

**[DRAFT] AGREED PROTECTIVE PROVISIONS**

**PART [X]**

**FOR THE PROTECTION OF H2 TEESSIDEREDCAR BULK TERMINAL LIMITED**

[171.] For the protection of RBT, the following provisions have effect, unless otherwise agreed in writing between the undertaker and RBT.

[172.] In this Part of this Schedule—

“apparatus” means any mains, pipes, cables or other apparatus within the Order limits ~~which~~to provide gas, water, waste, electricity and or electronic communications to the RBT operations site and or land within the vicinity of the RBT site together with any replacement of that apparatus pursuant to the Order;

“alternative access” means appropriate alternative road or rail access which enables RBT, NZT and RBT's leaseholders, sub-tenants and licencees to access the RBT operations and RBT site in a manner no less efficiently than previously by means of RBT's existing road ~~or~~and rail accesses;

“alternative apparatus” means appropriate alternative apparatus which enables gas, water, waste, electricity and electronic communications supply to be provided to the RBT operations site and or land within the vicinity of the RBT site in a manner no less efficiently than previously by existing apparatus;

“NZT” means the Net Zero Teesside project currently operated by Net Zero Teesside Power Limited and Net Zero North Sea Storage limited, acting pursuant to the NZT Order;

“NZT Order” means The Net Zero Teesside Order, 2024;

“offloading procedure” means the procedure whereby the undertaker, its employees, contractors or sub-contractors are offloading materials, plant or machinery required for the authorised development at the wharf within the RBT site, such procedure to commence when the undertaker, its employees, contractors or sub-contractors have commenced docking the relevant vessel at the wharf for the purposes of such offloading;

“RBT” means Redcar Bulk Terminal Limited (Company number 07402297), whose registered address is Time Central, 32 Gallowgate, Newcastle Upon Tyne, Tyne and Wear, United Kingdom, NE1 4BF and any successor in title or function to the RBT operations;

“the RBT operations” means the port business and other operations of RBT, its leaseholders, sub tenants and licensees carried out upon or partly upon the RBT site, including RBT's obligations to third parties such as (but not limited to) NZT;

“the RBT site” means land and property within the Order limits, vested in RBT together with such additional land and property as may become vested in RBT in connection with enlargement works to the wharf;

“works details” means—

(a) plans and sections;

(b) details of the proposed method of working, management measures and locations on the RBT site;

(c) details of the timing of execution of works and any interference this may cause to the RBT operations;

(d) details of any management measures (including details of access routes for vehicles to undertake) that will be put in place to ensure that road and rail traffic is still able to access the RBT operations and the RBT site (unless it would be unsafe to do so in which case such details must provide details of how alternative access is to be provided);

(e) details of lifting and scheduling activities on the RBT site, including the programming and access requirements for any offloading procedures; and

(f) any further particulars provided in response to a request under paragraph [177].

## Regulation of powers

[173.] The undertaker must not exercise the powers granted under this Order so as to hinder or prevent the RBT operations, or access to the RBT site without the prior written consent of RBT.

[174.] Any approval of RBT required under paragraph [173] must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made including for—

- (a) the continuing safety and operational viability of the RBT operations;
- (b) the avoidance of commercial losses to the RBT operations;

~~and~~

(c) the requirement for RBT, NZT and RBT's leaseholders, sub-tenants and or licencees to have reasonable access to the RBT operations and the RBT site at all times; or

(d) the preservation of RBT's ability to comply with contractual and legal obligations given imposed or otherwise existing prior to the date of this Agreement including obligations under or in connection with the NZT Order.

[175.] Without limiting paragraph [174], it is not reasonable for RBT to give approval pursuant to paragraph [174] subject to requirements which restrict or interfere with the undertaker's access to the RBT site during an offloading procedure save to the extent required by obligations entered into or existing prior to the date of the Order.

## Interference with Apparatus and Access

[176.] (1) If, in the exercise of the powers conferred by this Order, the undertaker requires that apparatus is removed, interrupted, severed or disconnected, that apparatus must not be removed, interrupted, severed or disconnected until details of the alternative apparatus have been approved by RBT and the alternative apparatus has been constructed at the undertaker's cost and is in operation to the satisfaction of RBT.

(2) The undertaker must ensure that RBT shall hold the same facilities and rights that it holds for the apparatus in respect of the alternative apparatus.

(3) Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), the undertaker shall ensure that the party responsible for any apparatus is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

(4) The provisions of this paragraph do not apply to apparatus in respect of which the relations between the undertaker and the party responsible for the apparatus in question are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

~~(5)~~ The undertaker shall not interfere with any road or rail accesses which RBT benefits from until details of any management measures (including details of access routes for vehicles to undertake) that will be put in place to ensure that road and rail traffic is still able to access the RBT Operations and the RBT Site is approved in writing by RBT.

(6) If the undertaker uses its powers under the Order to temporarily extinguish or permanently acquire any right of road or rail access which RBT benefits from, the undertaker must provide at its own cost an alternative access prior to the extinguishment or acquisition of that right of access and ensure that RBT shall hold the equivalent rights for that access in respect of an alternative access.

## Consent under this Part

[177.] Before commencing—

(a) any part of the authorised development which would have an effect on the RBT operations or access to them; ~~or~~

(b) any activities on or to the RBT site; or

(c) any part of the authorised development which may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph [176] or otherwise

the undertaker must submit to RBT the works details and plans for the proposed works or activities and such further particulars as RBT may, not less than 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

[178.] No—

(a) works comprising any part of the authorised development which would have an effect on the RBT operations or access to them; or

(b) activities on the RBT site,

are to be commenced until the works details in respect of those works or activities submitted under paragraph [177] have been approved by RBT.

[179.] Any approval of RBT required under paragraph [178] must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made including for—

(a) the continuing safety and operational viability of the RBT operations;

(b) the avoidance of commercial losses to the RBT operations;

and

(c) the requirement for RBT, NZT and RBT's leaseholders, sub-tenants and licencees to have reasonable access to the RBT site at all times

(d) the preservation of RBT's ability to comply with contractual and legal obligations given imposed or otherwise existing prior to the date of this Agreement including obligations under or in connection with the NZT Order.

[180.] Without limiting paragraph [179], it is not reasonable for RBT to give approval pursuant to paragraph [179] subject to requirements which restrict or interfere with the undertaker's access to the wharf and roadways within the RBT site during an offloading procedure save to the extent required by obligations entered into or existing prior to the date of the Order.

[181.]—

(1) The authorised development and activities on the wharf and roadways within the RBT site must be carried out in accordance with the works details approved under paragraph [178] and any requirements imposed on the approval under paragraph [179].

(2) Where there has been a reference to an arbitrator in accordance with paragraph [185] and the arbitrator gives approval for the works details, the authorised development and activities on the wharf and roadways within the RBT site must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph [185].

### **Co-operation**

[182.] Insofar as the construction of any part of the authorised development or activities on the wharf and roadways within the RBT site, and the operation or maintenance of the RBT operations or access to them would have an effect on each other, the undertaker and RBT must—

(a) co-operate with each other with a view to ensuring—

(i) the co-ordination of activities and programming to allow the authorised development, the undertaker's activities on the wharf and the roadways within the RBT site (including offloading procedures) and the RBT operations to continue;

(ii) that reasonable access for the purposes of constructing the authorised development and the undertaker's activities on the wharf and the roadways within the RBT site (including offloading procedures) is maintained for the undertaker, its employees, contractors and sub-contractors; and

(iii) that operation of the RBT operations and access to the RBT site is maintained for RBT, NZT and RBT's leaseholders, sub-tenants and licencees at all times; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the RBT operations, the construction of the authorised development and the undertaker's activities on the wharf and roadways within the RBT site (including offloading procedures).

[183.] The undertaker must pay to RBT—

(a) a cost agreed with RBT for the daily use of the RBT site and RBT services in consequence of the construction of any works referred to in paragraph [177] and use of the RBT site by the undertaker; and

(b) the reasonable costs and expenses incurred by RBT in connection with the approval of plans, inspection and approval of any works details.

### **Indemnity**

[184.]—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph [177] or by the use of the RBT site by the undertaker any damage is caused to the RBT site (including the wharf, roadways, any ~~RBT~~ buildings, plant or machinery on the RBT site) or to the RBT operations, or there is any interruption in any service provided, or in the provision or efficiency by RBT or denial of any services, or in any loss of service from apparatus that is affected by the authorised development the undertaker must indemnify RBT to—

(a) bear and pay the cost reasonably incurred by RBT in making good such damage or restoring the provision and or supply or making good any impairment of the efficiency by RBT of any services; and

(b) make compensation to RBT for any other expenses, loss, damages, penalty or costs reasonably incurred by RBT (including, without limitation, all costs for the repair or replacement necessitated by physical damage), by reason or in consequence of any such damage or interruption or denial of any service provided by RBT: including as a result of any offloading procedures

(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 RBT, its officers, employees, servants, contractors or agents.

(3) RBT must give the undertaker reasonable notice of any third party claim or demand that has been made against it in respect of the matters in sub-paragraph (1)(a) and (b) and no settlement or compromise of such a claim is to be made without the consent of the undertaker with such consent not to be unreasonably withheld: provided that if withholding such consent, the Undertaker shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) RBT must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph [184] applies: where it is within RBT's reasonable ability to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of RBT's control

(5) If reasonably requested to do so by the undertaker, RBT must provide a reasonable explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph [184] for claims reasonably incurred by RBT.

### **Transfer of benefit of Order**

185 Within 14 days after the date of any transfer or grant under article 8 (consent to transfer benefit of Order), the undertaker who made the transfer or grant must serve notice on RBT containing the name and address of the transferee or lessee, the 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.

### **Notices**

186 Regardless of article 45 (service of notices) a notice required to be served on RBT under this Schedule must be served both on the managing director for the time being of RBT in the manner provided by article 45 (service of notices).

### **Arbitration**

~~185~~187. Any difference or dispute arising between the undertaker and RBT under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and RBT, be referred to and settled by arbitration in accordance with article 46 (arbitration).