

PART 1
FOR THE PROTECTION OF THE IOT OPERATORS

Application

1.—(1) For the protection of —

- (a) Associated Petroleum Terminals (Immingham) Ltd and Humber Oil Terminal Trustees Ltd (together the “IOT Operators”); and
- (b) Phillips 66 Limited and Prax Lindsey Oil Refinery Limited (together the “IOT Operators’ Owners”)

the following provisions, unless otherwise agreed in writing at any time between the undertaker and the IOT Operators or the IOT Operators’ Owners, have effect.

Interpretation

2. In this Part of this Schedule —

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the duration of the construction period of Work Nos. 1, 2 and 3, and after the construction period of Work Nos. 1, 2 and 3 in respect of any use and maintenance of such works by or on behalf of the undertaker and arranged with an insurer whose security/credit rating is not lower than: “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings, and “A3” if the rating is assigned by Moody’s Investors Services Inc., such insurance shall include (without limitation):

- (a) a waiver of subrogation and an indemnity to principal clause in favour of the IOT Operators
- (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the IOT Operators to enable the IOT Operators to fulfil its functions in a manner no less efficient than previously;

"apparatus" means any part of Immingham Oil Terminal Jetty and associated oil terminal and tank farm including the pipe-line and storage system, structures and other infrastructure owned or maintained by the IOT Operators and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“Associated Petroleum Terminals (Immingham) Ltd” means Associated Petroleum Terminals (Immingham) Limited, company number 00564394 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;

“authorised development” has the same meaning as in article [2] (interpretation) of this Order (unless otherwise specified) and includes any associated development authorised by the Order and for the purposes of this Part includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

"functions" includes powers and duties;

“Humber Oil Terminals Trustee Ltd” means Humber Oil Terminals Trustee Limited, company number 00874993 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;

"in" in a context referring to apparatus in land, includes a reference to apparatus under, over or upon land;

"IOT" means the Immingham Oil Terminal jetty which is operated by Associated Petroleum Terminals (Immingham) Ltd on behalf of Humber Oil Terminals Trustee Ltd;

"IOT Finger Pier" means the IOT finger pier and its associated infrastructure;

"IOT Mitigation Measures" means the measures to be delivered by the undertaker in consultation with the IOT Operators to the reasonable satisfaction of the IOT Operators to ensure the safe use of the IOT and must include:

(a) a modified IOT Finger Pier designed in consultation with the IOT Operators to enable two Coastal tankers of up to [max size to be added] to berth on the northern side of the finger pier and two barges of up to [max size to be added] to berth on the southern side of the finger pier in accordance with [Work No. X];

(b) completion of Work No. 3;

unless otherwise agreed in writing between the undertaker and the IOT Operators.

"IOT Operators" means Associated Petroleum Terminals (Immingham) Ltd and Humber Oil Terminals Trustee Ltd;

"Marine and Liaison Plan" means a plan for the construction and operational phases of the authorised development detailing the construction methodology and schedule of works for the authorised development and to manage procedural controls such as berth limits, towage requirements and operational deconfliction relating to the authorised development which is to be developed by the Undertaker in consultation with the IOT Operators;

"Phillips 66 Limited" means Phillips 66 Limited, company number 00529086 registered at 7th Floor, 200-202 Aldersgate Street, London EC1A 4HD, and any successor in title;

"Prax Lindsey Oil Refinery Limited" means Prax Lindsey Oil Refinery Limited, company number 00564599 registered at Harvest House, Horizon Business Village, Weybridge KT13 0TJ, and any successor in title;

"pipe-line" means the whole or any part of a pipe-line belonging to or maintained by the IOT Operators and includes any ancillary works and apparatus; all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers; and such legal interest and benefit of property rights and covenants as are vested in the IOT Operators in respect of those items;

"plans" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"specified works" means any of the authorised development or activities undertaken in association with the authorised development which will or may be situated on, over, under or within 50 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 50 metres of any apparatus or may in any way adversely affect any apparatus; and

"working day" means any day other than a Saturday, Sunday or English bank or public holiday.

Acquisition of land and apparatus

3.—(1) Irrespective of any provision in this Order or anything shown on the land plans or contained in the book of reference—

(a) the Undertaker must not acquire or take temporary possession of any land interest of the IOT Operators or any apparatus or appropriate, acquire, extinguish, interfere with or override any easement or other interest of the IOT Operators or obstruct or render less convenient the access to any apparatus, otherwise than by agreement with the IOT Operators; and

- (b) any right of the IOT Operators to operate, maintain, repair, renew, adjust, alter or inspect any apparatus must not be extinguished by the undertaker until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the IOT Operators.

Retained apparatus

4.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to the IOT Operators a plan.

(2) The plan to be submitted to IOT Operators under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the manner of their construction including details of excavation and positioning of plant;
- (c) the position of all apparatus;
- (d) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (e) any intended maintenance regimes; and
- (f) an assessment of risks of rise of earth issues.

(3) The undertaker must not commence any specified works until the IOT Operators has given written approval of the plan so submitted.

(4) Any approval of the IOT Operators required under sub-paragraph (3) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);

(5) In relation to any specified works, the IOT Operators may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) The specified works must only be executed in accordance with the plan submitted under sub-paragraph (1) as approved or as amended from time to time by agreement between the undertaker and the IOT Operators and in accordance with such reasonable requirements as may be made in accordance with the paragraph by the IOT Operators for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the IOT Operators is entitled to watch and inspect the execution of those works.

(7) Where under sub-paragraph (3) the IOT Operators requires any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the IOT Operators' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and the IOT Operators must give 56 days' notice of its requirement for such works from the date of submission of a plan in line with this paragraph (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 the authorised development, 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) At all times when carrying out any part of the authorised development, the undertaker must comply with relevant guidance issued by the Health and Safety Executive and with the Control of Major Accident Hazards Regulations 2015.

Offshore Works

5.—(1) The undertaker must not except with the agreement of the IOT Operators carry out Work Nos. 1, 2 and 3, or any part of it.

(2) Before any berths forming part of Work No. 1 are commissioned, the undertaker must deliver the IOT Mitigation Measures in consultation with the IOT Operators;

(3) Before beginning to construct Work Nos. 1, 2 and 3, or any part of it, the undertaker must provide a Marine and Liaison Plan to minimise any conflict between the authorised development and the operations of the IOT and submit to the IOT Operators plans of Work Nos. 1, 2 and 3 (or part of it) including sufficient detail to show that the jetty, berths and impact protection works will provide adequate impact protection to sufficiently protect the IOT in the IOT Operators' reasonable opinion and such further particulars available to it as the IOT Operators may request within 21 days of receipt of the plans reasonably requested.

(4) Work Nos. 1, 2 and 3 must not be constructed except in accordance with such plans as may be approved in writing by the IOT Operators.

(5) Any approval of the IOT Operators required under this Schedule—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of refusal must be accompanied by a statement of grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the IOT Operators may have in connection with the safe, economic and efficient use, operation and maintenance of the IOT or otherwise for the protection of any apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker is permitted to refer such matters to arbitration pursuant to article [36].

(6) The IOT Operators must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If the IOT Operators require further particulars, such particulars must be requested by the IOT Operators no later than 21 days from the submission of plans and thereafter the IOT Operators must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

(7) The undertaker must give to the IOT Operators not less than 14 days' notice in writing of its intention to commence construction of any part of Work Nos. 1, 2 and 3 and notice in writing of its completion not later than 7 days after the date on which it is completed and the IOT Operators are entitled by its officer to watch and inspect the construction of such works.

(8) If any part of Work Nos. 1, 2 and 3 or the IOT Mitigation Measures is constructed otherwise than in accordance with this Part of this Schedule the IOT Operators may by notice in writing identify the extent to which the works do not comply with the approved details or otherwise with this Part of this Schedule and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of this Part of this Schedule or such alternative works as may be agreed with the IOT Operators or as otherwise may be agreed between the parties.

(9) Subject to sub-paragraph (9), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (8) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the IOT Operators may execute the works specified in the notice and any reasonable expenditure incurred by the IOT Operators in so doing will be recoverable from the undertaker.

(10) In the event of any dispute as to whether sub-paragraph (8) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the IOT Operators must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph () until the dispute has been finally determined in accordance with article [36] (arbitration).

Operation of Offshore Works

6. The IOT Operators' agreement under paragraph [5(1)] of this Part of this Schedule may be made subject to requirements in relation to the construction or operational phases of the authorised development to ensure that the IOT Operators do not suffer more interference than is reasonably practicable and may require reasonable commitments by the undertaker to ensure that vessels and tankers using the IOT are given priority over vessels using the authorised development.

Expenses

7. Save where otherwise agreed in writing between the IOT Operators and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to the IOT Operators within 30 days of receipt of an itemised invoice or claim from the IOT Operators all charges, costs and expenses reasonably incurred by the IOT Operators in, or in connection with the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by the IOT Operators in connection with the acquisition of rights or the exercise of statutory powers for such apparatus;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) 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.

Damage to property

8.—(1) The undertaker must permit the IOT Operators access to any apparatus during the carrying out of any specified works reasonably required for the purposes of inspection, maintenance and repair of such apparatus and upon reasonable notice.

Indemnity

(2) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purpose of those works) or property of the IOT Operators, or there is any interruption in any service provided by the IOT Operators, or the IOT Operators or the IOT Operators' Owners becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand accompanied by an invoice or claim from the IOT Operators or the IOT Operators' Owners the cost reasonably and properly incurred by the IOT Operators or the IOT Operators' Owners in making good such damage or restoring the supply; and
- (b) indemnify the IOT Operators and the IOT Operators' Owners for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the IOT Operators or the IOT Operators' Owners, by reason or in consequence of any such damage or interruption or the IOT Operators or the IOT Operators' Owners becoming liable to any third party as aforesaid other than arising from any default by the IOT Operators.

(3) 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 as a consequence of the authorised development or under its supervision does not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the IOT Operators fails to carry out and execute the

works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and the IOT Operators.

- (4) Nothing in sub-paragraph (1) imposes 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, its officers, employees, contractors or agents; and
 - (b) any authorised development or any other works authorised by this Part carried out by the IOT Operators as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the 2008 Act or article [8] (benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”) any works yet to be executed and not falling within this sub-paragraph (b) are subject to the full terms of this Part including this paragraph in respect of such new apparatus.
- (5) The IOT Operators and the IOT Operators’ Owners must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand must be made, unless payment is required in connection with a statutory compensation scheme, without first consulting the undertaker and considering its representations.
- (6) The IOT Operators and the IOT Operators’ Owners 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 it would as if settling third party claims on its own behalf from its own funds.
- (7) The undertaker shall not carry out Work Nos. 1, 2 and 3, or any part of such works, unless and until the IOT Operators are satisfied acting reasonably that the undertaker has procured acceptable insurance and the IOT Operators have confirmed the same in writing to the undertaker.
- (8) Co-operation and reasonableness

9.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker requires the removal of apparatus under this Part of this Schedule or the IOT Operators makes requirements for the protection or alteration of apparatus under this Part of this Schedule, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the IOT Operators’ undertaking and the IOT Operators must use its best endeavours to co-operate with the undertaker for that purpose.

(2) the undertaker and the IOT Operators must act reasonably in respect of any given term of this Part of this Schedule and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by this Part of this Schedule it must not be unreasonably withheld or delayed.

Miscellaneous

10. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and the IOT Operators in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this Part of this Schedule. In the case of any inconsistency, the provisions of this Order, including this Part of this Schedule, prevail.

Emergency circumstances

11.—(1) The undertaker acknowledges that the IOT Operators provides services to His Majesty’s Government, using its apparatus, which may affect any works to be carried under this Order.

(2) In the following circumstances, the IOT Operators may on written notice to the undertaker immediately suspend all works that necessitate the stopping or suspending of the supply of product through any apparatus under this Order and the IOT Operators are not in breach of its obligations to proceed:

- (a) circumstances in which, in the determination of the Secretary of State, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or
- (b) circumstances in which a request has been received, and a decision to act upon such request has been taken, by His Majesty's Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or
- (c) circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by His Majesty's Government or the Secretary of State; or
- (d) any circumstances identified as such by the COBRA committee of His Majesty's Government (or any successor committee thereof); or
- (e) any situation, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas, in connection with which the Secretary of State requires fuel capacity.

(3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which includes costs of demobilising and remobilising any workforce, and any costs to protect the IOT Operators' apparatus "mid-works") to account for the suspension.

(4) The IOT Operators are not liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under this paragraph or delays caused by it.