—
  - (i) seek E.ON’s consent to the carrying out of the proposed development within the vicinity of the pipelines and intake and outfall, such consent not to be unreasonably withheld; and
  - (ii) notify E.ON of its intention to carry out any development within the vicinity of the pipelines and intake and outfall, such notification to be provided at least 48 hours prior to any such development occurring; and

the authorised development must be carried out in accordance with the approved construction method statement.

#### *General*

**92.** Any dispute arising between the undertaker and E.ON under this Part of this Schedule is to be determined by arbitration as provided in article 57 (arbitration).



## PART 10

### FOR THE PROTECTION OF CENTRICA PLC

**93.** For the protection of Centrica the following provisions, unless otherwise agreed in writing between the undertaker and Centrica, have effect.

**94.** In this Part of this Schedule, “the pipelines” means Centrica’s cooling water pipelines and condensate pipeline.

**95.** Before extinguishing any existing rights for Centrica to keep, inspect, renew and maintain its infrastructure on, over or in the Order land or to cross the Order land to access its infrastructure, the undertaker, with the agreement of Centrica, must create a new right to keep, inspect, renew and maintain the infrastructure in the same location or a new right of access that is reasonably convenient for Centrica, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 57 (arbitration).

#### *The pipelines*

**96.—**(1) No stage of the authorised development is to commence until a construction method statement to protect the pipelines (offshore and onshore) and intake and outfall has been prepared by the undertaker and submitted to and agreed with Centrica.

(2) The construction method statement must include provisions in respect of—

- (a) the location and methods of reinforcement of crossing points over the pipelines and restrictions on building and altering the ground level over the pipelines elsewhere;
- (b) a mechanism for the enforcement of the undertaker’s use of designated crossing points over the pipelines and the agreed reinforcement methods; and
- (c) adoption of a prior notification and consent regime which would require the undertaker to—
  - (i) seek Centrica’s consent to the carrying out of the proposed development within the vicinity of the pipelines and intake and outfall, such consent not to be unreasonably withheld; and
  - (ii) notify Centrica of its intention to carry out any development within the vicinity of the pipelines and intake and outfall, such notification to be provided at least 48 hours prior to any such development occurring; and

the authorised development must be carried out in accordance with the approved construction method statement.

**97.** Before extinguishing any existing rights for Centrica to pass along parcel 03009 (Station Road), the undertaker, with the agreement of Centrica, must create a new right of way for Centrica, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 57 (arbitration).

#### *Power station access road*

**98.** The undertaker must not make use of the power station access road to access the Order land without the consent of Centrica and on such conditions as Centrica may apply.

#### *General*

**99.** Any dispute arising between the undertaker and Centrica under this Schedule must be determined by arbitration as provided in article 57 (arbitration).

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## PART 11

### FOR THE PROTECTION OF ANGLIAN WATER

**100.**—(1) For the protection of Anglian Water, the following provisions, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

(2) In this Part of this Schedule—

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage, and

- (a) any drain or works vested in Anglian Water under the Water Industry Act 1991(7);
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102 (4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“functions” includes powers and duties;

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

“plan” includes sections, drawings, specifications and method statements.

**101.** The undertaker must not interfere with, build over or near to any apparatus within the Order land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3000 millimetres of the apparatus, unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

**102.** The alteration, extension, removal or re-location of any apparatus must not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2010(8) for—
  - (i) the sludge and brine waste pipelines; and
  - (ii) the South Killingholme Sewage Treatment Works,

and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and

- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance

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(7) 1991 c. 56.

(8) S.I. 2010/675.

with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

**103.** In the situation where, in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension is to take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

**104.** Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker, with the agreement of Anglian Water, must create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 57 (arbitration).

**105.** If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

**106.** If for any reason or in consequence of the construction of any of the works referred to in paragraphs 101 to 103, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must,

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water,

by reason or in consequence of any such damage or interruption.

**107.** The undertaker must only exercise its powers of compulsory acquisition over the interests of Anglian Water in the Order land as a last resort and following consultation with Anglian Water and the resolution of any arbitration under article 57.

## PART 12

### FOR THE PROTECTION OF BETHANY JAYNE LTD

**108.** Before interfering with or extinguishing any existing rights for Bethany Jayne Ltd to—

- (a) pass along parcel 03009 (Station Road); or
- (b) use services and utilities in, on or over the Order land which serve land owned by Bethany Jayne Limited at the date of the coming into force of this Order,

the undertaker, with the agreement of Bethany Jayne Ltd, must create substitute rights (including appropriate ancillary rights of entry for the purposes of connection, maintenance, repair and renewal) that are reasonably convenient for Bethany Jayne Ltd, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 57 (arbitration).

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## PART 13

### FOR THE PROTECTION OF ROYAL MAIL GROUP LTD

**109.**—(1) For the protection of Royal Mail Group Ltd ('Royal Mail') the following provisions, unless otherwise agreed in writing between the undertaker and Royal Mail, have effect.

(2) No part of the authorised development is to be occupied until improvements to the A1173 / Pelham Road junction (or alternative mitigation measures to be approved in writing by the relevant planning authority, following consultation with Royal Mail), have been implemented in accordance with details approved by the relevant planning authority in consultation with Royal Mail.

(3) Such improvements must mitigate the effects of the proposed development on the operation of this junction and must be designed in accordance with normal standards.

(4) The undertaker must have due regard to any consultation response received from Royal Mail.

**110.** Any dispute arising between the undertaker and Royal Mail Group under this Part of this Schedule must be determined by arbitration as provided in article 57 (arbitration).

## PART 14

### FOR THE PROTECTION OF ASSOCIATED BRITISH PORTS

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

“AB Ports” means Associated British Ports in its capacity as harbour authority for the Ports of Immingham and Grimsby; and

“construction” includes execution and placing and maintenance, extension or enlargement and “construct” and “constructed” are to be construed accordingly.

**112.** The provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and AB Ports, have effect for the protection of AB Ports.

**113.**—(1) If—

(a) during the construction of a tidal work or within 10 years after the completion of that work and wholly or partly in consequence of its construction; or

(b) during the exercise of the powers to dredge conferred by this Order or within 10 years of the exercise of those powers and wholly or partly in consequence of the exercise of those powers,

there is caused or created an accumulation or erosion, the undertaker, if so requested by AB Ports acting reasonably, must remedy such accumulation or erosion to the extent attributable to such construction or exercise of such powers in the manner specified in sub-paragraph (3) and, if the undertaker refuses or fails so to do, AB Ports may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) If any accumulation or erosion in consequence of such construction or exercise of the powers to dredge arises within such period of 10 years and is remedied in accordance with sub-paragraph (3), any recurrence of such accumulation or erosion must from time to time be so remedied by the undertaker during that period of 10 years and at any time afterwards.

(3) For the purposes of sub-paragraphs (1) and (2) above—

(a) in the case of an accumulation, the remedy is to be its removal; and

(b) in the case of erosion, the remedy is to be the carrying out of such reconstruction works, and other protective works or measures as may be necessary.

(4) In the event that surveys, inspections, tests and sampling carried out under paragraph 15 of Part 1 of this Schedule establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a tidal work or the exercise of the powers to dredge, the undertaker is liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise.

(5) For the purposes of sub-paragraph (1) above the date of completion of a work is the date on which it is brought into use.

**114.** In exercising the powers conferred by this Order to construct the authorised development the undertaker must use all reasonable endeavours to ensure that the movement of construction vessels does not obstruct or interfere with the operation of the Ports of Immingham and Grimsby.

**115.** If AB Ports secures access between parcels 03009, 03014 and 03016 (Station Road) to the railway for the purposes of construction, operation and maintenance of a siding leased to it and for no other purpose, then before extinguishing or interfering with any existing rights for AB Ports to pass along those parcels, the undertaker, with the agreement of AB Ports, must create a new right of way for vehicular traffic that is reasonably convenient for AB Ports for that purpose, such agreement not to be unreasonably withheld or delayed.

**116.** The undertaker, before carrying out any works or exercising the powers conferred by article 15 (street works) in relation to the Rosper Road, the Humber Road, the A160 or the A180, must consult AB Ports and in carrying out the works or exercising such power must ensure that access to the Port of Immingham is not materially impeded.

**117.—(1)** The undertaker must pay to ABP Ports all costs, charges, damages and expenses which may be occasioned to or reasonably and properly incurred by ABP Ports by reason of or arising from—

- (a) any accumulation or erosion in consequence of the construction of a tidal work or the exercise of the powers to dredge conferred by this Order;
- (b) any surveys, inspections, tests or sampling reasonably carried out to establish whether such accumulation or erosion is occurring or has occurred; or
- (c) any obstruction or interference referred to in paragraphs 114 or 115.

(2) The undertaker must indemnify ABP Ports from and against all claims and demands arising out of, or in connection with such accumulation, erosion, obstruction or interference mentioned in sub-paragraph (1).

(3) ABP Ports must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(4) Nothing in this paragraph imposes any liability on the undertaker to the extent that any costs, charges, damages or expenses referred to in sub-paragraph (1) or (2) are attributable to negligence on the part of ABP Ports or any person in its employ or its contractors or agents.

**118.** Any difference arising between the undertaker and AB Ports under this Part must be determined by arbitration as provided in article 57 (arbitration).

## PART 15

### FOR THE PROTECTION OF THE OIL AND PIPELINES AGENCY

**119.—(1)** Unless agreed otherwise in writing between the undertaker and the Oil and Pipelines Agency, the provisions of this Part of this Schedule will apply.

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(2) This paragraph applies if any part of the river at, or adjacent to, the Oil and Pipelines Agency's facility on the river becomes subject to sedimentation, scouring, currents or wave action which—

- (a) is, during the period beginning with the commencement of the construction of a tidal work and ending with the expiration of 10 years after the date on which all the tidal works constructed under this Order are completed, wholly or partly caused by a tidal work; and
- (b) for the safety of navigation or for the protection of the Oil and Pipelines Agency's facility on the river, should in the reasonable opinion of the Oil and Pipelines Agency be prevented, mitigated or made good.

(3) The undertaker must either—

- (a) pay to the Oil and Pipelines Agency any additional expense to which the Oil and Pipelines Agency may reasonably be put in preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river at, or adjacent to, the Oil and Pipelines Agency's facility so far as (in any case) it is attributable to the tidal work; or
- (b) carry out the necessary dredging at its own expense and subject to the prior approval of the Oil and Pipelines Agency, such prior approval not to be unreasonably withheld or delayed,

and the reasonable expenses payable by the undertaker under this paragraph include any additional expenses accrued or incurred by the Oil and Pipelines Agency in carrying out surveys or studies in connection with the implementation of this paragraph.

**120.** Before extinguishing any existing rights for the Oil and Pipelines Agency to pass along parcel 03009 (Station Road), the undertaker must, with the agreement of the Oil and Pipelines Agency, create a new right of way for the Oil and Pipelines Agency, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 57 (arbitration).