

By email only: M60SimisterIsland@planninginspectorate.gov.uk

Your ref:

Our ref: 20049444

Date: 10-JAN-25

Dear Sir / Madam

TR010064: Application by National Highways for the M60/M62/M66 Simister Island Interchange Project
The Examining Authority's Written Questions and requests for further information Issued on 17 December 2024

With respect to questions with reference DCO.2.10 and NV2.1, the responses of United Utilities are set out below.

DCO.2.10

Schedule 9 – Protective Provisions

Question to: Cadent Gas, National Grid Electricity Transmission Plc, United Utilities and other statutory party affected by Protective Provisions

The ExA noted the applicant's update during CAH1 listing the parties whereby they considered additional / alternative wording to that presently in the draft DCO would be required. The ExA requests that any party affected by protective provisions provides the preferred wording you are seeking to the dDCO at D5 where disagreement remains with the applicant.

Response of United Utilities

United Utilities has recently forwarded a copy of our preferred wording for Protective Provisions to the applicant for their consideration. There were sent in the form of a draft side agreement. A copy of this document is enclosed.

NV.2.1

Noise and Vibration

Question to: United Utilities

Vibration, settlement and /or loading of assets

In [RR-015] United Utilities raised a concern regarding the potential effect of vibration, settlement and/or loading of their assets which may result from the construction of the proposed scheme. The applicant responded to this concern in [REP1-020]. Please confirm if you are satisfied with this response or detail any outstanding concerns.

Response of United Utilities

United Utilities welcomes the meaningful engagement with the applicant regarding the protection of its assets and operations both during construction and during the operational life of the proposed development. Alongside the detail of our wider dialogue and correspondence with the applicant, United Utilities notes the content of RR-015. This acknowledges the applicant's responsibility for the protection of United Utilities' assets during the construction of the scheme, a need to consider the impact of any potential settlement and vibration, and that there should be no additional load bearing impact on our assets during or after construction. RR-015 set out the applicant's intention to continue discussions with United Utilities in relation to its assets including a commitment to ensure that the '*Standard Conditions for Works Adjacent to Pipelines*' document is complied with during the design development and construction of the scheme.

Subject to final agreement of the Protective Provisions, which we have submitted for the applicant's consideration, United Utilities would be satisfied with the proposed approach

Moving forward, we respectfully request that you continue to consult with United Utilities on this proposed DCO. If you have any queries or would like to discuss this submission, please do not hesitate to contact me at planning.liaison@uuplc.co.uk.

Yours faithfully

Andrew Leysens
Planning, Landscape and Ecology
United Utilities Water Limited

Enc. M60 - Draft Side Agreement – U UW's comments 18-12-24

DATED

2024

(1) **NATIONAL HIGHWAYS LIMITED**

and

(2) **UNITED UTILITIES WATER LIMITED**

AGREEMENT

Relating to the M60/M62/M66 Simister Island Interchange Development Consent Order

THIS AGREEMENT is made on the _____ day of _____ 2024

BETWEEN

- (1) **NATIONAL HIGHWAYS LIMITED** (company number 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ ("**National Highways**"); and
- (2) **UNITED UTILITIES WATER LIMITED** (company number 02366678) whose registered office is at Haweswater House, Lingley Mere Business Park, Lingley, Green Avenue, Great Sankey, Warrington WA5 3LP ("**UU**").

WHEREAS

- (A) On 2 April 2024 National Highways applied to the Secretary of State under section 37 of the Planning Act 2008 for the Order.
- (B) The Order would authorise National Highways to widen the motorway between J17 to J18 of the M60 from four lanes to five in both directions, install a hard shoulder and widen the M66 southbound through M60 J18 from two lanes to four lanes and construct a new link road (known as the northern loop) linking the M60 eastbound to M60 southbound together with all associated works (the "**Scheme**").
- (C) UU is a water and sewerage undertaker and has Apparatus within the land affected by the Order.
- (D) The parties are entering into this Agreement for the purpose of regulating certain aspects of the relationship between them to ensure that UU's Interests are properly protected in the event that the Order is implemented.

NOW IT IS AGREED AS FOLLOWS

1 INTERPRETATION

1.1 Definitions

In this Agreement the following words and expressions shall have the following meanings-

Apparatus means:

- (a) any mains, pipes or other apparatus and accessories (within the meaning of section 219 of the Water Industry Act 1991) belonging to or maintained by UU for the purposes of water supply;
- (b) any drain, pipe or other apparatus or works and accessories (within the meaning of section 219 of the Water Industry Act 1991) vested in UU under the Water Industry Act 1991;
- (c) any sewer and accessories (within the meaning of section 219 of the Water Industry Act 1991) which is vested in UU or is the subject of a notice of intention to adopt under section

102(4), or an agreement to adopt made under section 104, of the Water Industry Act 1991; and

(d) any sludge main, disposal main (within the meaning of section 219 of the Water Industry Act 1991) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

Application	means the application made by National Highways under section 37 of the Planning Act 2008 to the Secretary of State for the Order;
Examining Authority	means the examining authority appointed by the Secretary of State to examine the Application;
Interests	means UU's interests granted to it by statute lease easement or otherwise to authorise the retention and use of its Apparatus and the maintenance, inspection, alteration, renewal, repair, replacement, removal and other such related rights in respect of its Apparatus;
Order	means the M60/M62/M66 Simister Island Interchange Development Consent Order as it is made by the Secretary of State (including any subsequent correction or amendment) and any reference to the Order before it is made by the Secretary of State is a reference to the most recent draft Order submitted to the Examining Authority by National Highways;
Protective Provisions	means the protective provisions for the protection of UU set out in Schedule 1 to this Agreement;
Secretary of State	means the Secretary of State for Transport.

- 1.2 References in this Agreement to numbered clauses are references to the clauses of this Agreement and references in this Agreement to numbered articles are references to the articles of the Order.
- 1.3 The headings in this Agreement are for convenience only and shall not be taken into consideration in the interpretation or construction of this Agreement.
- 1.4 Words importing the singular shall include the plural and vice versa, words importing any gender include every gender and words importing persons shall include firms, companies and corporations and vice versa.
- 1.5 Where any party to this Agreement for the time being comprises two or more persons obligations expressed or implied to be made by or with that Party are deemed to be made by or with the persons comprising that Party jointly and severally.

1.6 Any reference in this Agreement to a 'Party' or 'the Parties' is a reference to those Parties who are signatories to this Agreement or to their successors in title and commitments made in this Agreement shall be binding on those successors.

1.7 Any reference to an enactment includes a reference to it as amended (whether before or after the date of this Agreement) and to any other enactments which may, after the date of this Agreement, directly or indirectly replace it, with or without amendment.

1.8 Any reference to consent refers to consent in writing.

2 CONDITIONALITY

The covenants on the part of National Highways in clause 3 are conditional upon the making of the Order by the Secretary of State.

3 COVENANTS OF NATIONAL HIGHWAYS

3.1 In consideration of UU entering into this Agreement and UU's covenants in clause 4, National Highways hereby undertakes and agrees that the Protective Provisions shall have effect and shall be read as between the parties as though they are included in Schedule 9 (protective provisions) to the Order.

3.2 In the event of conflict between the terms of this Agreement and the terms of the Order, the terms of this Agreement shall prevail.

4 COVENANTS OF UU

UU hereby covenants with National Highways as follows:

4.1 As soon as reasonably practicable following the date of this Agreement and in any event before the expiry of 5 working days from the date of this Agreement, to unconditionally and fully withdraw in writing any adverse representations or objections made to the Examining Authority in relation to the Scheme and to confirm in writing to the Examining Authority its satisfaction with the arrangements that have been put in place between UU and National Highways.

4.2 Not to make any further written or verbal representations to the Examining Authority or the Secretary of State in relation to the Application, save that nothing in this clause 4.2 shall prejudice or affect the right of UU to object to any new or amended provision of the Order that may be introduced after the date of this Agreement that makes a material change which is prejudicial to UU's Apparatus or Interests.

4.3 To take all reasonable steps to mitigate any losses, claims, demands, proceedings, costs, damages or expenses which it suffers as a result of National Highways' negligence or breach of this Agreement.

5 AUTHORITY FOR THE WORKS

5.1 Notwithstanding that works to UU's Apparatus may be authorised by the Order, UU may at its discretion elect to carry out such works under its own statutory powers as a water and sewerage undertaker instead of accepting a transfer of the benefit of the Order from National Highways in relation to those works.

5.2 In the event that UU elects under clause 5.1 to carry out works under its own statutory powers then the Protective Provisions shall apply to such works and UU covenants to observe and comply with the Protective Provisions irrespective of whether it is carrying out the works under its own statutory powers or in reliance on the powers conferred by the Order.

5.3 In the event that UU elects under clause 5.1 to carry out works under its own statutory powers but then fails to carry out those works in accordance with the Protective Provisions or within a reasonable timeframe (including in accordance with such programme for the carrying out of those works as may be agreed in writing between National Highways and UU) then UU's election under clause 5.1 shall not prevent or otherwise prejudice the exercise of the powers to carry out the works conferred by the Order.

6 COMPENSATION

6.1 Nothing in this Agreement shall prejudice or affect UU's right to compensation under the Order or any enactment, regulation or statutory instrument applied by or incorporated in the Order arising in consequence of the exercise of any powers conferred by the Order, except that UU shall not be entitled to compensation in respect of a matter under the Order or any such enactment, regulation or statutory instrument if UU receives agreed compensation under this Agreement or any subsequent documentation in respect of that matter.

7 CONFIDENTIALITY

7.1 Subject to clauses 7.2 and 7.3 below, National Highways and UU agree to keep confidential and not disclose to any third party the content or terms of this Agreement.

7.2 National Highways may disclose the content or terms of this Agreement:

- (a) to the Department for Transport and its officers, employees, consultants and professional advisers;
- (b) pursuant to the requirements of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004; or
- (c) for the purpose of examination and certification of its accounts or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which it is carrying out its public functions.

7.3 Either Party may disclose the content or terms of this Agreement:

- (a) pursuant to a court order, or by compulsion of law or the rules of any competent regulator;
- (b) to any of their auditors, professional legal advisers or insurers; or
- (c) with the prior written consent of the other Party.

7.4 Subject to clause 6.5, in the event that any Party considers that it is required by law or by the rules of any competent regulator to disclose any terms of this Agreement, such Party will provide the other Party with such prompt written notice of such requirement as is reasonably practicable.

- 7.5 Each party acknowledges that either party (“the disclosing party”) may be required under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 to disclose information, including the terms of this Agreement, without first consulting with or obtaining consent from the other party. In such circumstances the disclosing party shall use reasonable endeavours to comply with clause 7.4, but shall be responsible for determining in its absolute discretion whether any information, including confidential information, is exempt from disclosure in accordance with the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- 7.6 If any Party discloses the terms of this Agreement pursuant to clause 7.3, that Party will use its reasonable endeavours to obtain assurances that any information relating to the terms of this Agreement will be treated by that person as confidential.
- 7.7 Nothing in this clause 7 shall prevent National Highways or UU from disclosing the fact of or existence of this Agreement, provided that such disclosure does not also include the content or terms of this Agreement.

8 THIRD PARTY RIGHTS

Only the parties to this Agreement may enforce its terms and no third party may enforce such a term under the Contracts (Rights of Third Parties) Act 1999 provided always that any successors in title to the business of UU or National Highways shall be entitled to the benefit of this Agreement.

9 NOTICES

- 9.1 Any notice served or given or plans, drawings or documents supplied under or in relation to this Agreement shall (in the case of a notice) be in writing, must refer to the relevant provision of this Agreement, and will in all cases be deemed to be sufficiently given, served or supplied if addressed or supplied to National Highways or UU as the case may be, and sent by first class post, courier service or registered post to the address of the Parties given in this Agreement or to such other address as they may from time to time designate by written notice to the other.
- 9.2 Any notice, plan, drawing or document given, served or supplied in accordance with this clause will be deemed, in the absence of evidence of earlier receipt, to have been given, served or supplied two working days after posting or dispatch, exclusive of the day of posting.

10 GOVERNING LAW AND JURISDICTION

- 10.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England.
- 10.2 The courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation.

11 DISPUTES

- 11.1 National Highways and UU agree to act reasonably and unless otherwise stated where any Party is required to give its agreement, consent or approval to any matter, such agreement, consent or approval:

- (a) shall be given as a notice in writing; and
 - (b) shall not be unreasonably withheld or delayed, save that in the case of any matters which adversely affect the safe, economic and efficient construction, operation, use or maintenance of the Scheme, National Highways shall retain absolute discretion.
- 11.2 National Highways and UU shall not use any means or take any action or procure any other person to take any action that would have the effect of nullifying or rendering less effective the terms of this Agreement.
- 11.3 Without prejudice to any other provision of this Agreement, National Highways and UU will attempt to resolve any lack of agreement, dispute or difference between them arising out of this Agreement by discussion and agreement in accordance with this clause.
- 11.4 Any dispute or difference arising between the parties as to their respective rights, duties and obligations under this Agreement or as to any matters arising out of it or in connection with the subject matter of this Agreement (other than a dispute as to land compensation) shall, in the first instance, be referred to a representative of UU and a representative of National Highways, each holding a senior management position. Those representatives shall meet as soon as possible and shall endeavour in good faith to resolve any dispute or difference amicably.
- 11.5 For the purpose of clause 11.4 the representative of National Highways shall be the Company Secretary or Development Director and the representative of UU shall be the Company Secretary or such other person as may be notified to the other Party from time to time
- 11.6 Any dispute or difference arising between the parties as to their respective rights, duties and obligations under this Agreement (other than a dispute as to land compensation which shall be referred to the Upper Tribunal), which cannot be resolved under clause 11.4, shall be referred to and determined by an independent person acting as an expert who has been professionally qualified for not less than 10 years and who is also a specialist in relation to such subject matter, such independent person to be agreed between the parties or failing such agreement to be nominated by the President or Vice President or other duly qualified officer of the Law Society of England and Wales on the application of either Party, who shall be asked to nominate an expert within 7 days of the request.
- 11.7 The expert shall be requested to reach a decision within 28 days of the dispute being referred to them or within such longer period (if any) as may be agreed by the parties after the dispute has been referred to the expert.
- 11.8 The expert may extend that period by up to 28 days without the agreement of the parties to the dispute if the Party referring the dispute consents.
- 11.9 Save in the case of manifest or legal error, the determination of the expert shall be binding on both parties and the expert shall have the power to award costs at his discretion.

12 TERMINATION

- 12.1 This Agreement may be terminated by National Highways by giving not less than 28 days' written notice to that effect to UU in the event that:
- (a) the Secretary of State determines not to make the Order; or

- (b) the Secretary of State makes the Order in a form which National Highways concludes, in its sole discretion, is materially prejudicial to its statutory functions or commercial interests and as a result National Highways decides not to implement the Order.

12.2 This Agreement will automatically terminate if the powers granted under the Order expire before National Highways has commenced exercising them.

12.3 On termination of this Agreement the rights and obligations of the Parties under it shall immediately cease and determine save in relation to any rights or remedies either Party may have against the other in respect of any antecedent breaches or liabilities existing at the date of termination.

13 MISCELLANEOUS

13.1 If any provision of this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

13.2 No waiver by either Party of any default by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default, whether of a like or different character.

13.3 The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies.

13.4 No single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of any right or remedy or exercise of any other right or remedy.

13.5 Nothing in this Agreement shall create a partnership, association or joint venture or establish a relationship of principal and agent unless expressly provided.

13.6 No variation of this Agreement shall be effective unless it is in writing and is signed by or on behalf of a duly authorised representative of each of the parties.

14 COUNTERPARTS

14.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

14.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email shall take effect as delivery of an executed counterpart of this Agreement. If such method of delivery is adopted, without prejudice to the validity of the Agreement thus made, each Party shall provide the other with the original of such counterpart as soon as reasonably possible thereafter.

14.3 No counterpart shall be effective until each Party has executed and delivered at least one counterpart.

IN WITNESS of which, this Agreement is executed as a deed:

EXECUTED as a **DEED** by affixing the Common Seal of **NATIONAL HIGHWAYS LIMITED** in the presence of:

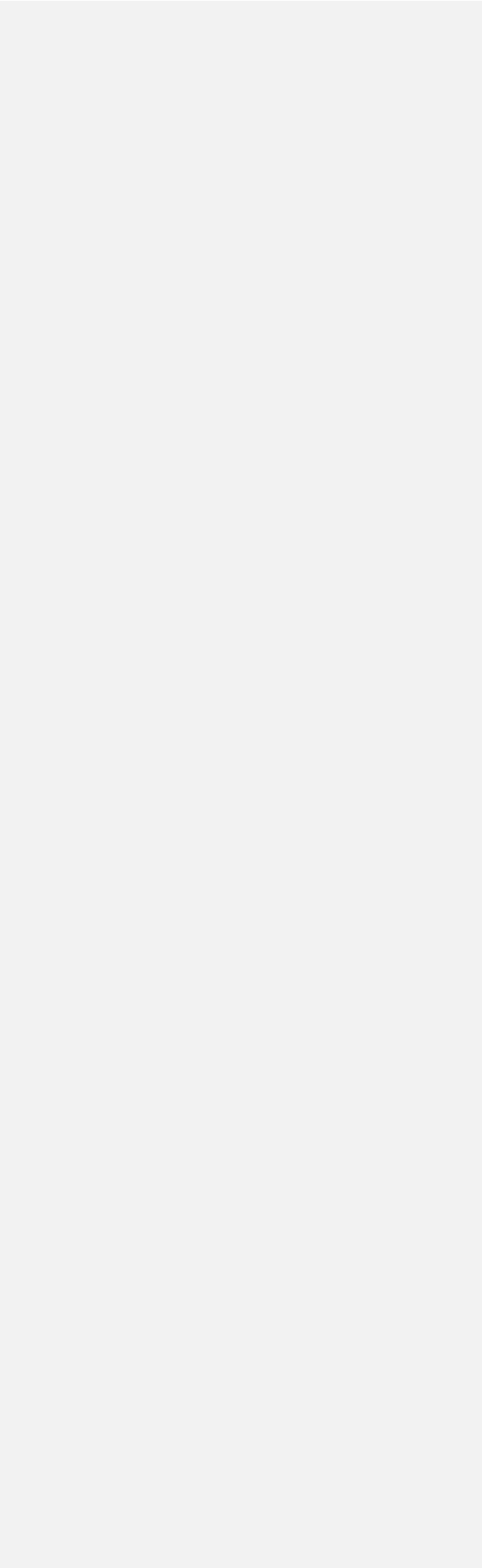
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Authorised Signatory

EXECUTED AS A DEED by affixing the Common Seal of **UNITED UTILITIES WATER LIMITED** in the presence of:

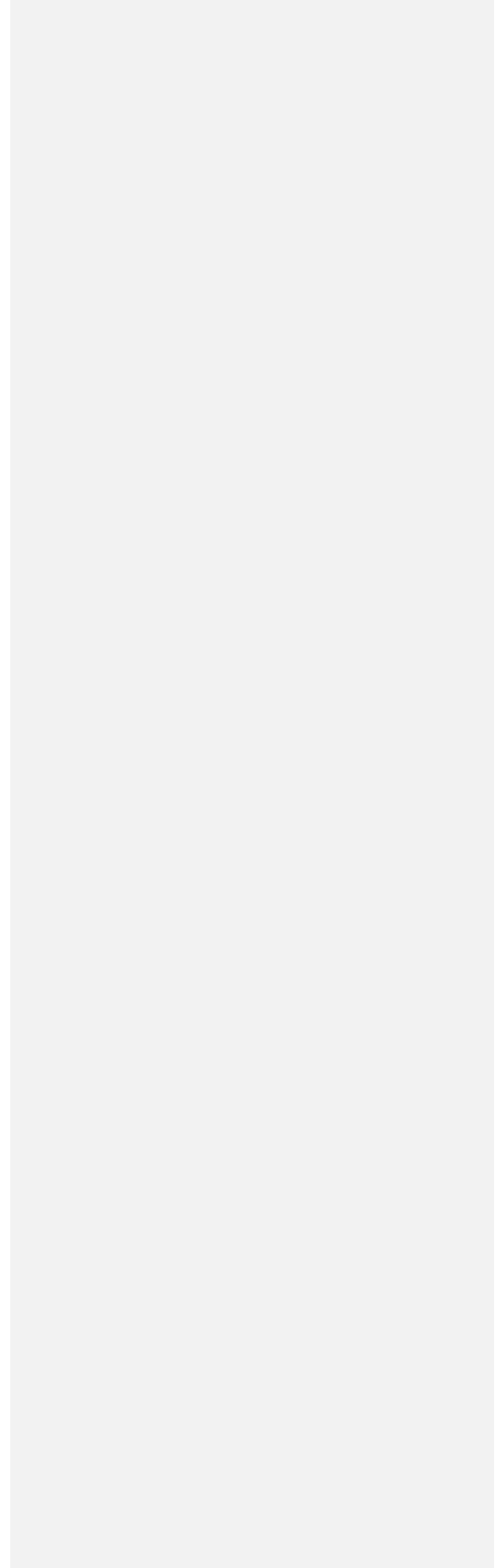
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Authorised signatory



Schedule 1

Protective Provisions



SCHEDULE 1 PROTECTIVE PROVISIONS

FOR THE PROTECTION OF UNITED UTILITIES WATER LIMITED

1. For the protection of United Utilities Water Limited (UU) the following provisions have effect, unless otherwise agreed in writing between the undertaker (National Highways) and UU.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker to fulfil its statutory functions in a manner no less effective and efficient than previously;

“apparatus” means—

(a) mains, pipes or other apparatus and accessories (within the meaning of section 219 of the Water Industry Act 1991) belonging to or maintained by UU for the purposes of water supply;

(b) any drain pipe or other apparatus or works and accessories (within the meaning of section 219 of the Water Industry Act 1991 vested in the utility undertaker under the Water Industry Act 1991; and

(c) any sewer and accessories (within the meaning of section 219 of the Water Industry Act 1991 which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act,

and includes a sludge main, disposal main (and accessories within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“utility undertaker” means United Utilities Water Limited.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the New Roads and Street Works Act 1991, the Street Works (Sharing of Costs of Works) (England) Regulations 2000 and the Water Industry Act 1991.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 15 (permanent stopping up, restriction of use of streets and public rights of way), the utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in

this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary alteration, diversion, prohibition, or restriction of the use any highway under the powers conferred by article 14 (temporary closure and restriction of use of streets), the utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of the utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker 56 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible and in accordance with the utility undertaker's statutory powers use its reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(5) The utility undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and, subject to the right of the utility undertaker to require the undertaker to itself carry out any such removal, subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), and subject to sub-paragraph (7), if the undertaker gives notice in writing to the utility undertaker that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, and the utility undertaker gives its consent in writing, that work, instead of being executed by the utility undertaker, may be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) If the undertaker gives notice in writing to the utility undertaker in accordance with sub-paragraph (6) to execute any work, or part of any work solely in connection with the removal of apparatus and UU has confirmed in writing to the Undertaker that such apparatus has been abandoned by the utility undertaker in the exercise of its statutory functions, that work, instead of being executed by the utility undertaker, may be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(8) The undertaker shall seek wherever reasonably practicable to allow the apparatus of the utility undertaker to remain in situ rather than remove and/or reposition it.

Discharge of Water, foul and surface water

(1) If the undertaker proposes to connect foul water to a public sewer operated by utility undertaker, the undertaker shall give to utility undertaker notice of the proposal, and within 42 days of the receipt by them of the notice, utility undertaker may refuse permission for the connection but only if it has reasonable grounds for doing so, or it may grant permission for the connection or alteration, subject to such reasonable conditions as it thinks fit acting reasonably. Any such permission may in particular specify the mode and point of connection.

(2) If the undertaker proposes to connect surface water to a public sewer operated by utility undertaker, the undertaker shall give to utility undertaker notice of the proposal, and within 42 days of the receipt by them of the notice, utility undertaker may refuse permission for the connection, but only if it has reasonable grounds for doing so, or it may grant permission for the connection or alteration, subject to such reasonable conditions as it thinks fit acting reasonably. Any such permission may in particular specify the mode, the point of connection, the rate of discharge and the size of any attenuation necessary. The utility undertaker shall be entitled to refuse any connection where the sustainable drainage system hierarchy for managing surface water has not been reasonably investigated and / or sustainable drainage has not been incorporated within the proposed surface water drainage to the satisfaction of utility undertaker.

(3) Where there are separate public sewers for foul water and surface water, utility undertaker may prohibit the discharge of foul water into the public sewer reserved for surface water, and prohibit the discharge of surface water into the public sewer reserved for foul water.

(4) Where utility undertaker has not granted or refused permission under this paragraph within 42 days from the receipt of notice of a proposal the permission shall be deemed to be granted

(5) Nothing in this section entitles the undertaker to:

(a) discharge in to a public sewer (directly or indirectly), highway drainage, groundwater, trade effluent or any liquid or other matter, the discharge of which in to a public sewer is prohibited by or under any enactment; or

(b) have drains or sewers that communicate directly with a storm water overflow.

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Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to the utility undertaker facilities and rights for the construction and maintenance in land of the undertaker or other land pursuant to a power in the Order of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such

terms and conditions as may be agreed between the undertaker and the utility undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to the utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Authority for the works

9. - (1) Any works involving the laying or construction of pipes or accessories thereto to form part of the utility undertaker's undertaking, or inspection, adjustment, repair or alteration (including moving or removing and replacing) of such apparatus, or any works requisite for or incidental to the purpose of any such works, shall, unless otherwise agreed in writing by the utility undertaker, be undertaken pursuant to the Order, provided that the utility undertaker may at its discretion elect to carry out such works under its own statutory powers following the service of statutory notice of entry onto land, such notice to be served by the utility undertaker

(2) In the event that the utility undertaker carries out any works involving new or existing utility undertaker assets under its own statutory powers then the Protective Provisions shall apply to such works and the utility undertaker covenants to observe and comply with the Protective Provisions irrespective of whether it is carrying out the works under its own statutory powers or in reliance on the powers conferred by the Order.

(3) In the event that the utility undertaker carries out any works involving new or existing utility undertaker assets under its own statutory powers but then fails to carry out those works in accordance with the Protective Provisions or within a reasonable timeframe (including in accordance with such programme for the carrying out of those works as may be agreed in writing between the undertaker and the utility undertaker) then this shall not prevent or otherwise prejudice the exercise of the powers to carry out the works conferred by the Order.

Retained apparatus

10.—(1) The undertaker shall consult with the utility undertaker at the earliest opportunity and in any event not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by the utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If the utility undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) Where the utility undertaker is required to carry out emergency works or urgent activities to its apparatus located within or adjacent to the Order limits to comply with statutory requirements, to maintain services or to avoid a water quality or environmental incident, the utility undertaker will notify the undertaker of its proposed works as soon as is reasonably practicable and access to the utility undertaker's apparatus is not to be unreasonably withheld.

Expenses and costs

11.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the utility undertaker all expenses reasonably incurred by the utility undertaker in, or in connection with, the inspection, survey, investigation, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2) including time spent in consultation regarding or in supervision of such works and in default of agreement such costs are to be determined by arbitration in accordance with article 44 (arbitration).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 44 (arbitration) to be necessary then, if such placing involves cost exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus;

(b) a like-for-like replacement of apparatus requiring a different material or a larger metric size because the original is no longer available is not to be treated as an apparatus of better type, or greater capacity or greater dimensions; and

(c) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to the utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

Indemnity

12.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2) any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the utility undertaker, or the utility undertaker elects to use its statutory powers referred to in paragraphs 7(3) or 9(1) the undertaker must—

(a) bear and pay the cost reasonably incurred by the utility undertaker in making good such damage or restoring the supply or use of the utility undertaker's statutory powers; and

(b) make reasonable compensation to the utility undertaker for any other expenses, loss, damages, penalty or costs suffered or incurred by the utility undertaker, by reason or in consequence of any such damage or interruption or use of the utility undertaker's statutory powers.

(2) The fact that any act or thing may have been done by the utility undertaker on behalf of the undertaker or in accordance with a plan approved by the utility undertaker or in accordance with any requirement of the utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) 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 the utility undertaker, its officers, servants, contractors or agents.

(4) The utility undertaker 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 not to be unreasonably withheld and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

Cooperation

13. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or the utility undertaker requires the removal of apparatus under paragraph 7(2) or the utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and the utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

14. At all times the undertaker shall procure that its employees, contractors and subcontractors take all reasonable and proper precautions in exercise of powers conferred by this Order to ensure that as little damage, obstruction or interference as reasonably practicable is caused to the undertaking of the utility undertaker.

15. The undertaker shall use its reasonable endeavours during the exercise of powers conferred by this Order to ensure that such works do not cause any interruption to the exercise by the utility undertaker of its statutory functions.

16. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and the utility undertaker in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.