

## SCHEDULES

### SCHEDULE 9

#### PROTECTIVE PROVISIONS

#### PART 6

#### FOR THE PROTECTION OF C.RO

##### *Recovery of expenses*

72.—(1) C.RO may recover from the undertaker any reasonable expenses however caused which C.RO incur—

- (a) arising from the approval of plans and the inspection of the construction or carrying out of any tidal work;
  - (b) by reason of any act or omission of the undertaker, or of any person in their employ, or of their contractors or workmen whilst engaged upon any tidal work or the construction and operation of the authorised development;
  - (c) in dredging away any accumulation consequent upon the execution or maintenance of a tidal work;
  - (d) in obtaining and depositing in the river such material as is necessary in the reasonable opinion of C.RO to protect C.RO's operations from the effects of scouring of the river bed consequent upon the execution or maintenance of a tidal work;
  - (e) in altering any mooring in any way which in the reasonable opinion of C.RO may be rendered necessary by reason of the execution or maintenance of a tidal work;
  - (f) in carrying out reasonable surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river) —
    - (i) to establish the marine conditions prevailing prior to the construction of a tidal work in such area of the river as C.RO have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the undertaker is liable to remedy under this paragraph; and
    - (ii) where C.RO have reasonable cause to believe that the construction of a tidal work is causing or has caused any siltation, scouring or other alteration as mentioned in sub-paragraph (i);
  - (g) arising from the carrying out of construction of a tidal work or the failure of a tidal work or the undertaking by C.RO of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such carrying out of construction, exercise or failure.
- (2) Subject to sub-paragraph (3), the undertaker is not required to pay any expense unless—
- (a) C.RO has given the undertaker reasonable notice that it intends to incur the expense including details of the works proposed and an estimate for them; and

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(b) the undertaker has given its consent to C.RO incurring that expense, which may include the undertaker offering to carry out any works to which this paragraph applies with the consent of C.RO.

(3) The undertaker's approval under sub-paragraph (2)(b) must not be unreasonably withheld or delayed, and if by the end of the period of 14 days beginning with the date on which the notice has been supplied to the undertaker, the undertaker has not intimated approval or disapproval, the undertaker is deemed to have approved the request as submitted;

(4) Nothing in this paragraph prevents C.RO from—

(a) carrying out works to which this paragraph applies without the prior consent of the undertaker; or

(b) recovering expenses from the undertaker for any such work it has carried out;

where such works are in the reasonable opinion of C.RO urgently necessary to ensure the safe and efficient operation of HST and C.RO must give notice of its intention to carry out such works to the undertaker.

(5) Where C.RO has carried out works under sub-paragraph (4) it must without undue delay submit the expenses for those works including any details of the works to the undertaker for approval and the undertaker's approval for them must not be unreasonably withheld.

(6) Any amount of expenditure approved by the undertaker under this paragraph must be paid to C.RO by the undertaker within 28 days of a demand for it.

**73.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance, operation or failure of the authorised development any damage is caused to any property of C.RO (including HST) or C.RO suffers any loss (including without limitation as a result of the failure by the undertaker to meet its obligations to C.RO under this Part of this Schedule) the undertaker must—

(a) bear and pay the cost reasonably incurred by C.RO in making good such damage; and

(b) indemnify C.RO against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it,

by reason or in consequence of any such damage or the exercise by the undertaker of the powers conferred by this Order.

(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 the act, neglect or default of C.RO, its officers, servants, contractors or agents.

(3) C.RO 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 with such assistance from C.RO as may be reasonably necessary.

**74.** With the exception of any duty owed by C.RO to the undertaker which is expressly provided for in this Part of this Schedule, nothing in this Order is to be construed as imposing upon C.RO either directly or indirectly, any duty or liability to which C.RO would not otherwise be subject and which is enforceable by proceedings before any court.

**75.** Unless otherwise agreed in writing, any dispute arising between the undertaker and C.RO under this Part of this Schedule is to be determined by arbitration as provided in article 57 (arbitration).