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SCHEDULES

SCHEDULE 5

PROTECTIVE PROVISIONS

FOR PROTECTION OF THAMES WATER UTILITIES LIMITED

3 For the protection of Thames Water Utilities Limited (hereinafter called “the sewerage undertakers”) the following provisions shall, unless otherwise agreed in writing between the Corporation and the sewerage undertakers, have effect:—

(1) In this paragraph—

“construction” includes execution, placing and altering and, in relation to temporary works, includes removal and “construct” and “constructed” shall be construed accordingly;

“new, altered or substituted works” includes any works required for the protection of any sewer;

“sewer” means a sewer or part of a sewer, including a public sewer, within the meaning of the Water Industry Act 1991 and includes any manholes, ventilating shafts, pumps or other accessories belonging to or forming part of a sewer;

“specified work” means so much of the authorised works and of any work (whether temporary or permanent) forming part of, or constructed in connection with, the authorised works, or any of them, as will or may be situated over or within 15 metres measured in any direction of, or (wherever situated) impose any load directly upon, any sewer, and includes the construction, maintenance or renewal of any such works:

(2) The Corporation shall not commence any specified work until they shall have given to the sewerage undertakers 56 days' previous notice in writing of their intention to commence the same, by leaving such notice at the principal office of the sewerage undertakers with plans as described in sub-paragraph (7) below (in this paragraph referred to as “the said plans”), and until the sewerage undertakers shall have signified their approval of the said plans:

Provided that such approval shall not be unreasonably withheld and if, within 56 days after the submission of the said plans, the sewerage undertakers have not approved or disapproved them, they shall be deemed to have approved the said plans:

(3) The Corporation shall comply with and conform to all reasonable orders, directions and regulations of the sewerage undertakers in the construction of any specified work and shall provide new, altered or substituted works in such manner as the sewerage undertakers shall reasonably require for the proper protection of, and for preventing injury or impediment to, a sewer of the sewerage undertakers by reason of any specified work and shall save harmless the sewerage undertakers against all expenses to be occasioned thereby:

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- (4) The specified works and all such new, altered or substituted works shall be constructed by or under the direction, superintendence and control of an officer of the sewerage undertakers duly appointed for the purpose at the cost, charge and expense in all respects of the Corporation; and all reasonable costs, charges and expenses to which the sewerage undertakers may be put by reason of such works, whether in the execution thereof, in the preparation or examination of plans or designs or in such direction, superintendence or control as aforesaid shall be paid to the sewerage undertakers by the Corporation on demand:
- (5) When any such new, altered or substituted works or any work of defence connected therewith shall be completed by or at the cost of the Corporation under the provisions of this paragraph, the same shall thereafter be as fully and completely under the direction, jurisdiction and control of the sewerage undertakers as any sewers or works now or hereafter may be:
- (6) Nothing in this Act shall extend to prejudice, diminish, alter or take away any of the rights, powers or authorities vested or to be vested in the sewerage undertakers in relation to sewers but all such rights, powers and authorities shall be as valid and effectual as if this Act had not been passed:
- (7) The plans to be submitted to the sewerage undertakers for the purposes of this paragraph shall be detailed plans, drawings, sections and specifications which shall describe the exact position and manner in which, and the level at which, any specified work is proposed to be constructed and shall accurately describe the position of all sewers of the sewerage undertakers within the limits of deviation (for which purpose the sewerage undertakers shall allow the Corporation access to plans in their possession and, under their supervision, to any of their sewers, in order to enable the Corporation to obtain reliable information) and shall comprise detailed drawings of every alteration which the Corporation may propose to make in any such sewers:
- (8) The sewerage undertakers may require such modifications to be made in the said plans as may be reasonably necessary to secure the sewerage system of the sewerage undertakers against interference or risk of damage and to provide and secure a proper and convenient means of access to the sewers of the sewerage undertakers:
- (9) The Corporation shall indemnify the sewerage undertakers against all claims, demands, costs, expenses, damages or loss which may be made on or against the sewerage undertakers or which the sewerage undertakers may incur or have to pay or which they may sustain in consequence of the construction, maintenance or renewal of a specified work or of the failure or want of repair thereof or any subsidence caused by the construction of any specified work or in consequence of any act or omission of the Corporation, their contractors, agents, workmen or servants, whilst engaged upon the specified work:

Provided that—

- (i) the sewerage undertakers shall give to the Corporation reasonable notice of any such claim or demand as aforesaid and no settlement or compromise thereof shall be made without the agreement of the Corporation; and
- (ii) nothing in this sub-paragraph shall impose any liability on the Corporation with respect to any claim, demand, costs, expenses, damage or loss which is attributable to the act, neglect or default of the sewerage undertakers or their agents, contractors, employees or workmen:

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- (10) If, in the construction of any specified work, or any new, altered or substituted works, or any work of defence connected therewith provided in accordance with this paragraph, the Corporation damage or, without the consent of the sewerage undertakers, in any way interfere with any sewer of the sewerage undertakers, the Corporation shall—
- (a) pay to the sewerage undertakers a capitalised sum representing any additional expense which may be expected to be reasonably incurred by the sewerage undertakers in the maintenance, management or renewal of any new, altered or substituted work which may be necessary in consequence of the said construction taking into account any betterment; and
 - (b) give to the sewerage undertakers full, free and uninterrupted access at all times to any such new, altered or substituted work or to any such sewer and every reasonable facility for the inspection, maintenance, alteration and repair thereof:
- (11) Notwithstanding the temporary stopping up or diversion of any street under the powers of section 18 (Temporary stoppage of streets) of this Act, the sewerage undertakers shall be at liberty at all times 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 them to inspect, repair, maintain, renew, remove or use any sewer which at the time of the stopping up or diversion was in that street:
- (12) In the exercise of the powers of section 23 (Underpinning of houses near works) of this Act, the Corporation shall not, so far as reasonably practicable, obstruct or render less convenient the access to any sewer of the sewerage undertakers and, if by reason or in consequence of the exercise of those powers any damage to any sewer (other than a sewer the repair of which is not reasonably necessary in view of its intended removal or abandonment) shall be caused, the Corporation shall bear and pay the cost reasonably incurred by the sewerage undertakers in making good such damage and shall—
- (a) make reasonable compensation to the sewerage undertakers for any loss sustained by them; and
 - (b) indemnify the sewerage undertakers against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by the sewerage undertakers;
- by reason or in consequence of any such damage:
- Provided that—
- (i) nothing in this sub-paragraph shall impose any liability on the Corporation with respect to any damage to the extent that such damage may be attributable to the act, neglect or default of the sewerage undertakers or their agents, contractors, employees or workmen;
 - (ii) the sewerage undertakers shall give to the Corporation reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Corporation:
- (13) (a) If in the construction of any new, altered or substituted works under this paragraph—
- (i) a sewer of better type or greater capacity is placed in substitution for an existing sewer of worse type or smaller capacity, except where this has been solely due to using the nearest currently available type or capacity, or

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- (ii) a sewer (whether an existing sewer or a sewer substituted for an existing sewer) is placed at a depth greater than the depth at which the existing sewer was,
- and the placing of a sewer of that type or capacity or the placing of a sewer at that depth, as the case may be, is not agreed by the Corporation, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the construction of the new, altered or substituted works exceeding that which would have been involved if the apparatus placed had been of the existing type or capacity, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the sewerage undertakers by virtue of sub-paragraphs (4) and (10) above shall be reduced by the amount of that excess:
- (b) For the purposes of sub-paragraph (13) (a) above an extension of a sewer to a length greater than the length of an existing sewer shall not be treated as a placing of a sewer of greater dimensions than those of the existing sewer:
- (c) An amount which apart from this sub-paragraph would be payable to the sewerage undertakers in respect of any new, altered or substituted works by virtue of sub-paragraphs (4) and (10) above (and having regard, where relevant, to sub-paragraph (13) (a) above) shall, if the works include the placing of a sewer provided in substitution for a sewer placed more than 7½ years earlier so as to confer on the sewerage undertakers any financial benefit by deferment of the time for renewal of the sewer in the ordinary course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary Where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992, and approved by the Secretary of State on 30th June 1992 as revised and reissued from time to time:
- (14) It shall be lawful for an officer of the sewerage undertakers duly appointed for the purpose at any reasonable time and, if required by the Corporation, under their supervision to enter upon and inspect any specified work or any other works constructed under the powers of this Act, for which purpose the Corporation shall allow to any such officer access over any other works or land of the Corporation:
- (15) The fact that any specified work has been constructed in accordance with a plan approved or not objected to by the sewerage undertakers or to their satisfaction or in accordance with any directions or award of an arbitrator shall not relieve the Corporation from any liability under the provisions of this paragraph:
- (16) As soon as reasonably practicable after the completion of the construction of a specified work the Corporation shall deliver to the sewerage undertakers a plan and section showing the position and level of that work as constructed and all new, altered or substituted works provided under this paragraph:
- (17) Any difference arising between the Corporation and the sewerage undertakers under this paragraph shall be referred to and settled by arbitration but the Corporation and the sewerage undertakers shall use their best endeavours to ensure that proceedings before an arbitrator commence in every case within seven days of the Corporation or the sewerage undertakers registering a failure to agree:
- (18) Nothing in this paragraph shall apply—
- (a) in relation to street works (within the meaning of Part III of the New Roads and Street Works Act 1991) executed by the Corporation; or

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- (b) in relation to apparatus in respect of which the relations between the Corporation and the sewerage undertakers are regulated by that Part of that Act.