

SCHEDULE 2

Article 12

PROVISIONS FOR MUTUAL PROTECTION OF WESTLINK HOLDINGS LIMITED AND MANCHESTER CANAL COMPANY

1. For the mutual protection of the Company and the Manchester Ship Canal Company (“MSC”) the following provisions shall, unless otherwise agreed in writing between the Company and MSC, apply and have effect on and from the operative date.

2. In this Schedule–

“detriment” means–

- (a) damage caused by the execution or failure of any of the owner’s specified works to the specified works of the other company; or
- (b) any act or omission of the owner, or of any persons in its employ, or of its contractors which interferes with the undertaking of the other company or which interferes with traffic on the Manchester Ship Canal or the navigation, or which causes or occasions any costs, charges, damages, expenses or losses to the other company other than in the lawful and proper exercise of its powers as a statutory harbour authority;

“the other company” means the Company or MSC, as the case may require;

“the owner” means the Company or MSC as the case may require;

“specified works” means, as the case may require–

- (a) any works owned by the Company and authorised by the River Weaver Navigation Acts 1721 to 1945 or any works to the Port that may be carried out and owned by the Company following the making of this Order; or
- (b) any works owned by MSC and authorised by the Manchester Ship Canal Acts and Orders 1885 to 1992 or any works that may be authorised and carried out by MSC pursuant to any future Act or Order.

3. If as a result of the execution or failure of any specified works or of any act or omission of the owner or any persons in its employ, or of its contractors, damage or other detriment is caused, the owner (if so required by the other company) shall make good such damage and shall pay to the other company all reasonable expenses to which the other company may be put, and compensation for any loss which the other company may sustain, in making good or otherwise by reason of the detriment.

4. The owner shall be responsible for and make good to the other company all costs, charges, damages, expenses and losses which may be occasioned to or reasonably incurred by the other company as a result of any detriment, and subject to paragraph 5 below the owner shall effectively indemnify and hold harmless the other company from and against all claims and demands arising out of or in connection with any detriment.

5. The other company shall give the owner reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of the owner.

6. Any difference arising between the Company and MSC under this Schedule (other than a difference as to the meaning or construction of this Schedule) shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.