

## SCHEDULE 10

### Protective provisions

## PART 15

### Protection of Encirc Limited

**177.** The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Encirc.

**178.** In this Part—

“Ash Road bridge” means the rail bridge crossing Ash Road;

“COMAH Regulations” means the Control of Major Accident Hazards Regulations 2015;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“CTS Meetings” means construction and traffic scheduling meetings to discuss a schedule in relation to the co-ordination of traffic movements relating to the specified works.

“Encirc” means Encirc Limited (company number NI030990, whose registered office is at 11 Gortahurk Road, Tonymore Derrylin, Enniskillen, Fermanagh, BT92 9DD and any associated company of Encirc Limited which holds property;

“Encirc’s business and operations” means the current operations and business carried out at the Encirc site and also includes any future business and operations of the Encirc site once the future development works have been implemented;

“Fence” means the existing fence erected by Encirc along the boundary between plots 1-02 and 1-06 as identified on the Land Plans;

“fit for purpose” means a road or access route which is of a standard equivalent to or better than the standard of the road or access route included in the Order for the same purpose;

“future development works” means;

- (a) construction of automated warehouse including automated link to glass manufacturing and filling facility, ancillary office space, driver welfare building, security building, HGV parking and marshalling yard and other associated works (LPA Ref: 22/03693/FUL) or any variation to or alternative to that form of development effecting Land Plan Plots 1-02 and 1-06 (Ref Land Plan D2.2 Sheet 1); and
- (b) construction of hydrogen/electricity fired furnace on site of existing dispatch yard and surrounding area effecting Land Plan Plot 1-02 (Ref: Land Plan D2.2 Sheet 1); and
- (c) construction of new rail sidings and intermodal area between existing rail sidings and Network Rail main line affecting Land Plan Plots 1-06, 1-06a 1-20, 1-21 and 1-22 (Ref: Land Plan D2.2 Sheet 1).

“Network Rail Standard” means Network Rail Standard reference ‘NR/L2/CIV/044 ‘Planning, Design and Construction of Undertrack Crossings’;

“Peel” means Peel NRE Limited (company number 004480419), whose registered office is at Venus Building, 1 Old Park Lane, Traffordcity, Manchester, M41 7HA;

“Existing Peel access road” means the existing access road at Plots 1-01a and 1-01 as shown on the Land Plans;

“Proposed Peel access road(s)” means the access road(s) proposed to be constructed to connect Plot 1-01a to Plot 1-04 as identified on the Land Plans D2.2 Sheet 1 pursuant to planning

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application Ref: 23/01239/FUL for construction of gas fired electricity generators, enclosures with ancillary equipment, metering station, transformer compound and access from Grinsome Road;

“Peel access road(s)” means collectively the Existing Peel access road and the Proposed Peel access road(s) and being fit for purpose to allow the undertaker access to Plot 1-01 and between Plots 1-01a and 1-04;

“relevant property” means:

- (d) any land, works, apparatus and equipment belonging to Encirc; and
- (e) any easement or other property interest held or used by Encirc or a tenant or licensee of Encirc for the purposes of such land, works, apparatus or equipment;

“specified work” means so much of any of the authorised development as is situated upon, across, under, over, or may in any way adversely affect, relevant property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to maintain the authorised development) in respect of such works.

### **Rights of access**

**179.** Regardless of any provision of this Order or anything shown on the land plans, the undertaker-

- (a) Must not extinguish any rights of access to the relevant property granted to Encirc otherwise than by agreement (both parties acting reasonably);
- (b) must provide a minimum of two working days notification prior to each entry to the relevant property, such notice to be submitted in writing to [facilities.elton@encirc360.com](mailto:facilities.elton@encirc360.com), and a single notification may cover multiple dates of entry;
- (c) provide any such details relating to the required access as is reasonably required by Encirc;
- (d) comply with any reasonable conditions which Encirc may specify in relation to the undertaker’s entry to the relevant property but only to the extent they do not restrict or impede the ability of the undertaker to construct, operate or maintain the authorised development;
- (e) must keep any existing roads used for access to the relevant property by Encirc clean but only to the extent they have been dirtied as a result of the specified works, clear from obstruction and in a usable condition as far as reasonably practicable; and
- (f) must pay a fair and reasonable proportion (according to use) of the costs incurred by Encirc in repairing and maintaining the entirety of Ash Road.

**180.** The parties shall hold the CTS Meetings fortnightly during detailed design and construction of the specified works. The undertaker and Encirc shall use all reasonable but commercially prudent endeavours to agree a schedule in relation to the co-ordination of traffic movements relating to the specified works. Where a schedule is agreed the parties will use the access routes only in accordance with the agreed schedule.

### **Rights of access – Grinsome Road to the Protos Site**

**181.** Subject to paragraph 183 (Rights of access – Ash Road (South)), provided that—

- (a) Peel has constructed the Peel access road(s) prior to the undertaker completing that part of Work No. 3 which relates to Land Plans Plots 1-01a, 1-01, 1-02, 1-03 and 1-04;
- (b) Peel has granted the undertaker an easement for all rights of access required by the undertaker over the Peel access road(s) and Land Plans Plot 1-04 to ensure the undertaker

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has suitable access (to the undertaker's satisfaction) to Plots 1-05, 1-08, 1-09, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-17 and 1-18; and

- (c) the undertaker is satisfied that the Peel access road(s) are/ is fit for purpose for the purposes of Work No.1, No.2, No. 3 and No.4:

the undertaker must not exercise the Powers conferred by this Order to (a) appropriate or acquire or take temporary possession of Land Plans Plots 1-02 and 1-03, or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right held by Encirc over Land Plans Plots 1-01a and 1-01.

**182.** The undertaker shall use all reasonable but commercially prudent endeavours to secure the grant by Peel of an easement for all rights of access required by the undertaker over the Peel access road(s) and Plot Plans Plot 1-04 to ensure the undertaker has suitable access (to the undertaker's satisfaction) to Plots 1-05, 1-08, 1-09, 1-10, 1-11, 1-12, 1-13, 1-14, 1-15, 1-16, 1-17 and 1-18.

### **Rights of access – Ash Road (South)**

**183.** Subject to Paragraph 184 (Rights of Access – Abnormal Loads), the undertaker must use the entrance from Ash Road as the primary access route (over Plots 1-06, 1-06a, 1-06b and 1-06c as identified on the Land Plans) for construction activities within Plots 1-20, 1-21 and 1-22. Provided that Encirc has granted to the undertaker a suitable right of access across a fit for purpose access route (to the undertaker's satisfaction) to all of Plot 1-22 as identified on the Land Plans as required by the undertaker—

- (a) The undertaker may in relation to Plot 1-21 exercise its powers under article 35 (temporary use of land for carrying out the authorised development) for the purpose of temporary use as a construction working area and for access only; and
- (b) The undertaker may not exercise the powers conferred under article 27 (compulsory acquisition of rights and restrictive covenants) in relation to Land Plans Plot 1-21 without the prior consent in writing of Encirc.

### **Rights of Access – Abnormal Loads**

**184.** In respect of abnormal loads, the undertaker may use the access route over Grinsome Road, being either (a) over Plots 1-01a, 1-01, 1-02, 1-03, 1-06, and 1-06d as identified in the Lands Plans, (b) over a route to be determined from Plots 1-01a, 1-01, part of 1-02, and from a point of egress (to be determined) in Plot 1-02 to the north end of Plot 1-06 subject to Encirc granting to the undertaker a suitable right of access across such route which must be a fit for purpose route (to the undertaker's satisfaction), or (c) over a route to be determined from that part of the Peel access road(s) constructed pursuant to planning permission reference 22/0363/FUL over Plots 1-03 and 1-02, and from an egress in Plot 1-02 (to be determined) to the north end of Plot 1-06 subject to Encirc granting to the undertaker a suitable right of access across such route which must be a fit for purpose route (to the undertaker's satisfaction). Use of any of the above routes is subject to the following conditions—

- (a) The undertaker must provide a minimum of two working days notification prior to use of the construction access, writing to be provided to [facilities.elton@encirc360.com](mailto:facilities.elton@encirc360.com);
- (b) The undertaker must not take access through the Fence unless and until Encirc have confirmed the written approval of HMRC and shall not take any steps which would lead to Encirc being in breach of any obligations to HMRC;
- (c) The undertaker shall comply with all reasonable conditions imposed by Encirc when taking access through the Fence and shall notify Encirc immediately if there is a breach of any such condition;
- (d) The undertaker will use all reasonable endeavours to take access through the Fence in such a manner as to cause as little damage as reasonably practicable and shall inform Encirc

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immediately if any damage is caused to the Fence including providing full details of the location and the damage caused.

- (e) The undertaker must pay to Encirc all reasonable and proper costs incurred by Encirc in providing reasonably necessary security detail to escort abnormal loads through the Fence;
- (f) The undertaker must make good any damage to the Fence as soon as reasonably practicable and must pay to Encirc all documented reasonable and proper expenses to which Encirc may be put and any compensation for any direct loss which it may sustain by reason of such damage provided that at all times Encirc will be under an obligation to take reasonable steps to mitigate its loss.

### **Railway**

**185.**—(1) The undertaker will procure that in carrying out Work No. 4 at Plots 1-19, 1-20, 1-22, 1-23 and 1-24, as identified on the Land Plans:

- (a) The Network Rail Standard (as in force when the works are being carried out) shall be complied with;
  - (b) All crossings under the existing railway lines (or any future development works installed by Encirc at the relevant property prior to the commencement of Work No. 4) will use trenchless crossing methods;
  - (c) COMAH Regulations shall be complied with.
- (2) The undertaker must—
- (a) at all times before, during and after the construction of the specified works allow an engineer or other person appointed by Encirc to watch and inspect the execution of the specified work; and
  - (b) supply the appointed person with all such information and all relevant and available documents as they may reasonably require with regard to the method of constructing a specified work.

(3) Encirc shall provide details of their scheduled trains at the relevant property to the undertaker on a monthly basis at CTS Meetings, and the undertaker and Encirc shall use all reasonable but commercially prudent endeavours to agree at the CTS Meetings provision to enable the authorised development and the operation of the scheduled trains. Where Encirc advise the undertaker of any changes to the schedule as soon as reasonably practicable, the undertaker shall use all reasonable endeavours to minimise interference of the carrying out of the specified works with the operation of Encirc's re-scheduled trains.

### **Construction Traffic Management Plan**

**186.** The undertaker must consult with Encirc prior to submitting any CTMP to the relevant planning authority for approval in accordance with Requirement 6. The undertaker will provide a draft CTMP to Encirc no later than 20 working days prior to submission, and confirm to Encirc the intended date of submission at the same time. Encirc may make representations on the draft CTMP to the undertaker no later than 14 days prior to the notified intended date of submission. The undertaker will have due regard to any reasonable representations timeously made by Encirc in finalising the CTMP for submission.

### **Co-operation**

**187.** Where Encirc propose to carry out any piling or construction works on the Order land within Land Plan Plots 1-20 and 1-22, prior to carrying out such works Encirc must agree with the undertaker the design and methodology which will be used, and the operational use of such works.

**188.** The undertaker and Encirc must use all reasonable but commercially prudent endeavours to reach agreement to enable the authorised development, Encirc's business and operations and any future development works to be carried out (subject to Encirc obtaining all necessary consents, permissions and authorisations).

**189.** The undertaker shall ensure that the pipeline is buried to a minimum depth of 4.3m under the existing railway ground level.

### **Specified work**

**190.** The undertaker must give Encirc no less than 56 days written notice of the intended commencement of any specified works and must include with this notification a plan and description of the works to be commenced and a programme for these works.

**191.** Any specified work must, when commenced, be constructed-

- (a) In such a manner as to cause as little damage and disruption as reasonably practicable to the relevant property, including damage by way of pollution or to the operation of Encirc's business and operations;
- (b) In such a manner so as not to cause any breaches of Encirc's obligations to HMRC or under the COMAH Regulations; and
- (c) If any damage to the relevant property or Encirc's business and operations or any such interference or obstruction is caused by the carrying out of the construction of a specified work, the undertaker must promptly inform Encirc of such damage, must make good such damage and must pay to Encirc all reasonable and proper expenses to which Encirc may be put and any compensation for any loss which it may sustain by reason of such damage, interference or obstruction, provided that at all times Encirc will be under an obligation to take reasonable steps to mitigate its loss.

### **Expenses**

**192.—(1)** Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Encirc or its servants, contractors or agents or any liability on Encirc with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

(2) The undertaker must pay to Encirc all reasonable and proper costs, charges, penalties, damages and expenses not otherwise provided for in this Part of this Schedule which may be reasonably incurred by Encirc, provided that at all times Encirc will be under an obligation to take reasonable steps to mitigate its loss -

- (a) by reason of the construction, maintenance or operation 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;
- (c) in respect of any damage caused to or additional maintenance required to relevant property
- (d) in respect of any damage to any access routes to the relevant property for which Encirc have a maintenance obligation but always limited to the extent such damage is attributable to the undertaker and the undertaker has not reimbursed the costs of remediation of such damage under sub-paragraph (e);
- (e) in respect of any claim against Encirc by any third party in respect of the access routes to the extent such claim relates to damage to the access routes but always limited to the extent such damage is attributable to the undertaker and the undertaker has not reimbursed the costs of remediation of such damage under sub-paragraph (d);

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- (f) by the provision of reasonably necessary security detail for any land, works, apparatus and equipment belonging to Encirc to the extent attributable to the specified works;
- (g) in respect of securing any required consents from HMRC in respect of the undertaking authorised development by the undertaker.

(3) The undertaker must indemnify and keep indemnified Encirc from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission to a maximum cap on liability of £5 million for each individual claim and an aggregate cap of £15 million provided that there shall be no cap on liability in respect of any damage caused to the Ash Road bridge which prevents access to the relevant property, provided that at all times Encirc will be under an obligation to take reasonable steps to mitigate its loss Encirc must—

- (a) give the undertaker reasonable written notice of any such sums referred to in paragraph 192 (3) as soon as reasonably possible after Encirc become aware of the same;
- (b) not make any offers to settle claims or demands without the prior consent of the undertaker;
- (c) take all reasonable steps to mitigate any liabilities;
- (d) where any claims or demands are made by Network Rail, advise Network Rail that any claims and demands should be directed to the undertaker only; and
- (e) keep the undertaker informed and have regard to the undertaker's representations in relation to any such sums referred to in this paragraph.

### **General**

**193.**—(1) Any difference or dispute arising between the undertaker and Encirc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Encirc, be determined by arbitration in accordance with article 49 (arbitration) of this Order.

(2) The undertaker and Encirc must each act reasonably in connection with the implementation of this Part of this Schedule.

### **Notices**

**194.** Any plans or notices submitted to Encirc by the undertaker pursuant to this Part must be sent to Encirc at [legal@encirc360.com](mailto:legal@encirc360.com) or such other address as Encirc may from time to time appoint instead for that purpose and notify to the undertaker in writing.