

SCHEDULES

SCHEDULE 10

PROTECTIVE PROVISIONS

PART 4

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

Indemnity

44.—(1) The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

(2) The undertaker is responsible for and indemnifies the Agency against all costs and losses not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of—

- (a) the construction, operation or maintenance or failure during construction of any specified works comprised within the authorised development;
- (b) the operation or maintenance of any specified works comprised within the authorised development or the failure of any such works; or
- (c) any act or omission of the undertaker, its employees, contractors or agents or other persons acting under the direction of the undertaker whilst engaged upon—
 - (i) the construction, operation or maintenance of the specified works; or
 - (ii) in the case of those specified works that the undertaker is liable to maintain, dealing with any failure of those specified works.

(3) For the avoidance of doubt in sub-paragraph (1)—

“costs” includes—

- (i) expenses and charges;
- (ii) staff costs and overheads;
- (iii) legal costs;

“losses” includes physical damage.

(4) The undertaker indemnifies the Agency against all liabilities, claims and demands arising out of or in connection with the authorised development or otherwise out of the matters referred to in sub-paragraph (1).

(5) In sub-paragraph (3)—

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“claims” and “demands” include as applicable—

- (a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;
- (b) any interest element of sums claimed or demanded;

“liabilities” includes—

- (c) contractual liabilities;
- (d) tortious liabilities (including liabilities for negligence or nuisance);
- (e) liabilities to pay statutory compensation or for breach of statutory duty;
- (f) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(6) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(7) The Agency must, at all times, take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(8) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(9) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, liabilities, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.