

PART 12

FOR THE PROTECTION OF DFDS SEAWAYS PLC

Application

121. For the protection of DFDS the following provisions, unless otherwise agreed in writing at any time between the undertaker and DFDS, have effect.

Interpretation

122. In this Part of this Schedule—

“authorised work” means any work specified in schedule 1;

“DFDS” means DFDS Seaways plc, company number 01554521 registered at Nordic House, Western Access Road, Immingham Dock, Immingham, DN40 2LZ; and

“environmental document” means the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement including, but not limited to the Navigation Risk Assessment and Transport Assessment.

Consultation and notification

123. At least 28 days before the undertaker commences the construction of any authorised work, or any phase of any authorised work, that has been assessed in any environmental document that may interfere with DFDS’ use of the Port of Immingham or the surrounding road network, the undertaker must consult DFDS in writing stating what is proposed and have regard to any response received from DFDS.

Indemnity

124. (1) The undertaker is responsible for and must make good to DFDS all reasonable financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by DFDS by reason of—

- (a) the construction or operation of the authorised works or the failure of the authorised works; or;
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works, .

and the undertaker must indemnify DFDS from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.

(2) DFDS must give the undertaker no less than 28 days' notice in writing, providing a reasonable explanation for any claim or demand, as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker.

DFDS Scheduled Services and use of DFDS berths

125. (1) In relation to the construction and operational phases of the authorised development the undertaker will use all reasonable endeavours to ensure—

- (a) vessels operating to and from the authorised development do not cause interference with vessels operated by DFDS and other scheduled services using DFDS berths in the Port of Immingham; and
- (b) vessels operated by DFDS and other scheduled services using DFDS berths in the Port of Immingham will be given priority over vessels using the authorised development in accordance with the schedule of services operated by DFDS and other scheduled services using DFDS berths at the date of this Order, as may be amended by agreement between DFDS and the undertaker.

Operations

126. Before commencing marine commercial operations the undertaker must provide DFDS with a copy of the Statutory Conservancy and Navigation Authority's approval of the written statement of proposed safe operating procedures for access to and egress from the authorised development, including any approved alteration made from time to time.

Disputes

127. Any dispute arising between the undertaker and DFDS under this Part of this Schedule is to be determined by arbitration as provided in article 35 (arbitration).