

## PROTECTIVE PROVISIONS FOR THE PROTECTION OF VENATOR MATERIALS UK LIMITED

1. For the protection of Venator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Venator.

### Definitions

2. In this Schedule—

“Venator” means Venator Materials UK Limited (company number 00832447) whose registered office is at Titanium House, Hanzard Drive, Wynyard Park, Stockton on Tees, TS22 5FD and any successor in title or function to the Venator operations;

“Venator operations” means the operations and assets within the Order land vested in Venator and any group company within the meaning of section 1261 of the Companies Act 2006 including, but not limited to, the freehold interest in the Venator Greatham Works; and

“works details” means—

- (a) plans and sections, including the routing of any proposed pipeline;
- (b) details of the proposed method of working and timing of execution of works; and
- (c) any further particulars provided in response to a request under paragraph 3(1).

### Consent under this Schedule

3.—(1) Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the Venator operations or access to them, the undertaker must submit to Venator the works details for the proposed work and such further particulars as Venator may reasonably require for the approval by Venator.

(2) No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the Venator operations or access to them are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by Venator.

(3) Any approval of Venator required under sub-paragraph (2) must not be unreasonably withheld or delayed and shall be provided within 28 days from the day the works details are provided pursuant to sub-paragraph (2) but may be given subject to such reasonable requirements as Venator may require to be made for—

- (a) the continuing safety and operational viability of the Venator operations; or
- (b) the requirement for Venator to have reasonable access with or without vehicles at all times to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the Venator operations.

(4) The authorised development must be carried out with good and suitable materials in a good and workmanlike manner in accordance with the works details approved under sub-paragraph (2) and any requirements imposed on the approval under sub-paragraph (3) and all other statutory and other requirements or regulations.

(5) Where there has been a reference to an arbitrator in accordance with paragraph 5 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 5.

### Indemnity

4.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised development or the works referred to in paragraph 3(2), any damage is caused to the Venator operations, or there is any interruption in any service provided, or in the supply of any goods, by Venator, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Venator in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Venator for any other expenses, loss, damages, penalty or costs incurred by Venator, by reason or in consequence of any such damage or interruption.

(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—

- (a) the act, neglect or default of Venator, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by Venator.

(3) Venator 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.

(4) Venator 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 4 applies.

(5) If requested to do so by the undertaker, Venator must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall only be liable under this paragraph 4 for claims reasonably incurred by Venator.

#### **Arbitration**

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

# Applicant's submissions

## 1. Issue 1 - Compulsory acquisition

- 1.1. The Applicant understands that Venator has concerns regarding the compulsory acquisition powers that are contained in the draft DCO.
- 1.2. These powers are required in order to ensure the delivery of the authorised development. These powers are required to ensure the authorised development can be constructed, operated and maintained and also to ensure that the authorised development's nationally significant public benefits can be realised, including supporting the Government's policies in relation to the timely delivery of new generating capacity and achieving ambitious net zero targets.
- 1.3. With the controls in place in the Protective Provisions in respect of controlling impacts of works across Venator's site, the impacts to Venator's operations, and its ability to be developed, are able to be controlled. With these measures in place, the Applicant ensures that there is no realistic prospect that the exercise of compulsory land powers would have a detrimental impact on the ability of Venator's site to be developed, or Venator's apparatus and operations to be protected.
- 1.4. The Applicant needs the ability to then deliver the authorised development, utilising the land shown on the Order limits. In this context, the Applicant considers that the balance lies clearly in favour of the grant of compulsory acquisition powers, taking into account the measures to avoid, minimise or mitigate the effects of such powers, and noting the substantial public benefits that it considers exist for the authorised development.
- 1.5. The Applicant also refers to the justification for compulsory acquisition powers that is outlined in the Statement of Reasons [CR1-013].

## 2. Issue 2 - Safeguarding Venator's current operations and future development

- 2.1. The Applicant understands that Venator has concerns regarding the impacts of the authorised development on Venator's operations and intentions to develop its land in the future. The Applicant considers that the protective provisions contained in Schedule 40 to the draft DCO [REP7-018] (**DCO PPs**) provide adequate protection to safeguard Venator's current operations and future development.
- 2.2. Paragraph 3 of the DCO PPs requires the Applicant to obtain Venator's consent before commencing any part of the authorised development which would have an effect on the operation or maintenance of the Venator operations or access to them (**Relevant Works**).
- 2.3. Venator can impose any reasonable requirements on the Relevant Works for:
  - 2.3.1. the continuing safety and operational viability of the Venator operations; or
  - 2.3.2. the requirement for Venator to have reasonable access with or without vehicles at all times to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the Venator operations.
- 2.4. These requirements directly address Venator's concerns regarding its ongoing operations.
- 2.5. The Relevant Works must be carried out:
  - 2.5.1. with good and suitable materials in a good and workmanlike manner;
  - 2.5.2. in accordance with the works details approved by Venator;
  - 2.5.3. any requirements imposed by Venator; and
  - 2.5.4. all other statutory and other requirements or regulations.
- 2.6. In the event that the Relevant Works are determined by an arbitrator, they must be carried out in accordance with the approval and conditions determined by the arbitrator.
- 2.7. Paragraph 4 of the DCO PPs states that if any damage is caused to Venator's Operations, or there is any interruption in any service provided, or in the supply of any goods, by Venator as a result of the construction of the authorised development or the Relevant Works, the Applicant must:

- 2.7.1. bear and pay the cost reasonably incurred by Venator in making good such damage or restoring the supply; and
  - 2.7.2. make reasonable compensation to Venator for any other expenses, loss, damages, penalty or costs incurred by Venator, by reason or in consequence of any such damage or interruption.
- 2.8. With these protections, the Applicant considers that Venator's concerns regarding its current operations and future development are safeguarded.