

Applicant's Commentary on IOT Operator's Protective Provisions

1. The Applicant has, as indicated in its letter dated 28 September 2023 (AS-020) acknowledged that protective provisions and indemnities will be provided to the IOT Operators ("IOTO"), substantially in accordance with the protective provisions submitted into the Examination by IOTO in REP1-039.
2. The words "substantially in accordance" however, are inevitably open to interpretation and the Applicant is disappointed to note that the protective provisions proposed by IOT seem to increase with every iteration – the version submitted this week to the ExA being a case in point, with the new inclusion of a £50 million insurance cover.
3. The Applicant, whilst certainly prepared to continue its discussion with IOT regarding the terms of a protective provision is not in a position to accept and would resist any form of protection provision as currently now being proposed by the IOTO. Whilst accepting certain elements, as recorded in its draft DCO, it is of the view that various elements of REP1-039 go beyond those which are reasonably necessary in order to protect IOTO's interests, and indeed beyond precedents from other DCOs.
4. The Applicant would ask the ExA to bear in mind that the Applicant owns the IOT Trunkway and Finger Pier under leasehold title HS342601. The IOT Operators in turn have rights of access over the Finger Pier and trunkway under the terms of a licence ("the Licence") dated 14 August 2013 and made between Associated British Ports (1) Humber Oil Terminals Trustee Limited ("HOTT") (2) Total Lindsey Oil Refinery Limited (4) and Phillips 66 Limited (4). Under the terms of the Licence the trunkway and Finger Pier belong to the Applicant, with the Applicant granting HOTT rights to bring onto and keep the "HOTT Equipment" on the Trunkway and Finger Pier and to berth HOTT Vessels at the trunkway and Finger Pier.
5. Importantly, under the terms of the Licence, the Applicant is already responsible for the maintenance, repair and insurance of the Trunkway and Finger Pier, whilst IOTO/ HOTT are only responsible for the maintenance and repair of the "HOTT Equipment".
6. As a result, the Applicant accepts that, in order to supplement its existing obligations in relation to the jetty itself, it should indemnify IOTO for any losses and damage caused to the HOTT pipelines and equipment as a result of construction of the IEERT development.
7. The same indemnities will not be required after the construction period, when operations at the IERRT have begun under the regime of risk controls required by the Harbour Master Humber. As effective risk mitigations to

protect the IOT will be put in place, no ongoing indemnity is required and the existing legal agreements between the Applicant and IOTO/ HOTT should prevail. To provide indemnities in perpetuity would fundamentally alter the existing commercial relationship between the Applicant and IOT Operators in such a fashion as to provide, at sever detriment to the Applicant, substantial betterment to the IOTO.

8. The ExA will also have noted that the latest draft of the evolving protective provision requires the Applicant to for example, provide Work No 3 in all circumstances, whilst also effectively providing the IOTO Operators with the power to prevent construction works through withholding their approval of plans. This provides the IOT Operators with an effective veto over the proposed development, creating uncertainty over the delivery of a nationally significant infrastructure project.

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Clyde & Co LLP