

**Consultation on Ofwat's section 13
proposal to modify the licences of
appointees in England and Wales
– condition R1**

Correction

Table 1 on page 11 was corrected on 15 July 2014.

About this document

This document invites comments on our proposal to insert a new temporary condition R1 into the conditions of appointment (licences) of appointed water and sewerage and water only companies in England and Wales. The proposed changes will require companies to fund the development of the arrangements for the new, non-household, retail market.

Under section 13 of the Water Industry Act 1991 (WIA91), we are able to modify the conditions of a company's licence if it agrees to the change we are proposing to make.

This document and the attached appendix is a Notice under section 13 of the WIA91.

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Responding to this consultation

We invite stakeholders to comment on our proposed modification by **13 August 2014**. Companies should also indicate their acceptance or otherwise of the proposed modification by this date. You can email your responses to ruth.gibson@ofwat.gsi.gov.uk or post them to:

Choice and Trading Arrangements
Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA.

If you wish to discuss any aspect of this document, please direct your enquiry to Ruth Gibson on 0121 644 7528 or by email to ruth.gibson@ofwat.gsi.gov.uk.

We will publish responses to this document on our website at www.ofwat.gov.uk, unless you indicate that you would like your response to remain unpublished.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000 (FoIA), the Data Protection Act 1998 and the Environmental Information Regulations 2004.

If you would like the information that you provide to be treated as confidential, please be aware that, under the FoIA, there is a statutory 'Code of Practice' which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

1. Background and purpose

1.1 Background

The Water Act 2014 received Royal Assent in May 2014. This new legislation includes provisions to give all non-household customers of companies operating wholly or mainly in England choice over their supplier of water and wastewater retail services. It will extend choice to over a million more businesses, public sector organisations and charities in England. For companies operating wholly or mainly in Wales, a small number of the very largest business and industrial customers (those using more than 50 million litres – MI – of water each year) can already choose their water supplier and these existing arrangements will continue following the new legislation.

Open Water Market Limited (OWML) was established in January 2014 to help deliver the new market arrangements necessary to provide real choice to all non-household customers in England, as well as the improvements in service and £190 million of customer benefits that this change is expected to provide.

OWML has been set up as a company limited by guarantee; companies that are likely to be operating in the new retail market have been able to join OWML and provide voluntary funding contributions since it was set up. The membership of OWML now includes the majority of companies that are likely to be operating in the new retail market, including existing incumbents and potential new entrants. Ofwat and the Scottish water regulator, the Water Industry Commission for Scotland (WICS), are also members and hold seats on the OWML Board.

When OWML was established, we planned three different phases. We set these out in more detail in [IN 14/03, 'Update on Open Water funding, resources and governance'](#), which we published in January 2014.

During the **first (current) phase**, companies were invited to fund and/or become members of OWML on a voluntary basis until the new Water Act was enacted and other funding arrangements were put in place. To date, 26 companies have already become members of OWML or applied to do so, including 17 appointed companies (including new appointments and variations – or NAVs) and 9 licensees; some of these companies have provided initial voluntary funding contributions to OWML.

We understand that several more companies are planning to submit applications for membership shortly. We are extremely pleased that so many companies have already joined OWML and provided funding contributions. This has enabled good progress to be made to allow the market to open in 2017, which is fast approaching.

Now that the Water Act 2014 has been enacted, we propose to move to **the next phase**, when the more detailed development of the new market arrangements will take place. For this next phase, we propose to require all appointed companies (except those that are appointed wholly or mainly in Wales and small companies, because their share of eligible non-household customers is negligible for the purposes of apportioning funding contributions) to provide funding for the development of the new retail market arrangements by means of a temporary condition in their licence.

To build a degree of flexibility into the funding arrangements for this next phase, we propose to require companies to provide funding to OWML, or if companies are notified by Ofwat, to Ofwat. This is an important change to our original proposed approach.

After some careful thought and discussion at the High Level Group (HLG), Ofwat and OWML, we have all come to the conclusion that OWML will not provide the right model to deliver the necessary work needed to open a retail market in April 2017.

We want to take decisive action now to ensure that the Open Water programme:

- has access to the funding it requires and is able to provide value for money in its activities;
- is able to maintain and build on the momentum that has been established;
and
- is operating within clear and effective lines of accountability.

We now all consider that the best approach is to set up a programme of work to be taken forward within Ofwat and for the work to formally move across from OWML by the end of the year.

The decision has the full support of the HLG and the OWML Board members, as they recognise that this is the most efficient means of delivery at the present time.

As a consequence of this change, and in response to recent comments from companies, we no longer propose to require companies (appointees and licensees) to become members of OWML. This is a further change to our previously proposed approach. However, we do consider that there continues to be a benefit from companies voluntarily becoming members of OWML, if they are not already members, and would encourage companies to consider this.

Companies have also asked us to be clearer on the ongoing governance of the programme and the future of OWML after December 2014. We provide more details on both of these areas below.

1.2 Why have we changed our approach?

When new bodies are established with public sector involvement, like OWML, a process must be followed whereby the Office of National Statistics, following advice from HM Treasury (HMT) and the Cabinet Office, is required to 'designate' those bodies as being either 'public' or 'private'. The former group are then subject to the same financial, governance and other controls that other public bodies are required to follow, while the latter operate as private companies under company law and the general legal framework, which is much more flexible. We expected OWML to be designated as a 'private' entity. We made this assumption because, for example, OWML appears very 'private' in nature in that it:

- receives no public funding;
- has no public function (as set out in legislation); and
- is owned by a majority of private members.

As a 'private' company, we had expected OWML to provide:

- an effective vehicle that would allow the market arrangements to be designed and developed quickly and efficiently, especially given the need to open the market in April 2017 and the proximity of that date (indeed, the creation of OWML has enabled some significant progress to be made on this important work since December, including, for example, the publication of the [market architecture plan](#)); and
- a collaborative, inclusive and balanced model that would allow all market participants and stakeholders to be involved in the design of the new market arrangements.

But it now appears likely that OWML will be designated as a 'public' body and would be subject to similar rules and controls that other public bodies face – for example, in terms of appointments, procurement and financial management. At the same time, OWML would remain a private company under company law and would be subject to the tax arrangements for a private company.

While there are clear merits to OWML having effective financial controls, the combination of these new 'public' controls and the additional constraints that they will impose on OWML to operate quickly and efficiently, and maintain momentum as we move into this next phase of work, we consider will cause unnecessary risk to the delivery of the market arrangements in time for the market to open in April 2017.

So Ofwat, the HLG and OWML Board members have decided that in the medium term a new programme with a ring-fenced budget should be created within Ofwat to take this work forward instead. We expect that this new approach will be more efficient and effective, with clearer and more streamlined governance for the work.

It is important that we maintain momentum, and we do not want to disrupt the important progress that OWML is currently making towards the next version of the market architecture plan and the drafting of the market codes and documents. We therefore propose that the work should be brought into Ofwat from January 2015. This means that OWML will continue to need funding through the proposed licence condition for the rest of this year, even though this will be for a shorter period than originally expected.

We also recognise the value of the work that has been carried out to establish OWML and for companies to join it as members. There seems to be a value in retaining OWML in the longer term as it may still evolve into the enduring market operator, although no decision has been taken about this yet, and there are implications from the current 'public' designation that we need to explore further, as we expect the enduring market operator to be a private body, similar to market operators in other utility sectors. But from the end of 2014, we propose that OWML would exist only as a non-active shell company until the market operator is set up, which is anticipated to be by the end of 2016 (when OWML would either evolve into the market operator, or be wound up).

Finally, we want to retain a working model that is collaborative, inclusive and balanced and allows the market arrangements to be developed in a way that ensures that all market participants and stakeholders can be involved in the market design.

We propose that a new advisory panel of elected company representatives would be set up to advise on the design of the new market arrangements, including the draft market codes.

The new panel would be established to run across both phases (that is, advising OWML up to December 2014, and then Ofwat from the beginning of 2015), as this would help to ensure a high degree of continuity. From the beginning of 2015, the panel would make recommendations to the Ofwat Board on key issues associated with the market design, although final decisions would be taken by Ofwat's Board. The panel would include representatives from wholesalers and retailers (both incumbents and new entrants), reflecting our commitment to elected representation to ensure balanced input to the design process and to encourage learning from this type of elected representation for which there is not substantial experience in the sector. We envisage that the panel could evolve to become the inaugural code panel.

We are taking key aspects of market governance to Ofwat Board in July and we propose to clarify the form, structure and timescales of the advisory panel following the Board discussion, but before completion of this consultation about the proposed licence modifications.

1.3 Purpose of the licence condition

The proposed licence condition requires companies to fund the development of the new market arrangements, by providing funding to OWML, or if companies are notified by Ofwat, directly to Ofwat.

We still consider that it is essential for all market participants to be involved in the design and development of the new market arrangements as they will affect all companies directly – not just new entrants and retailers operating in the market, but existing incumbent wholesalers as well. (So, for example, if existing incumbent companies take a strategic decision to withdraw from the non-household retail market, as wholesalers they will still be affected by these arrangements.)

To deliver market arrangements that are fit for purpose and to ensure that all companies have an opportunity to input into the market design effectively, we will need an effective programme of consultation and engagement with market participants and the advisory panel we have proposed seeks to provide this. However, we no longer consider that it is essential for all parties to become members of OWML, given the lack of certainty around its future beyond December and so have removed this requirement from the proposed licence condition. The

process will continue to be led by OWML up to December and there is a significant amount of important work on the market design being taken forward in that period. Therefore, we would still see value in companies joining OWML during this period and would encourage any who are not yet members to join voluntarily.

As we also expect an enduring 'market operator' to eventually administer the market, which is in line with how these markets work in other utilities, we propose that OWML would be retained as a non-active shell company so that it could potentially evolve into the market operator in due course if this was the most efficient and effective approach, but we recognise that we cannot commit to this at this stage. Where a market operator exists in other sectors all market participants are required to become members. This is the case, for example, with the [Central Market Agency \(CMA\) in Scotland](#) and is another reason why we would still encourage all companies to join OWML voluntarily.

Our proposed funding obligations are necessary to ensure there are sufficient resources available for the immediate and ongoing work to develop the new retail market arrangements, and that the costs of funding this work are spread across companies in a fair and proportionate way.

There is likely to be a considerable amount of work over the next couple of years to implement these arrangements, including developing and implementing the necessary central market systems to handle customer switching and financial settlement in the market, for example. Our proposed requirement will ensure that funding provision is fair and consistent, and removes the risk of some companies 'free-riding'.

Our proposals also recognise that for small companies and those operating wholly or mainly in Wales, where the Welsh Government has taken a different policy position, their contributions would be very small (for example, in the region of £0-£200). So we propose to exclude them from the requirement to contribute funding as we think this would be disproportionate.

We propose to require companies to fund the development of the new market arrangements by providing funding to OWML, or if notified by Ofwat, directly to Ofwat. This creates flexibility in the arrangements and allows the proposed approach described above to be delivered. If companies are notified to provide the funding directly to Ofwat, a ring-fenced budget would be set up for this area of work. This would ensure that any funding provided under the new proposed licence condition would not be used to deliver any other Ofwat activity.

We consulted with companies ahead of publishing this Notice, including helpful discussions with companies on last minute changes to the proposed condition text. The broad reasons why we need to make these modifications have not changed but we recognise that the licence condition we are consulting on is now different to the one proposed initially. We have sought to understand any concerns companies may have with either our original proposals or the current proposals, and we have made some amendments to the proposed condition to ensure it is acceptable. We welcome the constructive approach that companies have taken in responding to our proposals.

We are now seeking companies' formal agreement to our proposed licence modifications.

2. The proposed changes and why we need to make them

As explained above, the Water Act 2014 includes provisions to open the retail market for all non-household customers in England to choose their supplier of water or wastewater services. OWML has been established to enable companies to voluntarily fund the development of the central arrangements for this new market through the Open Water programme.

Although funding and membership of OWML has been on a voluntary basis up to now, that approach is not sustainable in the longer term. Those arrangements were set up to enable prudent preparation ahead of legislation. Now the Water Act has been enacted, we need to establish a proper funding arrangement, so that the detailed development of the new market arrangements can take place – including the:

- detailed market design;
- development of draft market rules (which will form the basis of the market codes); and
- procurement of the central systems.

And this work will need to be carried out by both Ofwat and OWML.

The condition is temporary in nature because these market preparation activities are only required for a relatively short period between approximately August 2014 and the end of 2016. After that, the enduring market operator is anticipated to be in place. We envisage that the market operator will collect its own fees directly from market participants in line with the provisions of the new market's licence and code arrangements, which are to be developed during the next phase.

The proposed temporary licence condition would require companies to fund the development of the new market arrangements in the period from August 2014 to approximately the end of 2016. (We have proposed that it can continue to have effect until 31 March 2018 to allow for any budget requirements in the 2017-18 financial year should the transition to the enduring market operator be delayed unexpectedly.)

We have sought to avoid an overly-complicated formula for calculating companies' contributions given the sums involved are relatively small and it is likely to be needed only up to the end of 2016. We propose to apportion funding contributions based on estimated market shares.

To do this, we have considered the relative shares of eligible non-household customers for each company, drawn from information submitted in previous June return submissions. While companies' business plans provide more up-to-date customer numbers, these are set at the service level, and are therefore not necessarily comparable between companies (for example, one company might split its sewerage charges into separate foul and surface water components – this could lead to an element of double counting). Although the June return data is historic, we have assessed its volatility over a number of years and have found the implied 'market shares' to be stable. So we propose to use these percentages to set companies' funding contributions under the proposed licence condition.

The funding split is shown in table 1 below – we propose to require contributions based on the percentages set out in the right-hand column (labelled 'Average').

Table 1 Breakdown of companies' share of non-household customers based on June return data

	2008-09	2009-10	2010-11	Average
Anglian Water	8.8%	8.8%	8.8%	8.8%
Northumbrian Water	5.9%	5.9%	6.0%	5.9%
Severn Trent Water	15.9%	16.0%	15.9%	15.9%
South West Water	4.5%	4.7%	4.7%	4.7%
Southern Water	5.9%	5.7%	5.6%	5.7%
Thames Water	20.1%	20.0%	19.9%	20.0%
United Utilities	14.2%	14.2%	14.2%	14.2%
Wessex Water	5.2%	5.2%	5.3%	5.3%
Yorkshire Water	9.3%	9.3%	9.4%	9.3%
Affinity Water	2.8%	2.8%	2.8%	2.8%
Bristol Water	1.3%	1.3%	1.3%	1.3%
Portsmouth Water	0.8%	0.8%	0.8%	0.8%
Sembcorp Bournemouth Water	0.6%	0.6%	0.6%	0.6%
South East Water	2.6%	2.6%	2.5%	2.6%
South Staffs Water	1.5%	1.5%	1.5%	1.5%
Sutton & East Surrey Water	0.6%	0.6%	0.6%	0.6%
Total	100%	100%	100%	100%

We recognise that there are a number of different ways that contributions could be decided, but we consider that using proportions of eligible non-household customers is both a reasonable proxy and proportionate. We have used eligible non-household customers instead of eligible premises because the information on premises is not currently available (the ongoing Open Water data pilot is helping to identify data requirements and issues in this area).

It should be noted that we do not propose to require smaller companies (Cholderton and NAVs) to contribute funding during the next phase. This is because their numbers of eligible customers are so small that their contributions would be negligible.

Similarly, we recognise the different policy position in Wales means that the threshold for customers to be eligible to choose their supplier is higher. This means that for those companies operating wholly or mainly in Wales the numbers of eligible customers are so small that their contributions would be negligible. So we do not propose to require companies operating wholly or mainly in Wales to contribute funding during the next phase either.

As the exact annual budget has not yet been confirmed for the period covered by the proposed licence condition, we have used the Open Water programme's budget estimates from the Open Water business case for 2014-20 to understand what the total budget requirements are likely to be. The budget estimates are set out below.

**Table 2 Indicative central costs from Open Water business case for 2014-20
(2013-14 prices, £ million) – low–high (mid-point)**

Cost area	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Open Water programme delivery costs	4.9	4.6–7.6 (6.1)	2.7–4.4 (3.6)	0	0	0
Market operator set-up costs (capitalised)	0	1.2–1.9 (1.6)	1.1–1.8 (1.5)	1.1–1.8 (1.5)	1.1–1.7 (1.4)	1.0–1.7 (1.4)
Market operator running costs	0	0	0	5.8–9.3 (7.6)	5.7–9.1 (7.4)	5.6–8.9 (7.3)
Totals	4.9	5.8–9.5 (7.7)	3.8–6.2 (5.1)	6.9–11.1 (9.1)	6.8–10.8 (8.8)	6.6–10.6 (8.7)

Clearly, these budget estimates are subject to change. We have used the mid-point figures from the budget estimates above to estimate each company's contributions and these have been reflected in companies' wholesale business plans.

But it is important to note that the proposed licence condition would require companies to pay their percentage of the annual budget as set by the OWML Board and/or Ofwat, which may be different to these estimated contributions. So we recognise the need to provide a degree of reassurance to companies about their contributions. We propose a cap for total annual contributions of £10.5 million in each financial year. This figure is drawn from the high point of the Open Water estimates plus 10% contingency. Clearly, the expected annual budget is likely to be lower than this limit and is subject to further review by OWML's Board or Ofwat, but the cap allows companies to understand what their maximum annual contribution would be. The cap of £10.5 million would apply to total annual funding provided under the licence condition, whether the funding is paid to either OWML or Ofwat.

Finally, if companies are notified to provide funding to Ofwat, we propose to invoice companies at the beginning of the financial year for a proportion of their estimated annual contribution (for example, 75%), with a re-forecast and further invoice in January, followed by a reconciliation and adjustment at the end of the year, when we would issue a credit note, or a further invoice for any material difference, if necessary. These provisions are similar to the current funding mechanism used for Ofwat's existing ring-fenced Thames Tideway project, and would allow us to adjust for under- or over-recovery of actual costs incurred during each year.

3. How we have changed the proposed draft licence condition in response to companies' comments

3.1 Changes in response to feedback on our original proposals

We wrote to all companies about the main funding and membership proposals in April 2014, and on 9 June we published [IN 14/12, 'Proposed temporary licence condition to facilitate the development of arrangements for the new retail market for non-household customers'](#) and a [summary of responses](#) on our website. All companies agreed in principle with our proposals, subject to some comments and queries as set out in the summary of responses. We made the following amendments to the draft text for the licence condition in response to comments we received from companies on the original proposals we circulated.

- We have amended the purpose of the condition, to be clearer that it only relates to the development of the non-household retail market, and does not extend to other provisions of the Water Act 2014.
- We have added the words, 'Limited by Guarantee' in paragraph 2(a), to be clear that OWML is a company limited by guarantee.
- We have added a new sub-paragraph 3.3 to ensure that any duplication or overlap with OWML's Articles of Association does not result in companies facing two separate obligations to contribute funding.

3.2 Changes driven by our new approach

In addition, as explained above, we have proposed a change to the draft licence condition to build in a degree of flexibility about the funding provisions. We propose that the funding of the development of new market arrangements is to be provided to OWML, or if companies are notified by Ofwat, directly to Ofwat.

The proposed change in the draft licence condition relating to funding provisions is designed to avoid us having to make further licence modifications later in the year. But the proposed split of contributions and the overall annual cap of £10.5 million remain the same.

We have also proposed a change to the draft licence condition which would permit Ofwat to invoice companies more than once a year, if companies are notified to provide funding directly to Ofwat. This would enable us to invoice companies at the beginning of the financial year for a proportion of their estimated annual contribution (for example, 75%), with a re-forecast and further invoice in January, followed by a reconciliation and adjustment at the end of the year, when we would issue a credit note, or a further invoice for any material difference, if necessary. These provisions are similar to the current funding mechanism used for Ofwat's existing ring-fenced Thames Tideway project, and would allow us to adjust for under- or over-recovery of actual costs incurred during each year.

It should be noted that the proposed licence condition includes the requirement to provide funding to the Secretary of State, rather than Ofwat. This is a formality in line with the provisions of fees under Condition N. The funding would be provided to Ofwat on behalf of the Secretary of State.

Finally, we have removed the proposed requirement for companies to become members of OWML, as there is uncertainty about the future of OWML beyond December 2014. Although we propose to retain OWML as a dormant company, until decisions about the enduring market operator are made, there remains some uncertainty about whether OWML could become the market operator in the longer term, so it would be disproportionate for us to require companies to become members of OWML at this stage. However, we anticipate requiring companies to become members of the enduring market operator (whether that is OWML or another body) at the point that it is set up ahead of market opening. Where a market operator exists in other sectors all market participants are required to become members, as is the case with the [CMA in Scotland](#).

4. Next steps

We would like responses to this document by **13 August 2014**, including formal responses from appointed companies.

Subject to companies' agreement to these proposals, we will amend the relevant instruments of appointment to insert the new temporary licence condition by 27 August 2014.

Appendix 1: Proposed new, additional condition R1

This draft sets out an illustrative example of what condition R1 would look like following our proposed modifications. The purpose of this example is to help to show the effect of the proposed modifications. It does not necessarily show the exact wording that will apply for each water company. For example, funding contributions will vary – details of the proposed funding contributions have been separately provided to companies on an individual basis.

We have marked in pink where we have made changes to the text that we originally proposed, in response to company comments. We have marked our further proposed changes in green.

Draft licence condition – temporary funding of Open Water and/or Ofwat

Condition R1: Open Water Programme

1. Introduction

The purpose of this Condition is to provide for the ~~membership of Open Water Market Limited and the~~ temporary funding of work in preparation for, or associated with, the expansion of the non-household retail market through the implementation of the provisions of the Water Act 2014 relating to the expansion of water supply licensing and the introduction of sewerage licences.

2. Interpretation

In this Condition:

- (a) "Open Water Market Limited" means the company limited by guarantee registered under that name with company number 08791025;
- (b) "Open Water Annual Budget" means the annual budget of Open Water Market Limited approved by its board or £10.5 million, whichever is the lowest amount; and
- (c) "Ofwat's Retail Market Costs" means the costs estimated by the Water Services Regulation Authority as likely to be reasonably incurred by it in that Charging Year, and/or as already having been reasonably incurred by it in that Charging Year, on work in preparation for, or associated with, the expansion of the non-household retail market through the implementation of the provisions of the Water Act 2014 relating to the

expansion of water supply licensing and the introduction of sewerage licences or £10.5 million, whichever is the lowest amount.

~~3. Membership~~

~~3.1 The Appointee shall, unless the Water Services Regulation Authority otherwise consents by notice to the Appointee, be a member of the company Open Water Market Limited.~~

~~3.2 Sub-paragraph 3.1 shall not apply until [a date to be inserted] at least one month from when the modification is made].~~

3. Funding obligation

3.1 Subject to sub-paragraphs 3.2 and 3.3, in each Charging Year the Appointee shall, within thirty days of the date on which Open Water Market Limited notifies the Appointee of the amount payable by the Appointee under this sub-paragraph, pay to Open Water Market Limited an amount or amounts which shall not exceed [a company-specific number (to be inserted) equivalent to the Appointee's percentage share of the total market share defined as all companies operating wholly or mainly in England except small companies (i.e. Cholderton and NAVs)] per cent of the Open Water Annual Budget for that year.

3.2 This sub-paragraph shall not apply until the Water Services Regulation Authority gives notice to the Appointee of its application and then (subject to sub-paragraph 3.3):

- (a) sub-paragraph 3.1 shall no longer apply unless the Water Services Regulation Authority directs the Appointee to make a payment or payments to Open Water Market Limited in accordance with sub-paragraph 3.1; and
- (b) the Appointee shall, within thirty days of the date on which the Water Services Regulation Authority notifies the Appointee of an amount or amounts payable by the Appointee in respect of Ofwat's Retail Market Costs, pay to the Secretary of State such an amount or amounts, EXCEPT THAT:
 - (i) nothing in this Condition requires the Appointee to make more than three payments in respect of Ofwat's Retail Market Costs for the same Charging Year; and
 - (ii) the total of all payments made under this sub-paragraph in respect of the same Charging Year shall not exceed [a company-specific amount (to be inserted) equivalent to the relevant proportion of £10.5 million, calculated using the Appointee's percentage market share as above] per cent of Ofwat's Retail Market Costs for that Charging Year.

3.3 For the avoidance of doubt:

- (a) if the Appointee is required (otherwise than under this Condition) to pay to Open Water Market Limited any subscription or other sums or dues then the amount or amounts payable in any year under this Condition to Open Water Market Limited shall be reduced by the amount of any such subscription or other sums or dues paid to Open Water Market Limited in the same year; and
- (b) nothing in this Condition requires the Appointee to make payments in any Charging Year that in total exceed [a company-specific amount (to be inserted) equivalent to the relevant proportion of £10.5 million, calculated using the Appointee's percentage market share as above] whether the payments the Appointee is required to make in any Charging Year under sub-paragraphs 3.1 and/or 3.2 have to be made to Open Water Market Limited, to the Secretary of State, or to both Open Water Market Limited and the Secretary of State in the same Charging Year.

4. Cessation of this Condition

This Condition shall cease to have effect on 1 April 2018 or such earlier date as the Water Services Regulation Authority may specify for this purpose by notice to the Appointee.



Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA

Phone: 0121 644 7500
Fax: 0121 644 7533
Website: www.ofwat.gov.uk
Email: mailbox@ofwat.gsi.gov.uk
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