

---

## PART [●]

### For the protection of Immingham Oil Terminal operators

#### Application

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

#### Interpretation

2.—(1) In this Part of this Schedule—

“affected assets” means apparatus owned or operated by the IOT Operators on or above ground which in the reasonable opinion of the IOT Operators would have the potential to be physically affected by a relevant work;

“alternative apparatus” means alternative apparatus adequate to enable the IOT Operators to fulfil its functions in a manner not less efficient than previously;

“alternative rights” means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of alternative apparatus including any restrictions on the landowner and occupiers for the protection of the alternative apparatus and to allow the IOT Operators to perform its functions;

“apparatus” means any part of the pipelines and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Part of this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any cathodic protection, coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962, as if the pipelines were a “pipe-line” in section 65(1) of that Act;
- (d) such legal interest, and benefit of property rights and covenants as are vested in respect of these items

“APT” means Associated Petroleum Terminals (Immingham) Limited (company number 00564394), whose registered office is at Queens Road, Immingham, Grimsby, North East Lincolnshire, DN40 2PN, and in all cases any successor in title;

“authorised development” has the same meaning as that given in article 2 (interpretation) and for the purposes of this Part of this Schedule;

“commence” has the same meaning as that given in article 2 of the Order (and “commencing” must be construed accordingly);

“damage” includes all and any damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

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

“engineer” means an engineer appointed by the IOT Operators for the purposes of this Part of this Schedule;

---

“functions” includes powers and duties and commercial undertaking;

“HOTT” means Humber Oil Terminals Trustee Limited (company number 00874993), whose registered office is at Queens Road, Immingham, Grimsby, North East Lincolnshire, DN40 2PN, and in all cases any successor in title;

“IOT” means the pipe-line and storage system associated with the Immingham Oil Terminal;

“IOT Operators” means APT and HOTT, acting in their capacity as operators and owners of the IOT, and any subsequent owner(s) and operator(s) of the pipelines or IOT;

“IOT Operators address” means the postal address details to be provided pursuant to paragraph 18;

“IOT Operators email” means the email address details to be provided pursuant to paragraph 18;

“party” means the undertaker and the IOT Operators and “party” is to be construed accordingly;

“pipelines” means the whole or any part of the pipelines belonging to or maintained or operated by the IOT Operators located within the multi-pipeline rack on the north side of A1173 Manby Road 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;

“plans” includes all designs, drawings, sections, specifications, method statement, soil reports, programmes, calculations, risks assessment and other documents that are reasonably necessary to allow the IOT Operators to assess the relevant works to be executed properly and sufficiently and in particular must describe:

- (a) the exact position of the works;
- (b) the level at which the works are proposed to be constructed or renewed;
- (c) the manner of the works’ construction or renewal including details of excavation, position of plant etc;
- (d) the position of the affected apparatus and/or premises and any other apparatus belonging to another undertaker;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regime;
- (g) details of the proposed method of working and timing of execution of works; and
- (h) details of vehicle access routes for construction and operational traffic.

“premises” means land within the Order limits that that the IOT Operators owns, occupies or otherwise has rights to use including but not limited to storage facilities, administrative buildings and jetties;

“relevant work” means any works that will or may be situated over, or within 15 metres measured in any direction of any of the apparatus and/premises, or will or which may have an effect on the operation, maintenance, abandonment of or access to any of the apparatus and/or premises or involves a physical connection or attachment to any apparatus; and

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of the undertaker and their principal contractors’ management of change procedures;
- (c) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;
- (d) details of the electrical design of the relevant work in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to any of the pipelines;

- 
- (e) details of the means by which the pipelines can be properly inspected and if necessary repaired during the construction and operation of the authorised development; and
  - (f) details of the assessment and monitoring work to be undertaken both prior to the construction of the relevant work and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system and the proposed remedial works.

### **Acquisition of apparatus**

**3.(1)** Regardless of any other provision in the Order or anything shown on the land plans or if the Order covers any premises or interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed-

- (a) The undertaker must grant the IOT Operators upon reasonable notice either (i) during the carrying out of any relevant works and/or (ii) following completion of the relevant works and during the operation of the authorised development access to any apparatus and/or premises for the purposes of inspection, maintenance and repair of such apparatus and upon reasonable notice. For the purposes of this subparagraph (a), 'apparatus' includes any connection into pipelines or associated infrastructure operated by the IOT Operators and/or any successor pipeline operator.
- (b) The undertaker must not, otherwise than by agreement with the IOT Operators, acquire any apparatus or the right of the IOT Operators in respect of the apparatus;
- (c) Where the undertaker acquires the freehold of any land in which the IOT Operators holds an interest, the undertaker must afford to or secure for the IOT Operators such rights in land in substitution for any right which would be extinguished by that acquisition (the replacement rights). These replacement rights must be granted upon substantially the same terms and conditions as the right(s) to be extinguished, unless otherwise agreed between the undertaker and the IOT Operators, and must be granted or out in place contemporaneously with the extinguishment of the rights which they replace;
- (d) The undertaker must not, otherwise in accordance with this part of this Schedule:
  - (i) Obstruct or render less convenient the access to any apparatus or premises;
  - (ii) Interfere with or affect the ability of the IOT Operators to carry out its functions as an oil pipeline operator;
  - (iii) Require that apparatus is relocated or diverted; or
  - (iv) Remove or require to be remove any apparatus
- (e) Any right of the IOT Operators to maintain, repair, renew, adjust, alter or inspect apparatus may not be extinguished until any necessary Alternative Apparatus has been constructed, it is in in operation and the Alternative Rights have been granted, all to the reasonable satisfaction of the IOT Operators
- (f) Any rights of the IOT Operators to access the apparatus and/or premises must not be extinguished until necessary alternative access has been provided to the reasonable satisfaction of the IOT Operators.

(2) Prior to the carrying out of any works that will or may be situated over, or within 15 metres measured in any direction of any apparatus and/or premises or may or will conflict with or breach the terms of any easement or other legal or land interest of the IOT Operators or affect the provisions of any enactment or agreement regulating the relations between the IOT Operators and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the parties must as the IOT Operators reasonably require enter into such deeds of consent upon such terms and conditions as may be agreed between the parties acting reasonably and which must be no less favourable on the whole to the IOT Operators than this Schedule, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variation by all other third parties with an interest in the land at that time who are affected by such works.

### **Authorisation of works details affecting pipelines or protected crossings**

---

**4.—**(1) Before commencing any part of a relevant work the undertaker must submit the works details to the IOT Operators and any other information that the IOT Operators may reasonably require to allow it to assess the works.

**5.—**(1) No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under paragraph 4 have been approved by the IOT Operators; or
- (b) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by an expert under paragraph 7.

**6.—**(1) Any approval by the IOT Operators under paragraph 4(a) must not be unreasonably withheld or delayed, and the IOT Operators must communicate its approval or refusal of the works details within 56 days of the date of submission of the works details under paragraph 4(1) above and any approval may be given subject to such reasonable requirements as the IOT Operators may require to be made for—

- (a) the continuing safety and operational viability of any apparatus and/or premises; and
- (b) the requirement for the IOT Operators to have—
  - (i) uninterrupted and unimpeded emergency access with or without vehicles to any apparatus and/or premises at all times; and
  - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operational viability of any apparatus and/or premises.

(2) The relevant work must be carried out in such manner and in such position or situation as may be agreed between the IOT Operators and the undertaker including any reasonable requirements imposed on the approval by the IOT Operators

(3) The undertaker must grant the IOT Operators at all times, upon reasonable notice (except in the case of emergencies when no prior notice is required) access (with or without vehicles) to any apparatus and/or premises during the carrying out of any relevant works for the purposes of inspection, maintenance and repair of such apparatus and/or premises.

**7.—**(1) In the event that—

- (a) the undertaker considers that the IOT Operators have unreasonably withheld their authorisation under paragraph 5(1); or
- (b) the undertaker considers that the IOT Operators have given their authorisation under paragraph 5(1) subject to unreasonable conditions

the undertaker may refer the matter for determination under paragraph 17.

(2) Where the matter is referred to an expert under paragraph 7(1) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 7(1).

(3) Where the undertaker considers that the IOT Operators has unreasonably withheld its authorisation under paragraph 7(1) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association for determination under paragraph 17.

## **Notice of works**

**8.** The undertaker must provide to the IOT Operators a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions. The IOT Operators will be entitled to watch and inspect the execution of the relevant works at any time.

---

## Monitoring for damage to pipelines

**9.—**(1) When carrying out the relevant work the undertaker must monitor at all times the relevant apparatus and/or premises to establish whether any loss or damage has occurred.

(2) Where any loss or damage occurs to any apparatus and/or premises as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must immediately notify the IOT Operators to enable repairs to be carried out to the reasonable satisfaction of the IOT Operators and at no cost to the IOT Operators.

(3) If loss or damage has occurred to any apparatus or premises as a result of the relevant work (arising from or caused by the carrying out of the relevant work) the undertaker will, at the request and election of the IOT Operators—

- (a) afford the IOT Operators all reasonable facilities to enable it to fully and properly repair and make good any damage to any apparatus and to test the any apparatus and to pay to the IOT Operators
  - (i) all and any of their costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; and
  - (ii) all and any of the costs reasonably incurred by the IOT Operators in stopping, suspending and restoring the supply through its pipeline and make reasonable compensation to the IOT Operators for any other expenses, losses, damages, penalty or costs incurred by the IOT Operators by reason of or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works; or
- (b) fully and properly repair any relevant apparatus as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the reasonable satisfaction of the IOT Operators to have effectively repaired the relevant apparatus asset before any backfilling takes place.

(4) If in the course of carrying out repairs under sub-paragraph (3)(a) or (3)(b) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement is not determined by arbitration to be necessary, then, if it involves cost in the execution of the repairs exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which would be payable to the IOT Operators under sub-paragraph (3)(a), or incurred by the undertaker under sub-paragraph (3)(b), by virtue of paragraph (3) will be reduced by the amount of that excess.

(5) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where the IOT Operators agree otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(6) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) above of this paragraph apply to that damage.

(7) In relation to the approved assessment and monitoring work to be undertaken both prior to the construction of the relevant work and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system, the undertaker must undertake any necessary remedial work.

(8) In the event that the undertaker does not carry out necessary remedial work in a timely manner then the IOT Operators are entitled, but not obliged, to undertake the necessary remedial work and recover all of the costs of doing so from the undertaker.

**10.—**(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and the IOT Operators must be notified immediately.

- 
- (2) Where there is leakage or escape of flammable liquids, the undertaker must immediately—
- (a) remove all personnel from the immediate vicinity of the leak;
  - (b) inform the IOT Operators;
  - (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
  - (d) assist emergency services as may be requested.

**11.** Irrespective of anything to the contrary elsewhere in this protective provision—

- (a) The undertaker and the IOT Operators must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers as a result of the other's negligence or breach of this Part of this Schedule; and
- (b) Neither the undertaker nor the IOT Operators are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this protective provision or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.

**Costs**

**12.**—(1) The undertaker must repay to the IOT Operators all fees, costs, charges and expenses reasonably and properly incurred by them in relation to these protective provisions in respect of—

- (a) approval of works details submitted by the undertaker under paragraph 4 and the imposition of reasonable requirements under paragraph 6;
- (b) the engagement of an engineer and their observation of the relevant work affecting the pipelines and the provision of safety advice under paragraph 8; and
- (c) the repair and testing of a pipeline or protected crossing, and the costs of stopping, suspending and restoring supply, under paragraph 9,

including the reasonable costs incurred by the IOT Operators in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to the IOT Operators to carry out their functions under these protective provisions.

**Indemnity and other provisions**

**13.**—(1) The undertaker must indemnify and keep the IOT Operators indemnified against all reasonable loss, costs, charges, damages, liability and expenses reasonably suffered or incurred by the IOT Operators by reason of—

- (a) the construction, operation, maintenance, repair and decommissioning of any relevant work carried out under this Part of this Schedule or the failure of it;
- (b) the carrying out of the authorised development;
- (c) the use or occupation of land over or in the vicinity of any apparatus or in the vicinity of any premises in connection with the carrying out of the authorised development;
- (d) any matters arising directly out of or in connection with the Order; and/or
- (e) any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of any relevant work.

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

- 
- (3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—
- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the IOT Operators, their officers, servants, contractors or agents; and/or
  - (b) any indirect or consequential loss of the IOT Operators or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption which is not reasonably foreseeable.
- (4) The undertaker and the IOT Operators must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers in connection with this Schedule.
- (5) The undertaker warrants that:
- (a) The information it or any of its employees, agents or contractors provide to the IOT Operators about the relevant works or the authorised development and on which the IOT Operators relies in the design of and carrying out of any of the relevant works is accurate; and
  - (b) The undertaker or any of its employees, agents or contractors have exercised all the reasonable skill, care, and diligence to be expected of a qualified and experienced member of their respective profession.
- (6) The IOT Operators must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as they would as if settling third party claims on their own behalf from their own funds.
- (7) The IOT Operators must give the undertaker reasonable notice of any claim or demand under sub-paragraph (1) above.
- (8) The undertaker must not commence any relevant works unless and until the IOT Operators has confirmed to the undertaker in writing that it is satisfied (acting reasonably but subject to all necessary regulatory constraints) that the undertaker has procured acceptable public liability insurance with a reputable insurer against its liabilities in accordance with the terms and level of cover notified under sub-paragraph (9) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under paragraph 17 and evidence of that insurance must be provided on request to the IOT Operators.
- (9) Not less than 30 days before commencing any relevant works or before proposing to change the terms of the insurance policy, the undertaker must notify the IOT Operators of details of the terms of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.
- (10) The undertaker must maintain insurance in relation to the authorised development affecting the IOT Operators during the construction, operation, maintenance, repair and decommissioning of the authorised development.
- (11) If the IOT Operators has a dispute about the proposed insurance (including the terms or level of cover) to be provided under sub-paragraph (8)—
- (a) The IOT Operators may refer the matter to an expert for determination under paragraph 17 and
  - (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 17 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination

#### **Further protection in relation to the exercise of powers under the Order**

**14.**—(1) The undertaker must give written notice to the IOT Operators if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 7 (benefit of the Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;

- 
- (b) the extent of the geographical area to which the application relates; and
  - (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**15.** The undertaker must, when requested to do so by the IOT Operators, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 45 (certification of plans etc.) in the form of a computer disc with read only memory or such other format as may be agreed between the relevant parties.

**16.** Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to the IOT Operators.

### **Expert Determination**

**17.** —(1) Except as provided for in sub-paragraph (7), article 49 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
- (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;
- (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and



- 
- (i) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 49 (arbitration).

## **Notices**

**18.**—(1) The IOT Operators must as soon as reasonably practicable following a written request from the undertaker provide details of the IOT Operators address and IOT Operators email.

(2) A notice or other document required or authorised to be served on the IOT Operators under this Part of this Schedule must be served—

- (a) by post to the IOT Operators address; and
- (b) by electronic transmission to the IOT Operators email,

or to such other postal or electronic mail address which the IOT Operators may from time to time notify to the undertaker.

(3) In the event that the IOT Operators do not provide the IOT Operators address and IOT Operators email within 14 days of the undertaker's request pursuant to sub-paragraph (1) then sub-paragraph (2) does not apply and the undertaker must—

- (a) serve any notice or document on the IOT Operators at their registered offices; and
- (b) send a copy of such notice or document to Immingham Oil Terminal marked for the attention of the terminal manager.