



**WATER SERVICES REGULATION AUTHORITY  
WATER INDUSTRY ACT 1991  
SECTION 7 AND SECTION 13**

**Variation of the Instrument of Appointment of South  
Staffordshire Water PLC and Modification of the  
Conditions of the Appointment of South Staffordshire  
Water PLC as a Water Undertaker and Termination of the  
Appointment of Cambridge Water PLC as Water  
Undertaker**

**Made on 25 March 2013  
Coming into effect on 1 April 2013**

**Variation of South Staffordshire Water PLC's Appointment**

1. On 27 June 1995, the Secretary of State for the Environment and the Secretary of State for Wales acting jointly and pursuant to sections 6(1) and 7(2) of the Water Industry Act 1991 (the "Act") authorised the Director General of Water Services<sup>1</sup> to make appointments and variations such as those contained in paragraphs 4 and 5 below.
2. Each of South Staffordshire Water PLC and Cambridge Water PLC holds an Appointment as a Water Undertaker for their respective Areas.

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<sup>1</sup> With effect from 1 April 2006 the functions of the Director General of Water Services were transferred to the Water Services Regulation Authority in accordance with section 36 of, and Schedule 3 to, the Water Act 2003.

3. Cambridge Water PLC has agreed that South Staffordshire Water PLC should replace it as the Water Undertaker for its Area.
4. Therefore, as provided by sections 7 to 9 of the Act, the Water Service Regulation Authority varies South Staffordshire Water PLC's Appointment so that it applies also to the area of appointment of Cambridge Water PLC.

### **Termination of Cambridge Water PLC's Appointment**

5. With the consent of Cambridge Water PLC, the Water Services Regulation Authority terminates its Appointment.

### **Modifications to South Staffordshire Water PLC's Conditions of Appointment**

6. South Staffordshire Water PLC's existing Conditions of Appointment are deleted and replaced with the Conditions of Appointment in the schedule to this variation.

**Signed for and on behalf of the  
Water Services Regulation Authority**

**Regina Finn  
Chief Executive**

## Schedule

### Condition A: Interpretation and Construction

- 1 Unless the contrary intention appears:
  - (1) words and expressions used in these Conditions and references in these Conditions to enactments shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them;
  - (2) references in these Conditions to enactments shall include any statutory modification thereof after the transfer date;
  - (3) words and expressions used in these Conditions shall have the same meaning as in any provision of the Water Industry Act 1991;
  - (4) references in these Conditions to sections and Schedules are references to sections of, and Schedules to, the Water Industry Act 1991; and
  - (5) references in these Conditions to paragraphs are references to paragraphs of the Condition in which the reference appears and references to sub-paragraphs are references to sub-paragraphs of the paragraph in which the reference appears.
- 2 In construing these Conditions:
  - (1) the heading or title of any Condition or of any paragraph of any Condition shall be disregarded; and
  - (2) any description of the purposes of a Condition shall be construed subject to the provisions of the rest of the Condition in which that description appears.
- 3 Unless the context otherwise requires, in these Conditions:

**"the Appointed Business"** means the business consisting of the carrying out by the Appointee of the Regulated Activities;

"**the Area**" means the area for which for the time being the Appointee holds the appointment as water undertaker;

"**Associated Company**" means any Group Company or Related Company;

"**the Auditors**" means the Appointee's auditors for the time being appointed in accordance with the Companies Act 2006;

"**books and records**" means any and all books, records, files, maps, plans, documents, papers, accounts, estimates, returns and other data of whatsoever nature and whether or not created, recorded or maintained in a document;

"**Cambridge Water**" means Cambridge Water PLC;

"**Cambridge Area**" means the area for which Cambridge Water was Appointee immediately prior to 1 April 2013;

"**Charging Year**" means a year commencing on 1<sup>st</sup> April;

"**domestic customer**" means the occupier of domestic premises;

"**domestic premises**" means any premises used wholly or partly as a dwelling or intended for such use;

"**financial year**" means a financial year of the Appointee beginning and ending on the respective dates referred to in section 390 of the Companies Act 2006;

"**Group Company**" means any subsidiary or holding company of the Appointee and any subsidiary of any holding company of the Appointee (other than the Appointee);

"**Information**" means information which is in the possession of the person required to furnish it or which it can reasonably obtain or which it can reasonably prepare from information which is in its possession or which it can reasonably obtain, and information which is required to be furnished under any of those Conditions shall be furnished, subject to the provisions of the

Condition under which that information is required to be furnished, in such form and manner as the Water Services Regulation Authority may reasonably require;

**"Periodic Review"** means a review conducted by the Water Services Regulation Authority for the purpose of determining one or more Price Controls in accordance with Part III of Condition B, but so that references in Part IV of Condition B to a Periodic Review shall exclude any review carried out under paragraph 10 of that Condition and shall include the determination by the Competition Commission of the relevant questions or, as the case may be, the disputed determination referred to it under paragraph 15 of Condition B;

**"Prior Year"** means the year commencing 1<sup>st</sup> April immediately prior to the relevant Charging Year;

**"Reference Notice"** means a notice given to the Water Services Regulation Authority under paragraph 9, 10 or 13 of Condition B;

**"the Regulated Activities"** means the functions of a water undertaker and, for the avoidance of doubt, references to the functions of a water undertaker shall include references to the duties imposed on a water undertaker;

**"Related Company"** means any company in relation to which the Appointee or any Group Company has a participating interest within the meaning of paragraph 11 of Schedule 10 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 or which has such a participating interest in relation to the Appointee or any Group Company and for this purpose references in that paragraph to a "company" shall be deemed to include references to any body corporate;

**"Relevant Premises"** means any office premises occupied by the Appointee in relation to the Appointed Business and to which members of the public have access;

**"the Retail Prices Index"** means the Retail Prices Index published by the Statistics Board each month in respect of all items or, if the said index for the month of November is not published by 31<sup>st</sup> December next following, such index for such month as the Water Services Regulation Authority may not later than 7<sup>th</sup> January next following determine to be appropriate in the circumstances, after such consultation with the Appointee as is reasonably practicable, and in such a case references to the Retail Prices Index shall be construed for the purpose of all subsequent calculations for which the value of the Retail Prices Index for that year is relevant as references to that other index;

**"Review Charging Year"** means the first of the Charging Years in respect of which any Periodic Review is carried out;

**"the Review Notice Date"** means the first day of January which is fifteen months before the first day of the Review Charging Year;

**"South Staffordshire Water"** means South Staffordshire Water PLC;

**"South Staffordshire Area"** means the area for which South Staffordshire Water was Appointee immediately prior to 1 April 2013;

**"Water Infrastructure Charge"** means such a charge as is described in section 146(2)(a) of the Water Industry Act 1991.

- 4 Any notification required or permitted to be given under any Condition shall be given in writing and cognate expressions shall be construed accordingly.
- 5 The Appointee may refer to the Water Services Regulation Authority for determination by it (having considered any representations by the Appointee and any other water undertaker) any question arising as to whether any area, island, premises or installation is, or, as the case may be, are, comprised within the Water Supply Area as that expression is defined in Schedule 1 to this instrument.

## **Condition B:Charges**

### Part I. Explanatory Provisions

#### 1 Introduction

The purposes of this Condition are set out in the following sub-paragraphs.

- 1.1 To limit increases in standard charges made by the Appointee for the supply of water. The weighted average increase is limited to the sum of the movement in the Retail Prices Index and an Adjustment Factor, called K.

Changes in metered charges are calculated by reference to actual consumption in a Weighting Year (a financial year of the Appointee). Changes in unmetered charges are calculated by reference to changes in average revenue per chargeable supply calculated on the customer base as at the preceding 1<sup>st</sup> December. Changes are weighted in proportion to the contribution which each type of charge makes to total revenue in the Weighting Year.

These matters are dealt with in Part II under the heading "Restriction of Standard Charges for Basket Items".

- 1.2 To provide for a review of the Appointed Business to be carried out by the Water Services Regulation Authority at five-yearly intervals, so that the Water Services Regulation Authority can determine whether the Adjustment Factor should be changed. Except where expressly provided in this Condition all reviews will cover periods of five consecutive years. This is dealt with in Part III under the heading "Periodic Reviews".

- 1.3 To enable the Appointee:

- (1) ...
- (2) to refer to the Water Services Regulation Authority for determination from time to time the question of changing the Adjustment Factor to allow for Notified Items and Relevant Changes of Circumstance;

- (3) to refer to the Water Services Regulation Authority for determination at any time the question of changing the Adjustment Factor where circumstances have a substantial adverse effect on the Appointed Business;
- (4) where notice to terminate the Appointment has been given, to refer to the Water Services Regulation Authority for determination the question what the Adjustment Factor should be in the future, on the assumption that the Appointment was to continue in force, for the purpose of facilitating consideration of the terms on which a new appointee could accept transfers of property, rights and liabilities from the Appointee, as provided in section 9(4) of the Water Industry Act 1991.

These matters are dealt with in Part IV under the heading "Interim Determinations".

- 1.4 To provide for the Water Services Regulation Authority to initiate changes to the Adjustment Factor to allow for Notified Items and Relevant Changes of Circumstance. This is also dealt with in Part IV.
- 1.5 To enable the Appointee to require the Water Services Regulation Authority to refer to the Competition Commission matters arising out of determinations by the Water Services Regulation Authority referred to in sub-paragraphs 1.2 and 1.4 and references referred to in sub-paragraph 1.3. These matters are dealt with in Part V under the heading "References to the Competition Commission and Modification of this Condition".
- 1.6 To require the Appointee to give Information to the Water Services Regulation Authority to enable it to make determinations under this Condition. This is dealt with in Part VI under the heading "Provision of Information to the Water Services Regulation Authority".
- 2 Defined terms which apply for the purposes of all Parts of this Condition

In this Condition:

references to "**the Appointed Business**" shall be construed as if the Appointed Business included the management and holding by the Appointee of any protected land;

"**Average Charge Per Chargeable Supply**" means, in respect of a specified Unmeasured Basket Item for a specified year, the amount  $\frac{R}{N}$  where:

R is the annual revenue (exclusive of VAT) which would accrue to the Appointee in respect of the specified Unmeasured Basket Item if all Standard Charges (other than Excluded Charges) made or to be made in respect of that Unmeasured Basket Item in the specified year were applied to all Chargeable Supplies of the Appointee which would have been subject to those Standard Charges as at 1<sup>st</sup> December preceding the specified year; and

N is the number of Chargeable Supplies as at such 1<sup>st</sup> December for which the Appointee would have been entitled to make those Standard Charges, provided that, where the specified year is a Prior Year,

- (a) there shall be included in N the number of any additional Chargeable Supplies which the Appointee would have made as at such 1<sup>st</sup> December if the Standard Charges to be made in respect of the Unmeasured Basket Item in the relevant Charging Year had applied; and
- (b) there shall be excluded from N the number of any Chargeable Supplies which the Appointee would not have been entitled to make as at such 1<sup>st</sup> December if the Standard Charges to be made in respect of the Unmeasured Basket Item in the relevant Charging Year had applied.

"**Basket Items**" means the Measured Basket Item and the Unmeasured Basket Item;

"**Chargeable Supply**" means any supply of water for which charges are payable;

**"Excluded Charges"** unless and until otherwise agreed between the Water Services Regulation Authority and the Appointee, are

- (1) amounts payable in respect of an unmeasured supply of water by means of stand-pipes or water tanks and in respect of the erection or maintenance of stand-pipes or water tanks;
- (2) charges for a supply of water provided by the Appointee under section 59 of the Water Industry Act 1991;
- (3) charges for unmeasured supplies of water to cattle troughs;
- (4) charges for unmeasured building water supplies;
- (5) amounts payable in respect of an unmeasured supply of water by means of bowsers or water tankers; and
- (6) charges for unmeasured supplies of water to farm taps and other agricultural water points
- (6A) Charges in any Charging Year for supplies of water (or for the provision of sewerage services or for the reception, treatment and disposal of trade effluent) to premises where the premises were supplied in the relevant Weighting Year with not less than such quantity of water as is specified from time to time under section 7(5)(a) of the Water Industry Act 1991

AND, for the avoidance of doubt, but without prejudice to the meaning of Standard Charges in respect of Basket Items, shall also include

- (7) charges payable for any such connection as is described in section 146(2)(a) of the Water Industry Act 1991;
- (8) charges for a supply of water in bulk to another water undertaker;
- (9) amounts payable under any such agreement as is described in section 20(1)(b) of the Water Resources Act 1991; and

(10) charges payable under any agreement for any unmeasured supply of water which are calculated by reference to the rateable value of hereditaments, occupied by the person to whom the supply is provided, fixed in accordance with section 32, 33 or, as the case may be, 34 of the General Rate Act 1967 or, as the case may be, fixed in accordance with section 54 of the Local Government Finance Act 1988

but so that where this Condition requires reference to be made to Excluded Charges in a Charging Year prior to that starting on 1<sup>st</sup> April 1990 the expression "Excluded Charges" shall be read and construed as though:

- (a) there were added to sub-paragraph (2) of this definition the words "and charges for a supply of water provided by the Appointee under section 37 of Schedule 3 to the 1945 Act"; and
- (b) there were added to sub-paragraph (9) of this definition the words "and any agreement entered into by the Appointee under section 81 of the Water Resources Act 1963 with respect to any of the matters referred to in sections 81(1)(b) and 81(1)(d) of that Act";

**"the Initial Determination"** means the determination by the Secretary of State after the transfer date and before 1<sup>st</sup> April 1990 of the Adjustment Factor for each Charging Year starting with the Charging Year starting on 1<sup>st</sup> April 1990;

**"the Measured Basket Item"** means measured water supply;

a **"measured supply"** is one where all or some of the charges for that supply are based on measured quantities of volume and an **"unmeasured supply"** is any other;

**"Non-volumetric Charge"** is a charge which is not based on measured quantities of volume;

**"the Relevant Charging Year"** means a Charging Year starting on 1<sup>st</sup> April 1995 or on the fifth anniversary of the first day of the first of the Charging Years in respect of which the last Periodic Review was carried out;

**"Standard Charges"** means

- (1) charges fixed under any such charges scheme as is referred to in section 143 of the Water Industry Act 1991;
- (2) charges payable under any such agreement as is referred to in section 142 of the Water Industry Act 1991 under or for which all the charges payable are in accordance with standard charges published or fixed by the Appointee;
- (3) charges determined by agreement in respect of a supply of water provided by the Appointee for non-domestic purposes where all the charges so determined in respect of that supply are in accordance with standard charges published or fixed by the Appointee;
- (4) charges fixed under any such charges scheme made by the Appointee under section 31 of the Water Act 1973 as, by virtue of paragraph 16(1) of Schedule 26 of the Water Act 1973, has effect on and after the transfer date as if it were a charges scheme made under section 143 of the Water Industry Act 1991 by the Appointee;
- (5) charges in respect of any such supply which the Appointee was under a duty to make under section 27 of the Water Act 1945 as, by virtue of paragraph 8 of Schedule 26 of the Water Act 1973, is a supply which the Appointee is under a duty to make on and after the transfer date where all charges in respect of such supply are in accordance with standard charges published or fixed by the Appointee; and
- (6) charges payable under any agreement made or entered into by the Appointee under any local statutory provision or under any other power conferred on the Appointee otherwise than by virtue of the Water Industry Act 1991, under which all the charges payable are in accordance with standard charges published or fixed by the Appointee

Provided that no part of this definition shall apply to any charge which is for the time being an Excluded Charge by virtue of (6A) of the definition of Excluded Charges;

but so that where this Condition requires reference to be made to Standard Charges in a Charging Year prior to that starting on 1<sup>st</sup> April 1990 the expression "Standard Charges" shall be read and construed as though:

- (a) there were added to sub-paragraph (4) of this definition the words "and any charges scheme made by the Appointee under section 31 of the Water Act 1973"; and
- (b) there were added to sub-paragraph (5) of this definition the words "and any such supply which the Appointee was under a duty to make under section 27 of the Water Act 1945, where all the charges in respect of such supply were in accordance with standard charges published or fixed by the Appointee".

In this definition references to standard charges published or fixed by the Appointee are to such charges, where published or fixed under a charges scheme or otherwise;

**"Termination Notice"** means a notice given in accordance with Condition O;

**"the Unmeasured Basket Item"** means unmeasured water supply;

**"Weighted Average Charges Increase"** means the sum calculated as follows:

$$W_t = \left( \frac{A_t(i)}{A_{t-1}(i)} \cdot r(i) \right) + \left( \frac{B_t(j)}{B_{t-1}(j)} \cdot r(j) \right) - 1$$

where

$W_t$  is the Weighted Average Charges Increase for the Charging Year

$i$  identifies the Unmeasured Basket Item

j identifies the Measured Basket Item

$A_t(i)$  is the Average Charge Per Chargeable Supply in respect of the Unmeasured Basket Item i for the Charging Year

$A_{t-1}(i)$  is the Average Charge Per Chargeable Supply in respect of the Unmeasured Basket Item i for the Prior Year

$B_t(j)$  is the Weighting Year Revenue in respect of the Measured Basket Item j for the Charging Year

$B_{t-1}(j)$  is the Weighting Year Revenue in respect of the Measured Basket Item j for the Prior Year

$r(i)$  or  $r(j)$  is the revenue (exclusive of VAT) which accrued to the Appointee in the Weighting Year from all Standard Charges other than Excluded Charges (including, in the case of the Measured Basket Item, any Non-volumetric Charge) in respect of the Unmeasured Basket Item i or the Measured Basket Item j (as the case may be), divided by the aggregate of such revenues for both Basket Items;

**"Weighting Year"** means the financial year of the Appointee ended last before 7<sup>th</sup> October in the Prior Year;

**"Weighting Year Revenue"** means the revenue (exclusive of VAT) which would have accrued to the Appointee in the Weighting Year in respect of the Measured Basket Item, if all Standard Charges other than Excluded Charges (including any Non-volumetric Charge) made or to be made in respect of the Measured Basket Item in the Charging Year or, as the case may be, the Prior Year had applied.

## Part II. Restriction of Standard Charges for Basket Items

### 3 The Charges Limit

- 3.1 The Appointee shall ensure that the Weighted Average Charges Increase in any Charging Year (beginning with the Charging Year starting on 1<sup>st</sup> April 1990) when expressed as a percentage does not exceed the Charges Limit.

3.2 The Charges Limit is the percentage calculated as  $RPI + K$  where

RPI is the percentage change (expressed, in the case of an increase, as a positive number, in the case of a decrease, as a negative number and, in the case of no change, as zero) in the Retail Prices Index between that published for the month of November in the Prior Year and that published for the immediately preceding November

K is the Adjustment Factor.

3.3 On the coming into force of the Appointment there shall be referred to the Secretary of State for determination by him the question of what the Adjustment Factor for each of the 10 consecutive Charging Years starting with the Charging Year starting on 1<sup>st</sup> April 1990 should be.

3.4 The Adjustment Factor shall be:

(1) for each of the Charging Years starting on 1 April in the year specified in Column 1 of the table below, the number set opposite that Charging Year in Column 2 of the said table (or such other number as shall from time to time be determined under this Condition);

<u>Column 1 (Year)</u>	<u>Column 2 (Adjustment Factor)</u>
2013	0.04
2014	-0.6

(2) for each subsequent Charging Year, such number as shall from time to time have been determined under this Condition or, if none, zero

and the Adjustment Factor may be a different number for any Charging Year and may be a positive or negative number or zero.

3.5 If the Weighted Average Charges Increase in any Charging Year is less than the Charges Limit then the Charges Limit for the following Charging Year shall be increased by the amount of such deficiency.

3.6 The Charges Limit for the Charging Year starting on 1<sup>st</sup> April 1992 and each subsequent Charging Year shall only be increased by virtue of sub-paragraph 3.5 to the extent that such deficiency is not attributable to any Charging Year ended three or more years previously.

4 Matters Affecting the Charges Limit and the calculation of the Weighted Average Charges Increase

4.1 Where the Appointee determines:

- (1) to make a material change (other than one which relates solely to the amount of a charge) to the basis on which it makes or calculates any Standard Charge, or Standard Charges taken as a whole, (other than Excluded Charges) for the supply of water;
- (2) to make a material change to the scope of any such scheme or agreement as is referred to in the definition of "Standard Charges" (in so far as such change relates to charges for the supply of water, other than Excluded Charges); or
- (3) to change the basis on which the Appointee treats supplies of water as separate supplies for the purpose of making Standard Charges (other than Excluded Charges) which affects the calculation of Average Charge Per Chargeable Supply

it shall:

- (a) notify the Water Services Regulation Authority; and
- (b) furnish to the Water Services Regulation Authority such explanations and Information relating to such change as the Water Services Regulation Authority considers requisite or expedient having regard to the purposes of this Condition.

4.2 Where there is a material change to the basis of compiling the Retail Prices Index this Condition, insofar as it relates to that part of the calculation of the Charges Limit to which the Retail Prices Index is relevant, shall be modified in

such manner as the Water Services Regulation Authority, after prior consultation with the Appointee, may determine to be appropriate to take account of such change.

## 5 Verification of compliance with the Charges Limit

### 5.1 Statements

The Appointee shall deliver to the Water Services Regulation Authority the following statements:

- (1) not later than the relevant date specified in sub-paragraph 5.2, a statement in writing (a "**Principal Statement**") of:
  - (a) the revenue which accrued in the Weighting Year from all Standard Charges (including, in the case of the Measured Basket Item, any Non-volumetric Charge), other than Excluded Charges, in respect of the Unmeasured Basket Item i and the Measured Basket Item j;
  - (b) the aggregate revenue which accrued in the Weighting Year from all such Standard Charges; and
  - (c) the amount of each and every type or category of charge for the supply of water which the Appointee proposes to make of a kind specified in the definition of "Standard Charges" as at the commencement of that Charging Year which are not Excluded Charges (and for this purpose where the Appointee proposes to charge different prices per cubic metre of water supplied depending upon the volume of water supplied or the time of supply or the category of customer or any other variable factor then each such price shall be treated as a different type or category of charge); and
- (2) not later than two months, or such later date as the Water Services Regulation Authority may allow, before the date during any Charging Year as from which the Appointee proposes to make or fix a new

Standard Charge (which is not an Excluded Charge) for the supply of water or to increase or decrease the amount of any such charge a statement in writing (a "**Supplemental Statement**") of the new charge or the amount by which the Appointee proposes to increase or decrease the amount of that charge.

Any Principal Statement or Supplemental Statement shall be accompanied by the information necessary to calculate  $A_t(i)$  and  $A_{t-1}(i)$  and  $B_t(j)$  and  $B_{t-1}(j)$  in the definition of Weighted Average Charges Increase and a written statement of those calculations.

5.1A Until 31 March 2015 (or such earlier date as the Water Services Regulation Authority may agree), whenever it complies with sub-paragraph 5.1 of this paragraph 5, the Appointee shall also supply to the Water Services Regulation Authority on a disaggregated basis in respect of Cambridge Water's Area the same statements and information as are required by sub-paragraph 5.1.

5.2 The relevant date for the purpose of sub-paragraph 5.1(1) is the date which is two months before the start of the relevant Charging Year.

5.3 Auditors' Report

Any Principal Statement shall be accompanied by a report by the Auditors as to whether, in their opinion, the information included in that Principal Statement under sub-paragraphs 5.1(1)(a) and (b) has been properly extracted from the relevant accounting statements prepared and delivered by the Appointee under paragraph 4 of Condition F and from the Appointee's accounting records and such other records of the Appointee as the Auditors consider relevant for the purpose of making their report and as to whether, in their opinion, the calculations delivered by the Appointee with that Principal Statement are in accordance with this Condition and with the Appointee's accounting and such other relevant records.

6 [Not used] Water Services Regulation Authority

Part III. Periodic Reviews

7 ...

8 Periodic Reviews of the Appointed Business at regular Five-yearly Intervals.

The Appointee shall furnish to the Water Services Regulation Authority such Information as the Water Services Regulation Authority may reasonably require to enable it to carry out a Periodic Review for the purpose of determining the question whether (having regard to all the circumstances which are relevant in the light of the principles which apply by virtue of Part I of the Water Industry Act 1991 in relation to the Water Services Regulation Authority's determination, including, without limitation, any change in circumstance which has occurred since the last Periodic Review or which is to occur) the Adjustment Factor should be changed (and if so, what change should be made to it) for each period of five consecutive Charging Years starting on the fifth anniversary of the first day of the period in respect of which the immediately-preceding Periodic Review was carried out.

8.1 The Appointee shall furnish to the Water Services Regulation Authority such Information (including further detail about or explanation of Information previously supplied, whether or not under this sub-paragraph 8.2) as the Water Services Regulation Authority may by notice reasonably require to enable it to carry out the Periodic Review.

9 ...

10 Periodic Reviews of the Appointed Business where a Termination Notice has been given

10.1 Where a Termination Notice has been given by the Secretary of State to the Appointee, the Appointee may refer to the Water Services Regulation Authority for determination by it the question whether, on the assumption that such a Termination Notice had not been given, (but subject thereto, having regard to all the circumstances which are relevant in the light of the principles which apply by virtue of Part I of the Water Industry Act 1991 in relation to the

Water Services Regulation Authority's determination, including, without limitation any change in circumstance which has occurred since the Initial Determination or, as the case may be, the last Periodic Review or which is to occur) the Adjustment Factor should be changed (and if so what change should be made to the Adjustment Factor) for the ten consecutive Charging Years starting with the Charging Year starting 1<sup>st</sup> April last before the Termination Notice is to expire.

10.2 A reference to the Water Services Regulation Authority under this paragraph 10 shall be made by notice given to the Water Services Regulation Authority not earlier than 1<sup>st</sup> July and not later than 14<sup>th</sup> July in the Charging Year next but one before that commencing on the said 1<sup>st</sup> April.

11 Effect of termination of the Appointment on Periodic Reviews

Subject to paragraph 10, if the Secretary of State shall have served a Termination Notice on the Appointee then this Condition shall have effect as though references to a Periodic Review being carried out in respect of a period of five consecutive Charging Years were references to a Periodic Review being carried out in respect of a period of that number of consecutive Charging Years which is the lesser of:

- (1) five; and
- (2) the number of consecutive Charging Years (including that in which the day on which the Termination Notice is to take effect falls) in the period starting on the first day of the first of the Charging Years in respect of which that Periodic Review is to be carried out and ending on the day on which the Termination Notice is to expire.

Part IV. Interim Determinations

12 Matters of interpretation and construction which apply for the purposes of this Part IV

12.1 In this Part of this Condition:

**"the Appropriate Discount Rate"** means such rate of return upon borrowing as, at the time at which the Appropriate Discount Rate falls to be applied from time to time under this Condition, investors and creditors would reasonably expect of a properly managed company holding the Appointment whose sole business consists of being a water undertaker and, without excluding other considerations which may also be relevant, having its equity share capital listed on London Stock Exchange plc, and the same Appropriate Discount Rate shall be applied for all purposes in determining questions the subject of the same reference (including questions determined by the Water Services Regulation Authority under paragraph 14 when it determines questions referred to it by the Appointee under paragraph 13);

**"equity share capital"** has the same meaning as in the Companies Act 2006;

**"Interim Determination"** means the determination by the Water Services Regulation Authority of the relevant questions the subject of a reference by the Appointee under paragraph 13 or pursuant to paragraph 14 or, as the case may be, the determination by the Competition Commission of the relevant questions or of the disputed determinations the subject of a reference to it pursuant to sub-paragraph 15(2) or 15(3), which relates to a reference by the Appointee under paragraph 13 or a determination pursuant to paragraph 14;

**"making a Relevant Determination"** means determining the Adjustment Factor initially or determining, in carrying out the most recent Periodic Review or making any subsequent Interim Determination (or, where there has been no Periodic Review, in making any Interim Determination) whether the Adjustment Factor should be changed (and, if so, what change should be made to the Adjustment Factor), and **"Relevant Determination"** shall be construed accordingly;

**"Net Present Value"** means the net present value calculated as at 30 September in the year in which the relevant Reference Notice is given or, where in any year no Reference Notice is given under paragraph 13 but the Water Services Regulation Authority gives a notice to the Appointee under

paragraph 14, as at 30 September in the year in which the Water Services Regulation Authority gives the notice, by discounting subsequent cash flows and inflating earlier cash flows at the Appropriate Discount Rate, assuming all cash flows in any Charging Year occur on 30 September in that Charging Year;

a "**Notified Item**" is any item notified by the Water Services Regulation Authority to the Appointee as not having been allowed for (either in full or at all) in making a Relevant Determination; and for the purpose of this definition:

- (a) where any such item was not allowed for in full then it shall only be a Notified Item to the extent that it was not allowed for; and
- (b) where, in determining whether the Adjustment Factor should be changed (and if so what change should be made to the Adjustment Factor), the Water Services Regulation Authority, or, as the case may be, the Competition Commission, allows for any such item as was previously so notified by the Water Services Regulation Authority then references in this Condition to Notified Items and Relevant Items shall be taken, for the purposes of any subsequent Interim Determination, to exclude such item to the extent that the Water Services Regulation Authority, or, as the case may be, the Competition Commission, allowed for it as aforesaid;

a "**Relevant Change of Circumstance**" is any of the following:

- (1)
  - (a) the application to the Appointee of any legal requirement; and
  - (b) any change to any legal requirement which applies to the Appointee (including any legal requirement ceasing to apply, being withdrawn or not being renewed);
- (2) either of the following circumstances for any Charging Year in respect of which the Secretary of State, or, as the case may be, the Water Services Regulation Authority, notified the Appointee that variations in

value received or expected to be received from Relevant Disposals of Land shall constitute a Relevant Change of Circumstance:

- (a) where for any Charging Year the value received or expected to be received from a Relevant Disposal of any Identified Land is, or is expected to be, different from the value which the Secretary of State, or, as the case may be, the Water Services Regulation Authority, notified the Appointee was the value attributable to a Relevant Disposal of that Identified Land for that Charging Year which had been allowed for in determining the Adjustment Factor initially or whether the Adjustment Factor should be changed (and if so what change should be made to the Adjustment Factor); or
- (b) where for any Charging Year, and to the extent not taken into account under (a) above, the aggregate value received or expected to be received from Relevant Disposals of Non-identified Land is, or is expected to be, different from the value which the Secretary of State, or, as the case may be, the Water Services Regulation Authority, notified the Appointee was the value attributable to Relevant Disposals of Non-identified Land for that Charging Year which had been allowed for in determining the Adjustment Factor initially or whether the Adjustment Factor should be changed (and if so what change should be made to the Adjustment Factor)

and so that any notification by the Water Services Regulation Authority for the purposes of this sub-paragraph (2) shall be relevant for the purposes of this sub-paragraph (2) to the exclusion of any earlier notification by the Secretary of State or the Water Services Regulation Authority for the purposes of this sub-paragraph (2) to the extent that the first-mentioned notification is made in respect of matters in respect of which that earlier notification was made.

For the purposes of this sub-paragraph (2):

- (i) "**Identified Land**" means any piece or parcel of protected land identified in any such notification referred to in (a) above as is relevant for the time being for the purposes of this sub-paragraph (2) as being included in that notification, not being, or being part of, a piece or parcel of land which has previously been the subject of a transfer under paragraph 7 of Condition K;
- (ii) "**land**" includes any interest or right in or over land;
- (iii) "**Non-identified Land**" means any piece or parcel of protected land, not being, or being part of:
  - (A) a piece or parcel of protected land identified in any such notification referred to in (a) above as is relevant for the time being for the purposes of this sub-paragraph (2); or
  - (B) a piece or parcel of protected land which has previously been the subject of a transfer under paragraph 7 of Condition K;
- (iv) "**protected land**" and "**disposal**" have the meanings respectively given to them in section 219 of the Water Industry Act 1991;
- (v) a "**Relevant Disposal**" means and includes any disposal by the Appointee;
- (vi) a "**Relevant Disposal of Land**" means and includes a Relevant Disposal of Identified Land and a Relevant Disposal of Non-identified Land;
- (vii) "**value**" includes value of any kind including, without limitation, cash, the value of real or personal property or any interest in such property, the value of any right or benefit (actual or prospective) and the value of any release, in whole or in part, of any obligation or claim, provided that to the extent that any property, right or benefit shall consist of a right to receive cash

or any other asset then no value shall be attributed to that property, right or benefit but the cash or other asset the subject thereof shall be included and treated as value received or expected to be received in the Charging Year in which it is received or expected to be received;

(viii) references to "**value received or expected to be received**" shall be construed so as to include receipts by, and grants to, the Appointee, any Associated Company or any other business in which either the Appointee or any Associated Company has a material direct or indirect interest;

(ix) **[Not used]**;

(x) in the case of a right or benefit, but subject to the proviso to (vii) above, value shall be deemed to have been received at the time the right is granted or the benefit arises;

(3) where:

(i) in making a Relevant Determination, an amount has been allowed for on account of steps taken or to be taken for the purpose of securing or facilitating compliance with a legal requirement (not being one to comply with which the Appointee has determined to make a change to the basis on which it charges customers for water supply services) or achieving a service standard adopted or to be adopted by the Appointee; and

(ii) in any such case:

(A) the Appointee has not taken (by the date by which it was assumed for the purposes of assessing the amount allowed for as aforesaid it would take those steps) any or all of those steps which, for the purpose of assessing the

amount allowed for as aforesaid, it was assumed it would take; and

(B) as a result, the amount allowed for as aforesaid is substantially greater than the sum of (a) the costs (if any) actually incurred by the Appointee for the relevant purpose specified in (i) above and (b) so much (if any) of that amount as has been otherwise offset by prudent management of the capital programme; and

(C) that purpose has not been otherwise achieved;

a "**Relevant Item**" is any of the following:

- (1) A Relevant Change of Circumstance (other than a Relevant Change of Circumstance falling within sub-paragraph (2) of the definition);
- (2) A Notified Item; and
- (3) A Relevant Disposal of Land

and references to a Relevant Item are to a Relevant Change of Circumstance (other than a Relevant Change of Circumstance falling within sub-paragraph (2) of the definition), a Notified Item or a Relevant Disposal of Land as the context may require.

12.2 In the definition of a "Relevant Change of Circumstance" and for the purpose of that definition:

- (1) a "**legal requirement**" is any of the following:
  - (a) any enactment or subordinate legislation to the extent that it applies to the Appointee in its capacity as a water undertaker (and for this purpose, but without prejudice to the generality of the foregoing, "subordinate legislation" includes any order made under section 18 of the Water Industry Act 1991 and any authorisation granted, approval given, or prohibition imposed, by

the Secretary of State under The Water Supply (Water Quality) Regulations 2000);

- (b) any regulation made by the Council or the Commission of the European Communities to the extent that it applies to the Appointee in its capacity as a water undertaker, or decision taken by the said Commission which is binding on the Appointee in its capacity as a water undertaker and to the extent that it is so binding;
- (c) any licence, consent or authorisation given or to be given by the Secretary of State, the Environment Agency or other body of competent jurisdiction to the Appointee for the purpose of carrying on any of the functions of a water undertaker:
- (d) any undertaking given by the Appointee to, and accepted by, the Secretary of State or, as the case may be, the Water Services Regulation Authority for the purposes of section 19(1)(b) of the Water Industry Act 1991;
- (e) other than any such undertaking as is referred to in (d), any undertaking given by the Appointee to any enforcement authority, and accepted by that enforcement authority, to take all such steps:
  - (i) as are specified by that enforcement authority to be necessary or appropriate for the Appointee to take for the purpose of securing or facilitating compliance with any legal requirement in relation to which that enforcement authority is the enforcement authority; or
  - (ii) the taking of which is specified by that enforcement authority to be a condition or requirement of granting or renewing any such licence, consent or authorisation as is referred to in (c) or agreeing not to withdraw the same;

- (f) the Conditions of these Appointments; and
- (g) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within (a) to (f) above to have effect in a way;
  - (i) different to that in which it previously had effect; or
  - (ii) different to that in which it was taken to have effect:
    - (A) for the purpose of determining the Adjustment Factor or, as the case may be,
    - (B) in determining whether the Adjustment Factor should be changed (and if so what change should be made to the Adjustment Factor)

but so that nothing in sub-paragraphs (a) to (g) above shall apply so as to include:

- (i) any such legal requirement as is referred to in section 41 of the Environment Act 1995, or
- (ii) that section

to the extent in either case that they require the Appointee to pay fees or charges to the relevant enforcement authority; and

- (2) "**enforcement authority**" means any person or body having jurisdiction to enforce or to take action under or in respect of the relevant legal requirement.

12.3 In paragraph 13 and in the definition of a "Relevant Change of Circumstance":

- (1) references to costs include references to expenditure and loss of revenue and references to costs being incurred include references to expenditure being made and loss of revenue being suffered;

- (2) references to receipts include references to receipts, cash or other assets of any sort, whether of a capital or revenue nature and including receipts of grants, contributions, gifts and loans; and
  - (3) without prejudice to sub-paragraph (1) above, "Operating Expenditure" in sub-paragraph 13.2(6) includes those items currently so identified in Regulatory Accounting Guidelines 3 and 4 and in the July Return 1999 Reporting Requirement, line 22 in table 21 and line 23 in table 22. For the avoidance of doubt, depreciation, the write-down/off of assets, the profits/loss on disposal of assets and infrastructure renewals expenditure or charges are excluded.
- 12.4
- (1) For the purposes of sub-paragraph 13.2(1) costs, receipts and savings shall be ascertained at the general price level prevailing, or expected to prevail, on 30 September in the year in which the Appointee gives notice under sub-paragraph 13.1, or the Water Services Regulation Authority gives notice under paragraph 14(1).
  - (2) In sub-paragraphs 13.2(8) and 13.2(9) and sub-paragraph (3) below "**at Outturn Prices**", in relation to the amount of any Base Cash Flow or depreciation, means that amount as adjusted to take account of the actual or expected cumulative percentage change in the Retail Prices Index from that prevailing, or expected to prevail, on 30 September in the year in which the Appointee gives notice under sub-paragraph 13.1, or the Water Services Regulation Authority gives notice under paragraph 14(1), up to and including that prevailing, or expected to prevail, on 30 September in the year in which the Base Cash Flow or depreciation occurred, or is expected to occur.
  - (3) In sub-paragraph 13.2(8) "**Current Value**", in relation to any Base Cash Flow or depreciation at Outturn Prices, means that amount, as adjusted to take account of the actual or expected cumulative percentage change in the Retail Prices Index from 30 September in the year in which that Base Cash Flow or depreciation occurred or is

expected to occur, up to and including 30 September in the relevant year.

12.5 For the purpose of section 13(5)(b) of the Water Industry Act 1991, the provisions of this Condition, to the extent that they relate to a Relevant Change of Circumstance falling within sub-paragraph (2) of that definition, are provisions of the Appointments which cannot be modified. This sub-paragraph shall cease to have effect if, but only if, this Condition ceases to contain any provision relating to changes to the Adjustment Factor to allow for Notified Items and Relevant Changes of Circumstance.

13 References to the Water Services Regulation Authority relating to Notified Items and Relevant Changes of Circumstance and circumstances having a substantial effect on the Appointed Business

13.1 The Appointee may from time to time refer to the Water Services Regulation Authority for determination by it (having considered the proposals of the Appointee) the questions set out in sub-paragraph 13.2 or, as the case may be, sub-paragraph 13.3. Such reference shall be made by notice given to the Water Services Regulation Authority, which, in the case of questions set out in sub-paragraph 13.2, shall be given in accordance with sub-paragraph 13.4. For the purposes of sub-paragraph 13.2 a single reference may be made in respect of any number of Notified Items and Relevant Changes of Circumstance and sub-paragraph 13.2 shall be construed accordingly.

13.2 In the case of a Notified Item or where there has been or is to be a Relevant Change of Circumstance all of the following:

- (1) what are, or are likely to be, the costs, receipts and savings reasonably attributable to the Relevant Item and also, in the case of a Relevant Change of Circumstance falling within sub-paragraph (2) of the definition, the costs, receipts and savings reasonably connected with the Relevant Disposal of Land;
- (2) except in the case of a Relevant Change of Circumstance falling within sub-paragraph (2) of the definition, to what extent:

- (a) are the costs determined under (1) reasonably recoverable through charges for services provided, functions carried out by, and other activities of, the Appointee in its capacity as a water undertaker which are not Standard Charges for Basket Items (not being Excluded Charges);
- (b) in the case of receipts and savings, is the Relevant Item relevant to services provided, functions carried out by, and other activities of, the Appointee as a water undertaker which are not Basket Items in respect of which the Appointee makes Standard Charges (not being Excluded Charges)

and where it is determined that such costs are reasonably recoverable as aforesaid or, as the case may be, that the Relevant Item is relevant as aforesaid, either in full or to an extent, then references hereafter to costs, receipts and savings reasonably attributable to a Relevant Item are to those costs, receipts and savings except to that extent;

- (3) both of the following:
  - (a) what costs reasonably attributable to, or connected with, the Relevant Item as determined under (1) and what timing of incurring of such costs are appropriate and reasonable for the Appointee in all the circumstances to incur and programme, or, as the case may be, to have incurred and programmed, by reason of the Relevant Item; and
  - (b) what receipts and savings reasonably attributable to, or connected with, the Relevant Item as determined under (1) and what timing of such receipts and savings is appropriate and reasonable for the Appointee in all the circumstances to achieve and programme or, as the case may be, to have achieved and programmed, by reason of the Relevant Item

and for the purpose of determining the separate amounts under (a) and (b), but without prejudice to the generality of the foregoing:

- (i) no account shall be taken of:
  - (A) any trivial amounts;
  - (B) any costs, to the extent that they would have been, or would be, avoided by prudent management action taken since the transfer date (and for this purpose what constitutes "prudent management action" shall be assessed by reference to the circumstances which were known or which ought reasonably to have been known to the Appointee at the relevant time);
  - (C) any savings achieved by management action taken since the transfer date over and above those which would have been achieved by prudent management action (and for this purpose what constitutes "prudent management action" shall be assessed by reference to the circumstances at the relevant time); or
  - (D) any amounts attributable to matters allowed for in making a Relevant Determination, except to the extent that such amounts otherwise fall to be taken into account as amounts reasonably attributable to, or connected with, the Relevant Item under this sub-paragraph (3) and sub-paragraph (1) by virtue of the definition of a Notified Item and a Relevant Change of Circumstance; and
- (ii) in the case of a Relevant Change of Circumstance falling within sub-paragraph (1) of the definition, regard shall be had to whether either:
  - (a) the Secretary of State has notified the Water Services Regulation Authority of any change of

policy, concerning any environmental or water-quality standard, which has been made since the Adjustment Factor was last determined; or

- (b) the Appointee has itself given notice to the Water Services Regulation Authority of the application to it of, or any change to, any legal requirement, before referring that legal requirement to the Water Services Regulation Authority under sub-paragraph 13.1;
  - (4) having determined under (3) the separate amounts of costs and of receipts and savings in respect of each Relevant Item, what are the annual cash flows thereof (costs being netted off against the amount of receipts and savings for this purpose) over each Charging Year included in the timing determined under (3) (those annual cash flows being hereinafter referred to as "**the Base Cash Flows**");
  - (5) what is the annual aggregate of:
    - (a) one half of the Base Cash Flows in respect of Relevant Changes of Circumstance falling within sub-paragraph (2) of that definition; and
    - (b) the Base Cash Flows in respect of all other Relevant Changes of Circumstance and Notified Items
- in both cases the subject of the notice or notices under sub-paragraph 13.4 or paragraph 14;
- (6) (a) where any part of an annual aggregate derived under sub-paragraph (5) consists of items to which (b) below does not apply, what is the Net Present Value of that part of the annual aggregate, calculated up to the start of the first of the Charging Years for which the next Periodic Review falls to be carried out;

- (b) where any part of the annual aggregate derived under sub-paragraph (5) consists of revenue and/or Operating Expenditure, what is the Net Present Value of that part of the annual aggregate, calculated over 15 years; and
  - (c) what is the aggregate of the Net Present Values calculated under (a) and (b) ("**the Materiality Amount**");
- (7) is the Materiality Amount equal to or does it exceed ten per cent of the turnover attributable to the Appointed Business in the latest financial year for which accounting statements have been prepared and delivered to the Water Services Regulation Authority under Condition F, as shown by those accounting statements, and for this purpose where the Materiality Amount is a negative figure it shall be treated as though it were a positive figure;
- (8) if so, for each year, ("**the relevant year**") until the first of the Charging Years for which the next Periodic Review falls to be carried out (having regard to any Review Notice or Reference Notice which has been given at the time when the reference is made),
  - (a) what are the following amounts:
    - (i) all Base Cash Flows at Outturn Prices attributable to the creation or acquisition of depreciable assets ("**Allowable Capital Expenditure**");
    - (ii) all the Base Cash Flows at Outturn Prices (save in respect of Relevant Changes of Circumstance falling within sub-paragraph (2) of that definition, where one half of the Base Cash Flow at Outturn Prices shall be used) attributable to the creation, acquisition or disposal of non-depreciable assets ("**Allowable Infrastructure Asset Expenditure**");

- (iii) all other Base Cash Flows at Outturn Prices ("**Other Allowable Expenditure**");
  - (iv) the sum of the Current Value of all Allowable Capital Expenditure occurring up to and including the relevant year, divided by the weighted average expected life of the assets attributable to that Allowable Capital Expenditure at the time those assets were or are expected to be created or acquired ("**Allowable Depreciation**");
  - (v) the sum of the Current Value of all Allowable Capital Expenditure occurring up to and including the relevant year less the sum of the Current Value of all Allowable Depreciation occurring up to and including the relevant year ("**Allowable Net Asset Value**");
  - (vi) the sum of the Current Value of all Allowable Infrastructure Asset Expenditure occurring up to and including the relevant year ("**Allowable Infrastructure Asset Value**");
  - (vii) the Appropriate Discount Rate, adjusted so as to exclude any allowance for changes in the Retail Price Index, multiplied by the sum of:
    - (A) the Allowable Net Asset Value for the relevant year; and
    - (B) the Allowable Infrastructure Asset Value for the relevant year;("the **Allowable Return**"); and
- (b) what is the sum of:
- (i) Other Allowable Expenditure;
  - (ii) Allowable Depreciation; and

(iii) the Allowable Return;

(the "**Annual Allowable Amount**")

(9) what change to the Adjustment Factor over the period from the beginning of the first of the Charging Years referred to in subparagraph 13.4(1) (in any case where a Reference Notice has been given in respect of subparagraph 13.2) or paragraph 14(1) (in any other case) until the first of the Charging Years for which the next Periodic Review falls to be carried out (having regard to any Review Notice or Reference Notice which has been given at the time when the reference is made) ("**the Relevant Period**") is most likely to allow, or, as the case may be, require, the Appointee to make such charges over the Relevant Period ("**Adjusted Charges**"), in such a manner as to secure that the increase, or, as the case may be, the decrease, in revenue attributable to the making of Adjusted Charges would, in each year of the Relevant Period, be equal to:

(i) the Annual Allowable Amount for that year,

plus

(ii) where Base Cash Flows at Outturn Prices have occurred prior to the first year of the Relevant Period, the amount, which, calculated as a constant annual amount over the Relevant Period, would result in the sum of the Net Present Values of these amounts equalling the sum of the Net Present Values of the Annual Allowable Amounts for each of the years prior to the Relevant Period,

Provided that -

(a) where costs have been allowed for in determining the Annual Allowable Amount, it shall be assumed that those costs will be financed other than by the proceeds of an issue of equity share capital and

- (b) the revenue attributable to the making of Adjusted Charges over the Relevant Period shall not result in interest cover which, measured both by its level in any one year and by trends in that level over time, is less than that appropriate to the financial position and performance which investors and creditors would reasonably expect of a properly managed company holding the Appointment, whose sole business consists of being a water undertaker and having its equity share capital listed on the London Stock Exchange.

13.3 All of the following:

- (1) whether any circumstance (other than a relevant Change of Circumstance) has occurred which has or will have:
  - (a) a substantial adverse effect on the Appointed Business or on its assets, liabilities, financial position, or profits or losses, not being one which would have been avoided by prudent management action taken since the transfer date; or
  - (b) a substantial favourable effect on the Appointed Business, or on its assets, liabilities, financial position, or profits or losses, being one which is (i) fortuitous and (ii) not attributable to prudent management action; and
- (2) if so, what change should be made to the Adjustment factor.

For this purpose:

- (i) what constitutes "prudent management action" shall be assessed by reference to the circumstances which were known or which ought reasonably to have been known to the Appointee at the relevant time;
- (ii) an effect shall not be regarded as a substantial adverse effect or a substantial favourable effect in any case unless, if the questions set out in sub-paragraph 13.2 were to be asked in relation to the circumstance giving rise to it, the answer to that in 13.2(7) (taking the reference in it

to ten per cent as a reference to twenty per cent) would be in the affirmative.

13.4 A Reference Notice given to the Water Services Regulation Authority in respect of sub-paragraph 13.2 shall contain or be accompanied by reasonable details of the Relevant Item in respect of which the Reference Notice is given and, unless the Water Services Regulation Authority otherwise consents, shall be given not later than:

- (1) the fifteenth day of September immediately preceding the first of the Charging Years in respect of which the Appointee wishes the change to the Adjustment Factor to take effect; or
- (2) if later, where the Water Services Regulation Authority has given a notice to the Appointee under paragraph 14.1 in respect of the same Charging Year, within fourteen days from the receipt by the Appointee of that notice.

14 [Changes to the Adjustment Factor initiated by the Water Services Regulation Authority relating to Notified Items and Relevant Changes of Circumstance.]

14.1 In the case of a Notified Item or where any Relevant Change of Circumstance has occurred or is to occur, the Water Services Regulation Authority may, having given notice to the Appointee specifying the Notified Item or, as the case may be, the Relevant Change of Circumstance, of its intention so to do not later than:

- (1) the fifteenth day of September immediately preceding the first of the Charging Years in respect of which it proposes the change to the Adjustment Factor to take effect; or
- (2) if later, where the Appointee has given a Reference Notice to the Water Services Regulation Authority in respect of sub-paragraph 13.2 and falling within sub-paragraph 13.4(1) in respect of the same Charging Year, within fourteen days from the receipt by the Water Services Regulation Authority of that Reference Notice

determine the questions set out in sub-paragraph 13.2 in respect of that Notified Item or, as the case may be, that Relevant Change of Circumstance. A single notice may be given under this sub-paragraph 14.1 in respect of any number of Notified Items and Relevant Changes of Circumstance and sub-paragraph 13.2 shall be construed accordingly.

- 14.2 Where sub-paragraph 13.4(2) or 14.1(2) applies, the questions set out in (5) to (9) inclusive of sub-paragraph 13.2 shall be determined in respect of all Notified Items and Relevant Changes of Circumstance in respect of which the Appointee and the Water Services Regulation Authority have given notice, taken as a whole.
- 14.3 In the case of sub-paragraph 13.3, the Water Services Regulation Authority shall give notice to the Appointee of its intention to determine the questions set out in sub-paragraph 13.3(1)(b) and (2).

Part V. References to the Competition Commission and Modification of this Condition

15 References to the Competition Commission

Where:

- (1) pursuant to paragraph 8 or following a reference under paragraph 10, the Water Services Regulation Authority has not given notice to the Appointee of its determination within one year from the Review Notice Date or, in the case of a reference under paragraph 10, within one year from the date of the relevant Reference Notice;
- (2) following a reference under paragraph 13, the Water Services Regulation Authority has not given notice to the Appointee of its determinations (including any determinations under paragraph 14 which fall to be taken into account in determining the questions the subject of the reference under paragraph 13) within 3 months from the date of the relevant Reference Notice; or

- (3) the Appointee disputes any determination made by the Water Services Regulation Authority under Part III or Part IV of this Condition

the Appointee may, by notice given to the Water Services Regulation Authority within:

- (a) 13 months from the Review Notice Date or, in the case of a reference under paragraph 10, from the date of the relevant Reference Notice (in the cases referred to in sub-paragraph (1));
- (b) 4 months from the date of the relevant Reference Notice (in the case referred to in sub-paragraph (2)); or
- (c) 2 months from the date on which the Water Services Regulation Authority gives notice of its determination to the Appointee (in the case referred to in sub-paragraph (3))

require the Water Services Regulation Authority to refer to the Competition Commission for determination by it:

- (i) in any case referred to in sub-paragraph (1) or (2), the relevant question or questions (including, where relevant, the questions in respect of any Notified Item or Relevant Change of Circumstance the subject of a notice under paragraph 14); or
- (ii) in any case referred to in sub-paragraph (3), the disputed determination.

16 Modification of this Condition following Periodic Reviews and references to the Water Services Regulation Authority or the Competition Commission

- 16.1 Except in the case of a Periodic Review carried out under paragraph 10, this Condition shall be modified by the change (if any) to the Adjustment Factor (which may be a different number for any Charging Year and may be a positive or negative number, or zero) necessary to give effect to any determination made by the Water Services Regulation Authority or the

Competition Commission under, or as the case may be, following a reference under, Part III, Part IV or Part V of this Condition.

- 16.2 Where the Appointee requires the Water Services Regulation Authority to make a reference to the Competition Commission under paragraph 15 in the case referred to in sub-paragraph (3) of that paragraph this Condition shall be modified by the change (if any) to the Adjustment Factor necessary to give effect to the Water Services Regulation Authority's determination but so that sub-paragraph 16.1 shall then apply to the determination made by the Competition Commission following such reference.

Part VI. Provision of Information to the Water Services Regulation Authority

17 **[Not used]**

17.1 The Appointee shall furnish to the Water Services Regulation Authority:

- (1) ...
- (2) not later than 30<sup>th</sup> September immediately following the date of the Reference Notice (in the case of a reference under paragraph 10);
- (3) at the time when it gives the relevant Reference Notice to the Water Services Regulation Authority (in the case of a reference under paragraph 13 falling within sub-paragraph 13.4(1));
- (4) as soon as reasonably practicable and in any event not later than the expiry of one month from the date of the Water Services Regulation Authority's notice to the Appointee under paragraph 14 (in the case of such a notice, including the case of a reference under paragraph 13 falling within sub-paragraph 13.4(2))

such Information as the Appointee reasonably believes is necessary or, as the case may be, as the Water Services Regulation Authority may reasonably require in its said notice, to enable the Water Services Regulation Authority to make its determination. The Appointee shall also furnish to the Water Services Regulation Authority as soon as reasonably practicable such further

Information as the Water Services Regulation Authority may from time to time by notice to the Appointee reasonably require to make its determination.

- 17.2 The Appointee shall also furnish to the Water Services Regulation Authority from time to time when so requested by the Water Services Regulation Authority such Information as the Water Services Regulation Authority may reasonably require to decide whether or not to make determinations under paragraph 14.
- 17.3 Any Information furnished to the Water Services Regulation Authority under this paragraph 17 or under paragraph 8 shall, if the Water Services Regulation Authority so requires to make its determination, be reported on by a person appointed by the Appointee and approved by the Water Services Regulation Authority (such approval not to be unreasonably withheld) ("**the Reporter**").
- 17.4 The Appointee shall enter into a written contract of engagement with the Reporter which shall:
- (1) where such a report is required by the Water Services Regulation Authority under sub-paragraph 17.3, require the Reporter to prepare and furnish to the Water Services Regulation Authority, and separately to the Appointee, a written report addressed jointly to the Water Services Regulation Authority and the Appointee in form and substance such as may be specified by, or consistent with any guidelines specified by, the Water Services Regulation Authority at the time when it requires the report to be furnished, the matters so specified being reasonably appropriate to enable the Water Services Regulation Authority to make its determination (to the extent that the Information in respect of which that report is required to be prepared and furnished is relevant to that determination); and
  - (2) include a term that the Reporter will provide such further explanation or clarification of his report as the Water Services Regulation Authority may reasonably require and such further Information in respect of, or verification of, the matters which are the subject of his report as the Water Services Regulation Authority may reasonably require.

The contract of engagement may also include provisions requiring the Reporter, his employees and agents to keep confidential and not to disclose, except to the Water Services Regulation Authority or as required by law, any information which the Reporter obtains in the course of preparing his report.

17.5 The Appointee shall co-operate fully with the Reporter to enable him to prepare his report, including without limitation, so far as is necessary for that purpose:

- (1) subject to reasonable prior notice to the Appointee, giving to the Reporter access at reasonable hours to any Relevant Plant and to any premises occupied by the Appointee in relation to the Appointed Business; and
- (2) subject to reasonable prior notice to the Appointee, allowing the Reporter at reasonable hours:
  - (a) to inspect and make photocopies of, and take extracts from, any books and records of the Appointee maintained in relation to the Appointed Business;
  - (b) to carry out inspections, measurements and tests on or in relation to any such premises or Relevant Plant; and
  - (c) to take on to such premises or on to or in to any Relevant Plant such other persons and such equipment as may be necessary for the purposes of preparing and completing his report.

17.6 Nothing in sub-paragraph 17.5 shall require the Appointee:

- (1) to do anything which is outside its reasonable control; or
- (2) to do, or to allow the Reporter to do, anything which would materially disrupt the Appointee's business (unless it is essential that that thing be done to enable the Reporter to prepare his report).

17.7 In sub-paragraphs 17.4 and 17.5:

(1) references to the Reporter include references to his employees and agents; and

(2) "**Relevant Plant**" means any plant used by the Appointee for the purpose of carrying out the Regulated Activities including, without limitation, water mains and other pipes and their accessories.

### **Condition C: Infrastructure Charges**

#### 1 Interpretation

In this Condition:

- 1.1 "**Infrastructure Charge**" means a Water Infrastructure Charge or a Sewerage Infrastructure Charge;
- 1.2 "**House**" means any building or part of a building which is occupied as a private dwelling house or which, if unoccupied, is likely to be so occupied and, accordingly, includes a flat;
- 1.3 "**Common Billing Agreement**" means an agreement between the Appointee and any other person under which that person has undertaken to pay, on terms agreed between them, charges for water supply or sewerage services, or both, in respect of two or more Houses which have a common Supply Pipe and which, in any case where that agreement relates to one of those services only, are also subject to a similar agreement for common billing between that person and the undertaker providing the other service;
- 1.4 "**Relevant Multiplier**" means a number (which may be one or more or less than one) calculated in the manner set out in the Appendix to this Condition;
- 1.5 "**Standard Amount**", in relation to any Infrastructure Charge, means the amount of that charge specified in sub-paragraph 2.1.3, as adjusted pursuant to sub-paragraph 2.2 (in respect of any Charging Year starting on or after 1<sup>st</sup> April 1996);

1.6 **"Supply Pipe"** means any part of a service pipe which a water undertaker could not be, or have been required to lay under section 46 of the Water Industry Act 1991; and

1.7 references to a connection are to such a connection as is mentioned in section 146(2)(a) or (b) of the Water Industry Act 1991.

## 2 Level of Infrastructure Charges

2.1 Subject to the following provisions of this Condition, in respect of each Charging Year, the amount of any Infrastructure Charge shall be -

2.1.1 in the case of a House subject to a Common Billing Agreement, the Standard Amount multiplied by the Relevant Multiplier for that house;

2.1.2 in the case of premises which do not consist in a House or Houses and to which water is provided by a Supply Pipe with an internal diameter larger than the standard size for the time being adopted by the Appointee for new connections of Houses, the Standard Amount multiplied by the Relevant Multiplier for those premises; and

2.1.3 in the case of any other premises -

Water Infrastructure Charge £200

Sewerage Infrastructure Charge £200

2.2 In respect of each Charging Year starting on or after 1<sup>st</sup> April 1996 -

2.2.1 the amounts specified in sub-paragraph 2.1.3 shall be adjusted by the percentage of any change in the Retail Prices Index between that published for the month of November in the Prior Year and that published for November 1994; and

2.2.2 sub-paragraph 4.2 of Condition B shall apply to this Condition as if the reference in it to the Charges Limit were a reference to the Standard Amount.

## 3 **[Not Used]**

3.1 Subject to sub-paragraph 3.2, where an amount has been paid or agreed to be paid to the Appointee on account of works which have been allowed for in determining the limits on Infrastructure Charges under the Appointment, that amount shall, to the extent that it is actually paid and is referable to a connection, count towards the level of charge for that connection under paragraph 2.

3.2 Where any such amount referable to a connection is greater than the level of charge for that connection under paragraph 2, nothing in this Condition shall preclude the Appointee from retaining or recovering the greater amount.

**4 [Not Used]**

**5 [Not Used]**

5.1 Subject to sub-paragraph 5.2, where a site is developed or redeveloped (including by means of conversion of a building or buildings on it) the total amount of Water Infrastructure Charges or, as the case may be, Sewerage Infrastructure Charges which may be recovered in respect of Houses and other premises on the site resulting from the development or redevelopment shall not exceed the Standard Amount multiplied by X, where X equals -

- (1) the aggregate of the Relevant Multipliers for all those premises less
- (2) the maximum number of premises with water or, as the case may be, sewerage connections on the site at any time in the period of 5 years before the development or redevelopment began.

5.2 For the purpose of calculating the amount of the limit imposed by this paragraph -

- (a) each premises to which sub-paragraph 2.1.3 applies shall be deemed to have a Relevant Multiplier of 1; and
- (b) where, by virtue of paragraph 3 or 4 of this Condition, the Appointee would be permitted to charge more in respect of any premises resulting from the development or redevelopment than the level otherwise

applying under paragraph 2, the limit shall be increased by the amount of the excess.

**6 [Not Used]**

6.1 Subject to sub-paragraph 6.2, where -

- (a) a person who has received a demand, or undertaken, to pay Infrastructure Charges in respect of 2 or more Houses subject to a Common Billing Agreement fails to pay them, or any part of them, within 14 days of the date of connection; or
- (b) a Common Billing Agreement is terminated otherwise than in accordance with its terms by the person who has undertaken to pay charges under it,

nothing in this Condition shall preclude the Appointee from recovering, whether from that person or from the occupier of each House subject to the agreement, Infrastructure Charges in respect of that House at the Standard Amount.

6.2 Whenever it takes advantage of sub-paragraph 6.1, the Appointee shall give credit for any amount already paid by way of Infrastructure Charges in respect of that House for the connection concerned.

7 Paragraph 2 does not apply to the interest element of any Instalment Amount payable in accordance with Condition D.

**8 [Not Used]**

8.1 Nothing in this Condition precludes the Appointee from charging less in any particular case than the level of Infrastructure Charge applying under paragraph 2.

8.2 Nothing in this Condition restricts the recovery or amount of any expenses or charges recoverable otherwise than under section 146 of the Water Industry Act 1991 or (except if and to the extent that sub-paragraph 3.1 applies to the

amount) restricts the recovery or level of any Infrastructure Charge by reference to any such amount.

9 Notification to Sewerage Undertakers

Where the Appointee makes a connection or connections to premises in respect of water supply services, it shall as soon as reasonably practicable inform any sewerage undertaker which provides services to those premises of the number of premises connected, the date or dates of connection, the address(es) of the premises, the name and address of the person(s) responsible for payment of charges for the supply of water to the premises and (if different) of the person(s) responsible for payment of Infrastructure Charges in respect of the premises and (where appropriate) the Relevant Multiplier(s) for the premises.

10 Arbitration

If, in any case to which a Relevant Multiplier applies, there is any dispute between the Appointee and the person on whom any Infrastructure Charge has been levied about the calculation of the Relevant Multiplier, or the number or type of fittings on which that calculation is based, it may be referred by either party for determination by the Water Services Regulation Authority.

11 Periodic Review of Level of Infrastructure Charges

11.1 Where a Periodic Review is to be carried out under paragraph 7 or 8 of Condition B, the Appointee may, by notice given to the Water Services Regulation Authority in relation to water or sewerage connections or both, refer to the Water Services Regulation Authority, for determination by it, the question whether any (and if so, what) change to the Standard Amount or the manner of calculation of any Relevant Multiplier should be made for the period or periods to which that review relates.

11.2 Where a Periodic Review is to be carried out under paragraph 7 or 8 of Condition B, the Water Services Regulation Authority may, after giving notice

to the Appointee in relation to water or sewerage connections or both, determine the question specified in sub-paragraph 11.1.

11.3 Notice under sub-paragraph 11.1 or 11.2 shall be given not later than 30 days after the Review Notice Date for the Periodic Review concerned.

12 **[Not used]**

13 Information

13.1 The Appointee shall furnish to the Water Services Regulation Authority, at the time when it gives notice to it under sub-paragraph 11.1 or 12.1, such Information as the Appointee reasonably believes is necessary to enable the Water Services Regulation Authority to make its determination. The Appointee shall also furnish to the Water Services Regulation Authority, after receipt by it of notice given under sub-paragraph 11.2 or 12.3 or this sub-paragraph, such further Information, specified in the notice, as the Water Services Regulation Authority may reasonably require to make its determination.

13.2 The Appointee shall also furnish to the Water Services Regulation Authority from time to time, when so requested by it, such Information as it may reasonably require, to decide whether or not to give notice under sub-paragraph 11.2 or 12.3.

13.3 Any Information furnished to the Water Services Regulation Authority under this paragraph shall, if the Water Services Regulation Authority so requires to make its determination, be reported on by a person ("**the Reporter**") appointed by the Appointee and approved by the Water Services Regulation Authority (such approval not to be unreasonably withheld). The provisions of sub-paragraphs 17.4, 17.5(2), 17.6 and 17.7(1) of Condition B shall apply to the engagement and terms of reference of each Reporter appointed pursuant to this Condition as they apply to those of each Reporter appointed pursuant to that Condition, save that the reference in sub-paragraph 17.4(1) to sub-paragraph 17.3 of that Condition shall be taken as a reference to this sub-paragraph.

14 References to the Competition Commission

Where -

- (1) following the giving of notice under sub-paragraph 11.1 or 11.2, the Water Services Regulation Authority has not notified the Appointee of its determination within 1 year from the Review Notice Date; or
- (2) following the giving of notice under sub-paragraph 12.1 or 12.3, the Water Services Regulation Authority has not notified the Appointee of its determination within 1 month from the date on which the notice under that sub-paragraph is given; or
- (3) the Appointee disputes any determination made by the Water Services Regulation Authority under this Condition

the Appointee may, by notice given to the Water Services Regulation Authority within -

- (a) 13 months from the Review Notice Date (in the cases referred to in (1) above); or
- (b) 2 months from the date on which the notice under sub-paragraph 12.1 or 12.3 is given (in the cases referred to in (2) above); or
- (c) 2 months from the date on which the Water Services Regulation Authority gives notice of its determination to the Appointee (in the cases referred to in (3) above)

require the Water Services Regulation Authority to refer to the Competition Commission, for determination by it -

- (i) in any case referred to in (1) or (2) above, the relevant question; or
- (ii) in the case referred to in (3) above, the disputed determination.

15 Modification of this Condition

- 15.1 This Condition shall be modified by the change (if any) to the Standard Amount or the manner of calculation of any Relevant Multiplier, necessary to give effect to any determination made by the Water Services Regulation Authority or the Competition Commission under, or, as the case may be, following a reference under, this Condition.
- 15.2 Where the Appointee requires the Water Services Regulation Authority to make a reference to the Competition Commission under paragraph 14, this Condition shall be modified by the change (if any) to the Standard Amount or the manner of calculation of any Relevant Multiplier, necessary to give effect to the Water Services Regulation Authority's determination, but so that sub-paragraph 15.1 shall then apply to the determination made by the Competition Commission following that reference.
- 15.3 In this paragraph "this Condition" includes the Appendix to it.

#### **APPENDIX: CALCULATION OF RELEVANT MULTIPLIER**

- 1 To calculate the Relevant Multiplier for a House to which sub-paragraph 2.1.1 of Condition C applies:
- 1.1 ascertain in respect of all the Houses subject to the Common Billing Agreement in question (eg all the flats in a block to which such an agreement applies) and all communal facilities shared by all or any of them, the total number of water fittings in all the categories specified in column 1 of the table below;
- 1.2 calculate by reference column 2 of the Table the aggregate loading units attributable to that total number of water fittings (and increase the aggregate, where necessary, to take account of the minimum for domestic appliances);
- 1.3 divide that number of loading units by 24 and divide the resulting figure by the number of Houses subject to the Common Billing Agreement;
- 1.4 the resulting number, will be the Relevant Multiplier.

2 To calculate the Relevant Multiplier for premises to which sub-paragraph 2.1.2 of Condition C applies, ascertain in respect of the premises the total number of water fittings in all the categories specified in column 1 of the Table below; calculate by reference to column 2 of the Table the aggregate loading units attributable to that total number of water fittings; divide the aggregate loading units by 24; and the resulting number will be the Relevant Multiplier, provided that if the resulting number is less than 1, the Relevant Multiplier will be 1.

**TABLE**

**Column 1**

**Column 2**

**Water Fitting (note 1)**

**Loading**

**Units**

WC flushing cistern

2

Wash basin in a House

1.5

Wash basin elsewhere

3

Bath (tap nominal size 3/4 in/20 mm) (note 2)

10

Bath (tap nominal size larger than 3/4 in/20 mm (note 2)

22

Shower

3

Sink (tap nominal size 1/2 in/15 mm)

3

Sink (tap nominal size larger than 1/2 in/15 mm)

5

Spray tap

0.5

Bidet

1.5

Domestic appliance (subject to a minimum of 6 L.U.s per House - notes 3 and 4)

3

Communal or commercial appliance (note 3)

10

Any other water fitting or outlet (including a tap but excluding a urinal or water softener

3

Notes to be read with the Table:

- 1 Reference to any fitting includes reference to any plumbing, outlet, dedicated space or planning or other provision for that fitting;
- 2 "Bath" includes a whirlpool bath and a jacuzzi;
- 3 "Domestic appliance" means an appliance (including a dishwasher, a washing machine and waste disposal unit) in a House and "communal or commercial appliance" means an appliance (including a dishwasher, a washing machine and a waste disposal unit) elsewhere than in a House (including in communal facilities);
- 4 In any calculation under paragraph 1, a minimum of six loading units shall be included, in respect of each House, for domestic appliances (whether or not the House has any such appliances) except, in the case of any House, where neither a washing machine nor a dishwasher can be provided (and there is no plumbing, outlet, dedicated space or planning or other provision for either appliance) in the House;
- 5 In the case of any premises with a sewerage only connection and no water fittings, the Relevant Multiplier will be one.

## **Condition D:Charges Schemes**

1 In this Condition:

**"the Instalment Amount"** means the aggregate amount which would fall to be paid in the relevant year by way of payments of interest and repayments of capital if an amount equal to the Water Infrastructure Charge payable for the relevant connection had been borrowed by the Appointee on terms:

- (1) requiring interest to be paid and capital to be repaid in twelve equal annual instalments; and
- (2) providing for the amount of the interest to be calculated at such rate, and in accordance with such other provision, as may have been determined either by the Appointee with the approval of the Water Services Regulation Authority or, in default of such a determination, by the Water Services Regulation Authority.

2 **[Not used]**

2.1 It shall be the duty of the Appointee to ensure that at all times on and after the relevant date specified in sub-paragraph 2.2 there is in effect a charges scheme in accordance with section 143 of the Water Industry Act 1991 by which:

- (1) it fixes the charges to be paid for supplies of water for domestic purposes except where such charges are determined by or in accordance with such an agreement as is referred to in section 142 of the Water Industry Act 1991; and
- (2) it fixes the charges to be paid for such connections as are described in section 146(2) of the Water Industry Act 1991.

2.2 **[Not used]**

3 For the purposes of paragraph 2 so much of any such charges scheme made by the Appointee under section 31 of the Water Act 1973 as by virtue of paragraph 16(1) of Schedule 26 of the Water Act 1989 has effect on and after

the transfer date as if it were a scheme made under section 143 of the Water Industry Act 1991 by the Appointee shall be treated as a charges scheme in accordance with section 143.

4 Any such charges scheme as is required to be in effect by virtue of subparagraph 2.1(2) shall provide that in the case of a connection to a water supply of a building or part of a building which is occupied as a dwelling house immediately before the connection is made:

- (1) the relevant charges shall be paid in full, within a reasonable period specified by the Appointee after the connection in respect of which those charges are payable is made; or, at the option of the person liable to pay the relevant charges
- (2) an amount equal to the Instalment Amount shall be paid in each of the twelve years following the relevant connection being made, subject only to that person giving such undertakings to that effect as the Appointee may reasonably require.

5 The Appointee shall:

- (1) inform persons who enquire about charges for such connections as are described in section 146(2) of the Water Industry Act 1991 that it is required to have in effect a charges scheme in respect of such charges and of the provisions required to be included in that charges scheme by virtue of paragraph 4;
- (2) make a copy of any such charges scheme as is required to be in effect by virtue of paragraph 2 in its latest form available for inspection at each Relevant Premises;
- (3) send a copy of any such scheme in its latest form free of charge to any person requesting it.

6 Nothing in this Condition shall prevent the Appointee from entering into such an agreement as is referred to in section 142 of the Water Industry Act 1991.

**Condition E: Prohibition on Undue Discrimination and Undue Preference and Information on charges**

- 1 This Condition applies in relation to charges:
- (1) fixed by the Appointee under any such charges scheme as is referred to in section 143 of the Water Industry Act 1991 by which the Appointee fixes the charges to be paid for any water supply services provided by the Appointee in the course of carrying out its functions;
  - (2) for any water supply services provided by the Appointee in the course of carrying out its functions payable under any such agreement as is referred to in section 142 of the Water Industry Act 1991 which are in accordance with standard charges published or fixed by the Appointee;
  - (3) determined by agreement in respect of a supply of water for non-domestic purposes which are in accordance with standard charges published or fixed by the Appointee;
  - (4) for any water supply services provided by the Appointee fixed under any such charges scheme made by the Appointee under section 31 of the Water Act 1973 as by virtue of paragraph 16(1) of Schedule 26 of the Water Act 1989 has effect on and after the transfer date as if it were a charges scheme made under section 143 of the Water Industry Act 1991 by the Appointee;
  - (5) for any water supply services provided by the Appointee in the course of carrying out its functions payable under any such agreement as is referred to in section 142 of the Water Industry Act 1991 which are not in accordance with standard charges published or fixed by the Appointee;
  - (6) determined by agreement in respect of a supply of water for non-domestic purposes which are not in accordance with standard charges published or fixed by the Appointee.

In this paragraph references to standard charges published or fixed by the Appointee are to such charges, whether published or fixed under a charges scheme or otherwise.

- 2 It shall be the duty of the Appointee in fixing or agreeing charges falling within any of sub-paragraphs 1(1) to 1(4) inclusive to ensure that no undue preference is shown to, and that there is no undue discrimination against, any class of customers or potential customers.
- 3 It shall be the duty of the Appointee in fixing or agreeing charges falling within either sub-paragraph 1(5) or 1(6) to ensure that no undue preference is shown to, and that there is no undue discrimination against, any customer or potential customer, but so that nothing in this paragraph shall require the Appointee to have regard to any charges fixed or agreed by it prior to the transfer date.
- 4 The Appointee shall provide to the Water Services Regulation Authority such Information as the Water Services Regulation Authority may reasonably request in order to satisfy itself that the Appointee is complying with this Condition, it being acknowledged that Information with which the Water Services Regulation Authority is furnished from time to time under Condition F may not be sufficient or relevant of itself for this purpose.
- 5 The Appointee shall provide to the Water Services Regulation Authority such Information as the Water Services Regulation Authority may from time to time reasonably request about the nature of any supply or service made or provided under any such agreement as is referred to in sub-paragraphs 1(5) and 1(6) and the terms and conditions on which that supply or service is made or provided.
- 6 This Condition shall not apply:
  - (1) to any such metering trials scheme as was made by the Appointee in accordance with section 4 of the Public Utility Transfers and Water Charges Act 1988 before the transfer date and which:

- (a) was either in force immediately before the transfer date or is due to come into force after the transfer date; and
    - (b) continues in force, in accordance with paragraph 16 of Schedule 26 of the Water Act 1989, as a scheme made by the Appointee under section 143 of the Water Industry Act 1991;
  - (2) to so much of such scheme as is made by the Appointee under section 143 of the Water Industry Act 1991 which is approved under the said section 4 and amends any such scheme as is referred to in subparagraph (1);
  - (3) so as to require the Appointee to contravene any local statutory provision;
  - (4) to any such terms or conditions as are determined by the Water Services Regulation Authority or by the Secretary of State (or by a person appointed by either of them) under section 56 of the Water Industry Act 1991 or so as to require the Appointee to have regard to any such terms or conditions;
  - (5) to any Water Infrastructure Charge the amount of which does not exceed the relevant amount specified in Condition C which applies from time to time for the purposes of Condition C; or
  - (6) to any terms and conditions on which any supply of water in bulk is given by the Appointee to another water undertaker.
- 7 The Appointee shall not be treated as having fixed or agreed charges for the purposes of paragraph 2 or 3 solely by reason that:
- (1) any charges scheme made by the Appointee under section 31 of the Water Act 1973 has effect on and after the transfer date by virtue of paragraph 16(1) of Schedule 26 of the Water Act 1989 as if it were a charges scheme made under section 143 of the Water Industry Act 1991 by the Appointee; or

- (2) any agreement made or entered into by the Appointee prior to the transfer date continues in force after the transfer date.
- 8 Until 31 March 2015 (or such earlier date as the Water Services Regulation Authority may agree) without prejudice to the generality of paragraphs 2 and 3, the Appointee shall ensure that charges which it makes to customers in that part of its Area which immediately prior to 1 April 2013 was served by Cambridge Water will be no higher than they would have been if that company's Appointment had not been terminated.
- 9 Until 31 March 2015 (or such earlier date as the Water Services Regulation Authority may agree) without prejudice to the generality of paragraphs 2 and 3, any difference between the charges payable by customers of the Appointee in the South Staffordshire Area and the Cambridge Area shall not amount to a breach of either paragraph 2 or paragraph 3.

## **Condition F: Accounts and accounting information**

### **1 [Not used]**

#### **1.1 Introduction**

The purposes of this Condition are to ensure that:

- (1) The financial affairs of the Appointed Business can be assessed and reported on separately from other businesses and activities of the Appointee, as if its sole business consisted of being a water undertaker having its equity share capital listed on the London Stock Exchange;
- (2) information on revenues, costs, assets and liabilities attributable to specified activities of the Appointed Business can be provided and reported on;
- (3) transactions between the Appointed Business and any other business or activity of the Appointee or any Associated Company can be assessed and reported on;
- (4) there is no cross-subsidy between the Appointed Business and any other business of the Appointee or between the Appointed Business and any Associated Company;
- (4A) The transfer of assets (including the provision of financial support) to Associated Companies does not adversely affect the Appointee's ability to carry out its functions as a water undertaker or to finance those activities;
- (5) the Water Services Regulation Authority is furnished with regular accounting and other information to enable it to compare the financial position and performance (including, without limitation, costs) of the Appointed Business and of so much of the respective businesses and activities of all other undertakers holding appointments under Chapter I of Part II of the Water Industry Act 1991 as consists of the carrying out of the Regulated Activities; and

- (6) the Appointee has at its disposal sufficient financial and managerial resources to carry out the Regulated Activities (including the investment programme necessary to fulfil its obligation under the Appointment(s)).

## 2 Interpretation and Construction

### 2.1 In this Condition and for the purposes of this Condition:

references to "**the Appointed Business**" shall be construed as if the Appointed Business included the management and holding by the Appointee of any protected land.

"**infrastructure assets**" means

- (1) Network Assets, as defined in paragraph 1 of Condition L; and
- (2) all of the following:
  - (a) valves and hydrants forming part of the water and trunk main systems;
  - (b) impounding and pumped raw water storage reservoirs;
  - (c) dams;
  - (d) sludge pipe lines; and
  - (e) outfall pipes and other pipes for the conveyance of effluent from any sewage disposal works of the Appointee which discharge directly into the sea or coastal waters;

"**infrastructure renewals expenditure**" means expenditure on maintaining or restoring the original operating capability, qualitative performance and condition of infrastructure assets, other than expenditure which is capitalised and routine day to day maintenance expenditure which is charged as an operating cost to the profit and loss account;

"**Principal Services**" means

- (1) water supply; and

(2) sewerage services

and references to a Principal Service are to either and each of water supply and sewerage services;

"**sewerage services**" includes sewage treatment and disposal and reception, treatment and disposal of trade effluent.

2.2 Except where otherwise expressly provided, references in this Condition to costs or liabilities shall be construed as including taxation, and references to any profit and loss account shall be construed accordingly.

2.3 For the purposes of this Condition:

(1) all forms of property shall be assets, whether situated in the United Kingdom or not, including:

(a) options, debts and incorporeal property generally; and

(b) any currency including sterling;

(2) references to the supply of a service include references to anything (including the services of any employee) being made available; and

(3) references to a transfer of an asset or liability include references to a part transfer of an asset or liability and, without limitation, there is a part transfer of an asset where an interest or right in or over the asset is created.

### 3 Accounting Records

The Appointee shall keep proper accounting records in a form which enables the revenues, costs, assets and liabilities of, or reasonably attributable to, the respective businesses and activities of the Appointee described in this Condition and the other matters mentioned in this Condition to be separately identified, having regard to the terms of any guidelines notified from time to time by the Water Services Regulation Authority to the Appointee under paragraph 5, 6, 7, or 8.

#### 4 Accounting Statements

4.1 The Appointee shall prepare on a consistent basis in respect of each financial year ending after the transfer date accounting statements which shall comprise, and show separately in respect of each of:

- (1) the Appointed Business;
- (2) on an aggregated basis, all businesses and activities of the Appointee other than the Appointed Business; and
- (3) on an aggregated basis, all businesses and activities of the Appointee including the Appointed Business

a profit and loss account, a statement of assets and liabilities and a statement of source and application of funds, together with notes thereto, setting out the revenues, costs (including depreciation, where charged), assets and liabilities thereof, or reasonably attributable thereto.

4.2 Accounting statements prepared under sub-paragraph 4.1 shall:

- (1) so far as reasonably practicable having regard to the purposes of this Condition, have the same content as the annual accounts of the Appointee prepared under the Companies Act 2006 and be prepared in accordance with the formats and the accounting policies and principles which apply to those accounts; and
- (2) state the principal accounting policies applied.

#### 5 Segmental Information

5.1 Accounting statements prepared under paragraph 4 shall show or disclose separately:

- (1) an analysis of total operating costs (excluding interest and taxation) of the Appointed Business showing separately for each Principal Service:
  - (a) manpower costs;
  - (b) other costs of employment;

- (c) power;
- (d) local authority rates;
- (e) water charges (including abstraction charges and amounts payable for taking supplies of water in bulk);
- (f) local authority sewerage agencies;
- (g) materials and consumables;
- (h) hired and contracted services;
- (i) charges for bad and doubtful debts;
- (j) depreciation and amortisation (where charged);
- (k) intangible assets written off;
- (l) infrastructure renewals expenditure;
- (m) exceptional items; and
- (n) on an aggregated basis, all other operating costs.

The analysis shall include the details reasonably necessary to reconcile the operating costs shown in it with the total operating costs (excluding interest and taxation) of the Appointee shown in the accounting statements prepared under paragraph 4 in respect of the same period;

- (2) an analysis of total turnover of the Appointed Business showing separately turnover attributable to:
  - (a) water supply and, separately on an aggregated basis, sewerage and sewage treatment and disposal (excluding reception, treatment and disposal of trade effluent), distinguishing in each case between the provision of those services on a measured and unmeasured basis respectively;
  - (b) on an aggregated basis, reception, treatment and disposal of trade effluent;
  - (c) grants; and
  - (d) on an aggregated basis, all other sources;

- (3) an analysis of total tangible fixed assets attributable to the Appointed Business showing separately:
- (a) for each of the items included in the annual accounts of the Appointee prepared under the Companies Act 2006 required to be disclosed under Section B of Part I of Schedule 1 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008; or
  - (b) for each of the items included in such other analysis of tangible fixed assets by asset type as is disclosed in those annual accounts; and
  - (c) if not separately disclosed in those annual accounts, for infrastructure assets

amounts attributable to each Principal Service, and, as a separate category, on an aggregated basis tangible fixed assets which are not attributable to either Principal Service.

The analysis shall include:

- (i) the details reasonably necessary to reconcile the tangible fixed assets shown in it with the tangible fixed assets shown in the analysis prepared under this sub-paragraph 5.1(3) in respect of the immediately preceding financial year (including details of grants);
- (ii) a statement of any assets which have been re-classified as current assets during the relevant financial year; and
- (iii) to the extent that information is required to be given in respect of any of the items included in the annual accounts of the Appointee prepared under the Companies Act 2006 referred to in this sub-paragraph 5.1(3) by virtue of Part III of Schedule 1 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008, the same information in respect

of those items. In the case of the first analysis prepared under this sub-paragraph 5.1(3) the reconciliation required to be included under (i) above shall be with the analysis prepared by the Water Authority in respect of the financial year ended last before the transfer date; and

- (4) details necessary to reconcile expenditure made or incurred in relation to infrastructure assets with the expenditure made or incurred in relation to Network Assets during the same financial year as shown in the statement required to be delivered to the Water Services Regulation Authority under sub-paragraph 5.3 of Condition L.

5.2 Accounting statements prepared under paragraph 4 shall show separately for each item relating to sewerage services included in the analyses under sub-paragraphs 5.1(1) (operating costs) and 5.1(3) (tangible fixed assets) an analysis between amounts which are attributable to sewerage (including reception of trade effluent) and sewage treatment and disposal (including treatment and disposal of trade effluent).

5.3 The Water Services Regulation Authority may, after consulting with such bodies as are reasonably representative of undertakers holding appointments under Chapter I of Part II of the Water Industry Act 1991 or, if none, the Appointee, from time to time by reasonable notice to the Appointee specify in such guidelines as are reasonable and appropriate for the purpose set out in sub-paragraph 1.1(5), variations of:

- (1) the matters required to be shown or disclosed under sub-paragraph 5.1(1) (but not so as to require separate analyses of matters comprised within any of the items listed in that sub-paragraph); and
- (2) the items in respect of which the analysis of total fixed assets is to be prepared under sub-paragraph 5.1(3)

and thereafter the Appointee shall show or disclose information under sub-paragraph 5.1(1) in respect of those matters or, as the case may be, shall

prepare the analysis under sub-paragraph 5.1(3) in respect of those items, in each case as so varied from time to time.

6 Transactions entered into by the Appointee or the Appointed Business with or for the benefit of Associated Companies or other businesses or activities of the Appointee

- 6.1 The Appointee shall ensure that every transaction between the Appointed Business and any Associated Company (or between the Appointed Business and any other business or activity of the Appointee) is at arm's length, so that neither gives to nor receives from the other any cross-subsidy.
- 6.2 Subject to sub-paragraphs 6.3 to 6.7, accounting statements prepared under paragraph 4 shall disclose in relation to each transaction of a description specified in the first column of the Appendix to this Condition which took place during the financial year to which those statements relate, the company or, as the case may be, the business or activity which was party to the transaction with the Appointee or, as the case may be, the Appointed Business or which otherwise benefited from the transaction and the information in relation to that transaction specified in the second column of that Appendix.
- 6.3 Subject to sub-paragraph 6.4, any amount required to be disclosed in relation to a transaction specified in paragraph 3, 4, 5, or 6 of the Appendix may be aggregated with any amount relating to any other transaction falling within the same paragraph with the same company or other business or activity of the Appointee.
- 6.4 Subject to sub-paragraph 6.7, if the amount to be disclosed under sub-paragraph 6.2 in respect of any single transaction between the Appointee and any Associated Company (or between the Appointed Business and any other business or activity of the Appointee) exceeds 0.5% of the turnover of the Appointed Business, or £100,000, whichever is the greater, then that transaction shall not be aggregated under sub-paragraph 6.3 and the Appointee shall include in any accounting statement prepared under paragraph 4 the information about that transaction which is specified in the

Appendix in relation to a transaction of that kind and which complies with any guidelines issued by the Water Services Regulation Authority for this purpose.

- 6.5 The Appointee shall, when submitting accounting statements prepared under paragraph 4 to the Water Services Regulation Authority, report to it the turnover of any Associated Company with which the Appointed Business has undertaken any transaction of any kind specified in the Appendix.
- 6.6 Nothing in sub-paragraph 6.2 shall require the disclosure of any information if the aggregate of any amounts required to be disclosed' under paragraphs 3, 4, 5 and 6 of the Appendix relating to transactions with the same company or other business or activity of the Appointee is not material to the Appointed Business as a whole. For the avoidance of doubt, if the aggregate of such amounts is material to the Appointed Business as a whole then information shall be disclosed in accordance with this paragraph 6 and the Appendix in relation to each such transaction (subject always to sub-paragraph 6.3). For the purpose of this sub-paragraph 6.6 the question whether an amount is material to the Appointed Business as a whole shall be determined by the Auditors by reference to whichever is the greater of:
- (1) The book value of the asset or liability the subject of, or affected by, the transaction; and
  - (2) The consideration or other charge given, paid or waived.
- 6.7 Nothing in this paragraph 6 or the Appendix shall require the disclosure of information which relates solely to a transaction wholly unconnected with the Appointed Business.
- 6.8 The Appointee shall not, in respect of any Charging Year, make any payments to any Associated Company in respect of the services rendered to the Appointee by that company, which exceeds:
- (i) such prices in respect of the service in question which the Appointee has ascertained by market testing in accordance with such arrangements as the Water Services Regulation Authority may have

approved for the purpose of this paragraph 6 and as set out in Regulatory Accounting Guideline 5 (Transfer Pricing in the Water and Sewerage Industry) or any revision or modification of it for the time being in force, provided that those arrangements have no prejudicial effect upon the proper carrying out of the Appointee's functions or any of them; or

- (ii) if, in the opinion of the Water Services Regulation Authority, the Appointee has demonstrated that market testing as described in (i) above is inappropriate, such proportion as the Water Services Regulation Authority may agree of the Associated Company's costs in providing to the Appointee the service in question (including a reasonable return to the Associated Company).

6.9 Without prejudice to sub-paragraphs 6.1 to 6.7 above, the Appointee shall obtain from any Associated Company referred to in sub-paragraph 6.8, such information about the latter's costs as the Water Services Regulation Authority may reasonably require.

6.10 The Appointee shall not, without the consent of the Water Services Regulation Authority and otherwise than in compliance with its directions concerning the valuation of the asset and the treatment of the consideration in the Appointee's accounts, transfer to any Associated Company to which sub-paragraph 6.8 applies any right or asset to which paragraph 3 of Condition K of these Conditions applies.

6.11 (1) The Appointee shall not, without the consent of the Water Services Regulation Authority

- (i) give any guarantee of any liability of any Associated Company;
- or

- (ii) make to any such company any loan.

(1A) The Appointee shall not, without the consent of the Water Services Regulation Authority,

- (i) enter into an agreement or incur [any] commitment incorporating a cross-default obligation, or
  - (ii) subject to sub-paragraph 6.11(1B) below, continue or permit to remain in effect any agreement or commitment incorporating a cross-default obligation.
- (1B) Where liability under the cross-default obligation would arise only on a default by a subsidiary company of the Appointee, the Appointee may permit that cross-default obligation to remain in effect for the period for which it was fixed by the instrument which created it, so long as its potential liability is not increased and no changes are made in the terms under which that liability might arise.
- (2) For the purposes of this sub-paragraph 6.11
  - (a) "**liability**" includes the creation of any mortgage, charge, pledge, lien or other form of security or encumbrance, the making of any loan and the undertaking of any other indebtedness;
  - (b) "**loan**" includes the transfer or lending, by any means, of any sum of money or of any rights in respect of that sum; and
  - (c) "**cross-default obligation**" means a term of any agreement or arrangement whereby the Appointee's liability to pay or repay any debt or other sum arises or is increased or accelerated by reason of a default of any person other than the Appointee.

6.12 Without prejudice to the application of sub-paragraph 6.2 the Appointee shall declare or pay dividends only in accordance with a dividend policy which, has been approved by the Board of the Appointee and which complies with the following principles:

- (i) the dividends declared or paid will not impair the ability of the Appointee to finance the Appointed Business; and

- (ii) under a system of incentive regulation dividends would be expected to reward efficiency and the management of economic risk.

### Ring-Fencing

6A.1 The Appointee shall at all times act in the manner best calculated to ensure that it has adequate:

- (a) financial resources and facilities;
- (b) management resources; and
- (c) systems of planning and internal control

to enable it to secure the carrying out of the Regulated Activities including the investment programme necessary to fulfil its obligations under the Appointment(s). The above requirements must not be dependent upon the discharge by any other person of any obligation under, or arising from, any agreement or arrangement under which that other person has agreed to provide any services to the Appointee in its capacity as a Relevant Undertaker.

- (1A) For the purposes of sub-paragraph 6A.1(c) above, the Appointee shall ensure that its systems of planning and internal control comply with such guidance as the Water Services Regulation Authority may, from time to time, specify in writing for the purposes of this Condition.
- (1B) Paragraph 10 in this Condition F (Guidelines and references to the Competition Commission) shall apply to the guidance referred to in sub-paragraph 6A.1(1 A) above, as it applies to the guidelines mentioned in sub-paragraph 10.1.

6A.2A The Appointee shall, at the same time as it complies with sub-paragraph 9.3 (submission of Accounting Statements) submit to the Water Services Regulation Authority a Certificate in the following terms:-

- "(1) that in the opinion of the Directors, the Appointee will have available to it sufficient financial resources and facilities to enable it to carry out, for

at least the next 12 months, the Regulated Activities (including the investment programme necessary to fulfil the Appointee's obligations under the Appointment(s));

- (2) that in the opinion of the Directors the Appointee will, for at least the next 12 months, have available to it:
  - (a) management resources; and
  - (b) systems of planning and internal control

which are sufficient to enable it to carry out those functions as required by sub-paragraph 6A.1 above; and

- (3) that in the opinion of the Directors, all contracts entered into with any Associated Company include all necessary provisions and requirements concerning the standard of service to be supplied to the Appointee, to ensure that it is able to meet all its obligations as a water undertaker."

6A.2B (1) The Appointee shall, when it complies with sub-paragraph 6A.2A, submit with each Certificate a statement of the main factors which the Directors have taken into account in giving that Certificate.

- (2) Without prejudice to sub-paragraph 6A.3 below, the Directors shall inform the Water Services Regulation Authority in writing as soon as they become aware of any circumstance which causes them to believe that the most recent Certificate under sub-paragraph 6A.2A could not be repeated in the light of that circumstance.

6A.3 (1) Whenever the Directors become aware that the Appointee or any Group Company is proposing to embark upon any activity which is not one of those described in sub-paragraph 6A.1 and which may be material in relation to the Appointee's ability to finance the carrying out of the functions mentioned in that sub-paragraph, they shall as soon as is practicable, having regard to the purposes of this Condition, notify the Water Services Regulation Authority about that proposal.

(2) Not later than 14 days after the Directors become aware that the Appointee or any Group Company has embarked upon any activity to which sub-paragraph 6A.3(1) applies, they shall submit to the Water Services Regulation Authority a Certificate in the terms specified in sub-paragraph 6A.2A.

6A.4 (1) Each Certificate under sub-paragraphs 6A.2A and 6A.2B or 6A.3 shall be either: -

(a) signed by all the Directors of the Appointee for the time being; or

(b) approved by a duly-convened meeting of the board of Directors of the Appointee for the time being, signed (in confirmation of that approval) by a Director or the Secretary of the Appointee and have attached to it a certified copy of an extract of the minutes of the relevant meeting containing the resolution to approve it.

(2) Each Certificate under sub-paragraph 6A.2A, shall be accompanied by a report prepared by the Appointee's Auditors and addressed to the Water Services Regulation Authority, stating whether they are aware of any inconsistencies between that Certificate and either the statements referred to in sub-paragraph 9.3 or any information which the Auditors obtained in the course of their work as the Appointee's Auditors and, if so, what they are.

6A.5A The Appointee shall, at all times, conduct the Appointed Business as if it were substantially the Appointee's sole business and the Appointee were a separate public limited company. The Appointee should have particular regard to the following in the application of this Condition:-

(a) the composition of the Board of the Appointee should be such that the directors, acting as such, act independently of the parent company or controlling shareholder and exclusively in the interests of the Appointee;

- (b) the Appointee must ensure that each of its Directors must disclose, to the Appointee and the Water Services Regulation Authority, conflicts between duties of the Directors as Directors of the Appointee and other duties;
- (c) where potential conflicts exist between the interests of the Appointee as a water undertaker and those of other Group Companies, the Appointee and its Directors must ensure that, in acting as Directors of the Appointee, they should have regard exclusively to the interests of the Appointee as a water undertaker;
- (d) no Director of the Appointee should vote on any contract or arrangement or any other proposal in which he has an interest by virtue of other directorships. This arrangement should be reflected in the Articles of Association of the Appointee;
- (e) the Appointee should inform the Water Services Regulation Authority without delay when:
  - (i) a new Director is appointed;
  - (ii) the resignation or removal of a Director takes effect; or
  - (iii) any important change in the functions or executive responsibilities of a Director occurs.

The Appointee should notify the Water Services Regulation Authority of the effective date of the change and, in the case of an appointment, whether the position is executive or non-executive and the nature of any specific function or responsibility;

- (f) the dividend policy adopted by the Appointee and the implications of sub-paragraph 6.12 of this Condition F; and
- (g) the Principles of Good Governance and Code of Best Practice (or any successor document having a similar purpose and content) as may

from time to time be incorporated into or approved for the purposes of the Listing Rules of the Financial Services Authority.

6A.5B The Appointee shall, at such times and in such ways as may from time to time be required by the Listing Rules of the Financial Services Authority, publish such information about its annual interim and final results as is by those rules required to be announced by a company whose shares are for the time being listed on the London Stock Exchange.

6A.5C (1) Subject to sub-paragraph 6A.5C(2) below, the Appointee shall maintain the listing of a financial instrument and shall use all reasonable endeavours to retain that financial instrument, whose market price should react to the financial position of the Appointee's Appointed business, on the London Stock Exchange, or, with the prior agreement of the Water Services Regulation Authority, some other exchange of similar standing.

(2) The obligation in sub-paragraph 6A.5C(1) applies unless the Appointee satisfies the Water Services Regulation Authority that market conditions make it inappropriate for the Appointee to maintain such a financial instrument.

6A.6 (1) The Appointee shall use all reasonable endeavours to ensure that it, or any Associated Company as an Issuer of corporate debt on its behalf, maintains at all times an Issuer credit rating which is an Investment grade rating.

(2) In this Condition:

**"Investment grade rating"** means a rating recognised as investment grade by Standard and Poor's Rating Group (or any of its subsidiaries), by Moody's Investors Services Incorporated (or any of its subsidiaries) or by Fitch Ratings Limited, or any other reputable credit rating agency which has comparable standing in the United Kingdom and the United States of America.

**"Issuer credit rating"** means a credit rating assigned to an issuer of corporate debt by Standard and Poor's Rating Group (or any of its subsidiaries), by Moody's Investors Services Incorporated (or any of its subsidiaries) or by Fitch Ratings Limited, or any other reputable credit rating agency which has comparable standing in the United Kingdom and the United States of America.

- 6A.7 (1) Except with the prior consent of the Water Services Regulation Authority, the Appointee shall not transfer, lease, license or lend any sum or sums, asset, right or benefit to any Associated Company of the Appointee if:
- (a) the Appointee does not hold an Issuer credit rating that is an Investment grade rating;
  - (b) where the Appointee holds more than one Issuer credit rating, one or more of the ratings so held is not an Investment grade rating; or
  - (c) any Issuer credit rating held by the Appointee is BBB- by Standard & Poor's Ratings Group or Fitch Ratings Ltd or Baa3 by Moody's Investors Service, Inc. (or such higher Issuer credit rating as may be specified by any of these credit rating agencies from time to time as the lowest Investment grade rating), or is an equivalent rating from another credit rating agency that has been notified to the Appointee by the Water Services Regulation Authority as of comparable standing for the purposes of sub-paragraph 6A.6(1) and:
    - (i) is on review for possible downgrade; or
    - (ii) is on "Credit Watch" or "Rating Watch" with a negative designation;
- or, where neither (i) nor (ii) applies:

- (iii) the rating outlook of the Appointee as specified by any credit rating agency referred to in sub-paragraph (c) above which at the relevant time has assigned the lower or lowest Issuer credit rating that is an Investment grade rating held by the Appointee has been changed from stable or positive to negative.

(2) Where any of sub-paragraphs 6A.7(1)(a), (b) or (c) apply the exceptions are:

- (a) payment properly due for any goods, services or assets in relation to commitments entered into prior to the date on which the circumstances described in sub-paragraph 6A.7(1) arise, and which are provided on an arm's length basis and on normal commercial terms;
- (b) a transfer, lease, licence or loan of any sum or sums, asset, right or benefit on an arm's length basis, on normal commercial terms and where the value of the consideration due in respect of the transaction in question is payable wholly in cash and is paid in full when the transaction is entered into. For the avoidance of doubt this exception does not include a dividend or other distribution out of distributable reserves or a repayment of capital;
- (c) repayment of, or payment of interest on, or payments to an Appointee's financing subsidiary of any fees, costs and other amounts arising under (i) a loan made between the Appointee and the Appointee's financing subsidiary, for so long as the Appointee's financing subsidiary continues to be an Associated Company of the Appointee; or (ii) a loan not prohibited under other provisions of these Conditions and which was contracted prior to the date on which the circumstances in sub-paragraph 6A.7(1) arise, provided that payment in respect of such loan is

not made earlier than the original due date for payment in accordance with its terms; and

(d) payments for group corporation tax relief or for the surrender of Advance Corporation Tax calculated on a basis not exceeding the value of the benefit received, provided that the payments are not made before the date on which the amounts of tax thereby relieved would otherwise have been due.

(3) For the purposes of sub-paragraph 6A.7(2)(c) a financing subsidiary is a subsidiary of the Appointee which is wholly owned by the Appointee and is dedicated solely to raising finance on behalf of, and on lent to the Appointee for the purposes of the Appointee's Regulated Activities and this is reflected in the Articles of Association of the financing subsidiary.

## 7 Basis of allocations and apportionments

7.1 The analyses of operating costs and tangible fixed assets prepared under sub-paragraphs 5.1(1), 5.1(3) and 5.2 shall give a description of the bases of any apportionments or allocations of costs and assets and shall be prepared in accordance with any guidelines which may be issued from time to time by the Water Services Regulation Authority under sub-paragraph 7.3.

7.2 Accounting statements prepared under paragraph 4 and, where relevant, the description of transactions prepared under paragraph 6 shall:

- (1) describe the basis of any apportionment or allocation of revenues, costs, assets and liabilities between the Appointed Business and any other business or activity of the Appointee or between the Appointee and any Associated Company;
- (2) specify the nature of the revenues, costs, assets or liabilities which have been so apportioned or allocated; and

- (3) specify between which business, activity or Associated Company the revenues, costs, assets or liabilities have been so apportioned or allocated.

7.3 The Water Services Regulation Authority may, after consulting such bodies as are reasonably representative of undertakers holding appointments under Chapter I of Part II of the Water Industry Act 1991 or, if none, the Appointee, from time to time by reasonable notice to the Appointee issue such guidelines as are reasonable and appropriate for the purpose set out in sub-paragraph 1.1(5) as to the bases of allocations and apportionments to be adopted in preparing the analyses required under sub-paragraphs 5.1(1), 5.1(3) and 5.2 and in making the allocations and apportionments referred to in sub-paragraph 7.2(1) and thereafter the Appointee shall prepare the analyses and make the allocations and apportionments in accordance with such guidelines as may apply from time to time.

## 8 Current Cost Accounting Statements

8.1 In addition to preparing accounting statements under paragraph 4, the Appointee shall prepare accounting statements on the current cost basis in respect of the same period in accordance with such guidelines as are reasonable and appropriate for the purposes of this Condition as the Water Services Regulation Authority may from time to time, after consulting with such bodies as are reasonably representative of undertakers holding appointments under Chapter I of Part II of the Water Industry Act 1991 or, if none, the Appointee, notify to the Appointee for the purposes of this paragraph 8.

8.2 Guidelines notified by the Water Services Regulation Authority to the Appointee under sub-paragraph 8.1 may:

- (1) specify the form and content of current cost accounting statements, including information on specified types of revenue, cost, asset or liability and information on the revenues, costs, assets and liabilities attributable to specified activities, provided that the guidelines may not require the Appointee to disclose information in such current cost

accounting statements in respect of items in respect of which the Appointee is not required to give information in accounting statements prepared under paragraph 4 from time to time;

- (2) require any reconciliation that may be required with the annual accounts of the Appointee prepared under the Companies Act 2006;
- (3) specify the accounting principles and the bases of valuation to be used in preparing current cost accounting statements; and
- (4) specify the nature of the report by the Auditors required to be given in respect of accounting statements.

## 9 Audit and publication of accounting statements

9.1 The Appointee shall procure the following reports by the Auditors addressed to the Water Services Regulation Authority:

- (1) in respect of each set of accounting statements prepared under this Condition, a report stating whether in their opinion:
  - (a) proper accounting records have been kept by the Appointee as required by paragraph 3; and
  - (b) that set of accounting statements (including the information required to be shown or disclosed under paragraphs 5, 6 and 7) is in agreement with the Appointee's accounting records and complies with the relevant paragraphs (including any relevant guidelines) or, in the case of accounting statements prepared under paragraph 8, complies with the relevant guidelines;
- (2) in respect of each set of accounting statements prepared under paragraph 4, a report stating whether in their opinion that set of accounting statements represents a true and fair view of the revenues, costs, assets and liabilities of, or reasonably attributable to, the businesses and activities mentioned in paragraph 4; and

- (3) in respect of each set of accounting statements prepared under paragraph 8, a statement of opinion as to such other matters as may be specified in the guidelines applying to those accounting statements.
- 9.2 The Appointee shall enter into a contract of appointment with the Auditors which shall include a term that the Auditors will provide such further explanation or clarification of their reports, and such further Information in respect of the matters which are the subject of their reports, as the Water Services Regulation Authority may reasonably require.
- 9.3 The Appointee shall deliver to the Water Services Regulation Authority a copy of each set of accounting statements prepared under this Condition and of each report referred to in sub-paragraph 9.1 as soon as reasonably practicable and in any event not later than 15<sup>th</sup> July following the end of the financial year to which they relate.
- 9.4 Accounting statements prepared under this Condition (excluding the information required to be disclosed under sub-paragraphs 5.1(4) and 5.2, paragraph 6 and sub-paragraphs 7.1 and 7.2 and any information exempted from this sub-paragraph 9.4 from time to time by the Water Services Regulation Authority by notice to the Appointee), together with the Auditors' reports delivered to the Water Services Regulation Authority under sub-paragraph 9.3 in respect of those accounting statements (but excluding any part of any such report to the extent that it relates specifically to any information excluded or exempted from this sub-paragraph 9.4 as aforesaid), shall be published with the annual accounts of the Appointee prepared under the Companies Act 2006 or, at the Appointee's option, with the annual accounts of its holding company prepared under the Companies Act 2006 and copies thereof made available upon request to customers.
- 10 Guidelines and references to the Competition Commission
- 10.1 The Appointee may, by notice given to the Water Services Regulation Authority within 1 month of the date of any such notice or notification as is referred to in paragraphs 5, 6, 7 and 8, require the Water Services Regulation Authority to refer to the Competition Commission for determination by it the

question whether the guidelines the subject of the relevant notice or notification are appropriate and reasonable for the purposes specified in the relevant paragraph.

- 10.2 Where the Appointee requires the Water Services Regulation Authority to make a reference to the Competition Commission under sub-paragraph 10.1 any guidelines issued by the Water Services Regulation Authority which are the subject of that reference shall not apply unless and until the Competition Commission determines that they shall apply.

## APPENDIX

### COLUMN 1

1. Any borrowings or sums lent:  
(a) by or to the Appointed Business to or by any other business or activity of the Appointee; or  
(b) by or to the Appointee to or by any Associated Company.

1A. Any dividend paid to any Associated Company.

2. The giving of any guarantee or any other form of security by the Appointee for or in respect of any obligations of any Associated Company.

3. The transfer of any asset or liability:  
(a) to or by the Appointee by or to an Associated Company; or  
(b) to or by the Appointed Business by or to any other business or activity of the Appointee.

4. The supply of any service by or to the Appointee to or by an Associated Company or by or to the Appointed Business to or by any other business or activity of the Appointee.

5. The omission by the Appointee or any Associated Company to exercise a right as a result of which the value \* of the aggregate assets less the aggregate liabilities ("net assets") of the Appointee is decreased.

6. The waiver by the Appointee or the Appointed Business of any consideration, remuneration or other payment owed to it by any Associated Company or other business or activity of the Appointee.

### COLUMN 2

1. The principal of the amount borrowed or lent, the date on which or the dates between which repayment is to be made and the rate of interest payable.

1A. The basis on which the dividend has been established.

2. The form of the guarantee or other security given, the assets the subject of the security, the amount of the obligation (including where relevant the rate of interest payable) and the date of maturity of the obligation.

3. The asset or liability the subject of the transfer, the amount of the consideration for the transfer and the value attributed to the asset or liability in the accounting records kept by the Appointee.

4. The nature of the service supplied, the terms on which it was supplied and the total charge made for the service.

5. The company omitting to exercise the right and the amount by which the value\* of the net assets of the Appointee is decreased.

6. The amount of the consideration, remuneration or payment waived.

- \* For this purpose the value shall be taken to be the value attributed to the relevant items in the accounting records kept by the Appointee or, in the case of an interest in land or buildings which is affected by the omission, the open market value of that interest or, where under Condition K a certificate as to the best price of that interest has been furnished to the Water Services Regulation Authority, that best price

**Condition G: Code of Practice for Customers and relations with the Consumer Council for Water**

- 1 The Appointee shall within two months after the transfer date prepare and submit to the Water Services Regulation Authority for its approval a Code of Practice:
  - (1) describing the nature of the services to domestic customers provided by the Appointee in the course of the Appointed Business;
  - (2) describing the tariffs charged to domestic customers and such other terms on which those services are provided as the Appointee considers appropriate for inclusion;
  - (3) describing arrangements for the payment of bills by domestic customers including information about payment by instalments and budget plans;
  - (4) describing the procedure for handling complaints from domestic customers established by the Appointee under paragraph 7;
  - (5) setting out information as to the availability of, facilities for, and any amount payable in respect of, the testing of meters and describing the method of proof and effect of a meter reading, liability for charges after ceasing to occupy metered premises and the offences referred to in section 175 of the Water Industry Act 1991 (Offences of tampering with meters etc.);
  - (6) informing customers what they should do in cases of emergency and when making enquiries of the Appointee; and
  - (7) describing the functions of the Consumer Council for Water under the Water Industry Act 1991 and informing customers where they can contact the Consumer Council for Water.
- 2 The Appointee shall, not less frequently than once every three years and if and whenever requested to do so by the Water Services Regulation Authority

but not more frequently than once a year, review the Code and the manner in which it has operated, with a view to determining whether any modification should be made to it or to the manner of its operation.

- 3 In carrying out any review of, or making any substantive revision of, the Code or its operation (whether under paragraph 2 or otherwise) the Appointee shall consult the Consumer Council for Water and shall consider any representations made by it about the Code or the manner in which it is likely to be or, as the case may be, has been operated.
- 4 The Appointee shall submit to the Water Services Regulation Authority for its approval any revision of the Code which, after consulting the Consumer Council for Water if so required under paragraph 3, it wishes to make.
- 5 The Appointee shall make such modifications to the Code and any revision of the Code as the Water Services Regulation Authority, after prior consultation with the Appointee, may specify within two months after the date on which the Code or, as the case may be, the relevant revision is submitted to it under paragraph 1 or, as the case may be, under paragraph 4 as a condition of approving the Code under paragraph 1 or, as the case may be, approving any revision of the Code under paragraph 4, being such modifications as in the Water Services Regulation Authority's opinion are necessary to ensure that the Code complies with the requirements specified in paragraph 1. The Water Services Regulation Authority's approval shall be deemed to have been given if, within the said period of two months, it shall not have specified any such modifications to the Code or, as the case may be, the relevant revision.
- 6 The Appointee shall:
  - (1) send a copy of the Code and each revision of it (in each case in the form approved, or deemed approved, by the Water Services Regulation Authority) to the Consumer Council for Water;
  - (2) draw the attention of domestic customers to the existence of the Code and each substantive revision of it and how they may inspect or obtain a copy of the Code in its latest form;

- (3) make a copy of the Code in its latest form available for inspection at each Relevant Premises;
  - (4) send a copy of the Code in its latest form free of charge to any person requesting it; and
  - (5) provide the information referred to in sub-paragraph (5) of paragraph 1 with every demand for payment of charges which are fixed by reference to metered volume.
- 7 The Appointee shall establish within two months after the transfer date a procedure for handling complaints from customers about the manner in which the Appointee carries out the Appointed Business, which shall include particulars of the training to be given to staff in the handling of complaints.
- 8 The Appointee shall provide special means of identifying officers authorised by the Appointee when they visit customers' premises.
- 9 Subject to paragraph 10, the Appointee shall at the request of the Consumer Council for Water meet the Consumer Council for Water not less frequently than once in each Charging Year and on such other occasions as the Consumer Council for Water may reasonably request.
- 10 The Appointee shall not be required to meet the Consumer Council for Water under this Condition before the expiry of three months after the transfer date.
- 11 At not less than one meeting in each Charging Year held pursuant to paragraph 9 the Appointee shall be represented by at least one director of the Appointee.
- 12 The Appointee may comply with this Condition by preparing and submitting to the Water Services Regulation Authority for its approval either:
  - (a) a Code of Practice in relation to the Appointed Business as a whole; or
  - (b) separate Codes of Practice in relation to the respective parts of the Appointed Business which relate to the South Staffordshire Area and the Cambridge Area.

13. If the Appointee prepares just one Code of Practice, that Code of Practice:
- (a) shall make specific provision for those parts of the Appointed Business which relate to the South Staffordshire Area and the Cambridge Area and that provision may be different in respect of those parts; and
  - (b) paragraphs 3 to 11 of this Condition shall apply separately in relation to each of those parts of the Appointed Business which relate to the South Staffordshire Area and the Cambridge Area, and to the Code of Practice developed in respect of each relevant part of the Appointed Business.

## **Condition H: Code of Practice and Procedure on Debt Recovery**

- 1 Unless it has already done so, the Appointee shall within two months after 1 April 2005 prepare and submit to the Water Services Regulation Authority for its approval a Code of Practice which shall:
  - (1) give guidance to domestic customers who have difficulty in paying their bills;
  - (2) describe the range of procedures which may be adopted by the Appointee to collect outstanding debt from domestic customers; and
  - (3) contain such other information as the Appointee considers appropriate.
- 2 The Appointee shall, not less frequently than once every three years and if and whenever requested to do so by the Water Services Regulation Authority but not more frequently than once a year, review the Code and the manner in which it has been operated, with a view to determining whether any modification should be made to it or to the manner of its operation.
- 3 In carrying out any review of, or making any substantive revision of, the Code or its operation (whether under paragraph 2 or otherwise) the Appointee shall consult the Consumer Council for Water and shall consider any representations made by it about the Code or the manner in which it is likely to be or, as the case may be, has been operated.
- 4 The Appointee shall submit to the Water Services Regulation Authority for its approval any revision of the Code which, after consulting the Consumer Council for Water if so required under paragraph 3, it wishes to make.
- 5 The Appointee shall make such modifications to the Code and any revision of the Code as the Water Services Regulation Authority, after prior consultation with the Appointee, may specify within two months after the date on which the Code or, as the case may be, the relevant revision is submitted to it under paragraph 1 or, as the case may be, paragraph 4 as a condition of approving the Code under paragraph 1 or, as the case may be, approving any revision of the Code under paragraph 4, being such modifications as in the Water

Services Regulation Authority's opinion are necessary to ensure that the Code complies with the requirements specified in sub-paragraph 1(1) and 1(2). The Water Services Regulation Authority's approval shall be deemed to have been given if, within the said period of two months, it shall not have specified any such modifications to the Code or, as the case may be, the relevant revision.

6 The Appointee shall:

- (1) send a copy of the Code and each revision of it (in each case, in the form approved, or deemed approved, by the Water Services Regulation Authority) to the Consumer Council for Water;
- (2) with every demand for payment of charges, draw the attention of domestic customers to the existence of the Code in its latest form and how they may inspect or obtain a copy;
- (3) make a copy of the Code in its latest form available for inspection at each Relevant Premises; and
- (4) send a copy of the Code in its latest form free of charge to any person requesting it.

7. The Appointee may comply with this Condition by preparing and submitting to the Water Services Regulation Authority for its approval either:  
(a) a Code of Practice in relation to the Appointed Business as a whole; or  
(b) separate Codes of Practice in relation to the respective parts of the Appointed Business which relate to the South Staffordshire Area and the Cambridge Area.

8. If the Appointee prepares just one Code of Practice:  
(a) that Code of Practice shall make specific provision for those parts of the Appointed Business which relate to the South Staffordshire Area and the Cambridge Area and that provision may be different in respect of those parts; and  
(b) paragraphs 2 to 6 of this Condition shall apply separately in relation to each of those parts of the Appointed Business which relate to the South Staffordshire Area and the Cambridge Area, and to the Code of Practice developed in respect of each relevant part of the Appointed Business.

### **Condition I: Code of Practice and Procedure on Leakage**

- 1 In this Condition "**supply pipe**" means that part of the service pipe for which the owner is responsible.
- 2 The Appointee shall within two months after the transfer date prepare and submit to the Water Services Regulation Authority for its approval a Code of Practice concerning liability for charges of domestic customers occupying metered premises where there is an unidentified leak on the supply pipe. The Code shall contain information as to the procedures described in paragraph 8 and such other information as the Appointee considers appropriate.
- 3 The Appointee shall, not less frequently than once every three years and if and whenever requested to do so by the Water Services Regulation Authority but not more frequently than once a year, review the Code and the manner in which it has been operated, with a view to determining whether any modification should be made to it or the manner of its operation.
- 4 In carrying out any review of, or making any substantive revision of, the Code or its operation (whether under paragraph 3 or otherwise) the Appointee shall consult the Consumer Council for Water and shall consider any representations made by it about the Code or the manner in which it is likely to be or, as the case may be, has been operated.
- 5 The Appointee shall submit to the Water Services Regulation Authority for its approval any revision of the Code which, after consulting the Consumer Council for Water if so required under paragraph 4, it wishes to make.
- 6 The Appointee shall make such modifications to the Code and any revision of the Code as the Water Services Regulation Authority, after prior consultation with the Appointee, may specify within two months of the date on which the Code or, as the case may be, the relevant revision is submitted to it under paragraph 2 or, as the case may be, under paragraph 5 as a condition of approving the Code under paragraph 2, or, as the case may be, approving any revision of the Code under paragraph 5, being such modifications as in the Water Services Regulation Authority's opinion are necessary to ensure

that the Code contains the information required by paragraph 2. The Water Services Regulation Authority's approval shall be deemed to have been given if, within the said period of two months, it shall not have specified any such modifications to the Code or, as the case may be, the relevant revision.

7 The Appointee shall:

- (1) send a copy of the Code and each revision of it (in each case in the form approved, or deemed approved, by the Water Services Regulation Authority) to the Consumer Council for Water;
- (2) with every demand for payment of charges which are fixed by reference to volume, draw the attention of domestic customers to the existence of the Code in its latest form and how they may inspect or obtain a copy;
- (3) make a copy of the Code in its latest form available for inspection at each Relevant Premises; and
- (4) send a copy of the Code in its latest form free of charge to any person requesting it.

8 **[Not used]**

8.1 The Appointee shall follow the procedures described in this paragraph.

8.2 At the time when a meter is installed, the Appointee shall check the supply pipe between the meter and the customer's tap to establish if there are significant leaks in that pipe. Where as a result of that check a leak is detected in the supply pipe which can be repaired without additional excavation at the time the meter is installed the Appointee shall repair the leak at the Appointee's expense. Where as a result of that check a leak is detected which cannot be repaired without additional excavation, the Appointee shall notify the customer of the leak and ask the customer to repair it at the customer's expense. If the customer then fails to repair the leak, the Appointee shall be entitled to treat any subsequent loss of water as consumption by the customer and to charge the customer accordingly.

- 8.3 Subject to sub-paragraph 8.2, where, after a meter has been installed, a subsequent meter reading indicates that a customer has an abnormally high consumption which could be due to an undetected leak in the supply pipe, then if a leak is subsequently discovered the Appointee shall make an adjustment to the customer's measured charges provided that the customer (or the owner responsible for the supply pipe) carries out the necessary remedial work at the customer's, or as the case may be, the owner's direction and expense within a reasonable period of time specified by the Appointee. The Appointee shall not be required to make such an adjustment in the event of a subsequent leak or where a leak has been caused through the negligence of the customer (or the owner responsible for the supply pipe) or their respective agents or where the customer knew or ought to have known that there was a leak and failed to repair it.
- 8.4 Where the Appointee is required to make an adjustment to the customer's measured charges under sub-paragraph 8.3, the adjustment shall be based upon the customer's past normal consumption. Where there is no record of past consumption, the adjustment shall be based upon typical usage for property of a similar type and the customer's measured charges shall be further adjusted if the customer's subsequent actual usage is significantly different.
- 8.5 Where the Appointee is required to make an adjustment to a customer's measured charges for water supply under this paragraph it shall as soon as reasonably practicable inform any sewerage undertaker who provides sewerage services in relation to the same premises of that fact and of the basis on which the adjustment has been, or will be, made.
9. The Appointee may comply with this Condition by preparing and submitting to the Water Services Regulation Authority for its approval either:
- (a) a Code of Practice in relation to the Appointed Business as a whole; or
  - (b) separate Codes of Practice in relation to the respective parts of the Appointed Business which relate to the South Staffordshire Area and the Cambridge Area.
10. If the Appointee prepares just one Code of Practice, that Code of Practice:

(a) shall make specific provision for those parts of the Appointed Business which relate to the South Staffordshire Area and the Cambridge Area and that provision may be different in respect of those parts; and

(b) paragraphs 3 to 8 to this Condition shall apply separately in relation to each of those parts of the Appointed Business which relate to the South Staffordshire Area and the Cambridge Area, and to the Code of Practice developed in respect of each relevant part of the Appointed Business.

## **Condition J: Levels of Service Information and Service Targets**

### Part I. Levels of Service Information

#### 1 Provision of Information

- 1.1 The Appointee shall in respect of each Charging Year, starting with the Charging Year commencing on 1<sup>st</sup> April 1990, furnish Information to the Water Services Regulation Authority once in each Charging Year in respect of the matters specified in, and otherwise in accordance with, Appendix A to the letter entitled "Levels of Service" dated 11<sup>th</sup> August 1989 from the Secretary of State to the Appointee ("**the Levels of Service Letter**").
- 1.2 Where the Water Services Regulation Authority is satisfied that the provision of Information in respect of the matters specified in Appendix A to the Levels of Service Letter is inadequate to enable it properly to keep the quality of the services provided by the Appointee in the course of the Appointed Business ("**Services**") under review the Water Services Regulation Authority may, subject to prior consultation with the Appointee, by notice to the Appointee vary the matters specified in that Appendix in respect of which Information is to be furnished under sub-paragraph 1.1 in a manner which is reasonable having regard to the Water Services Regulation Authority's duties under sub-sections (1) and (2) of section 27 of the Water Industry Act 1991 and thereafter the Appointee shall in respect of each Charging Year furnish Information to the Water Services Regulation Authority in respect of those matters as so varied. The Water Services Regulation Authority may, subject as aforesaid, make variations from time to time under this sub-paragraph and references in this sub-paragraph to the matters specified in Appendix A to the Levels of Service Letter shall be read and construed as though they were references to the matters specified in Appendix A as varied from time to time.
- 1.3 Where the Water Services Regulation Authority considers it requisite or expedient for the purpose of deciding whether to make an application to the Secretary of State under section 39 of the Water Industry Act 1991 (and, if so, what provisions should be set out in the application) or to require the

Appointee to notify a Service Target under sub-paragraph 3.2 the Appointee shall furnish to the Water Services Regulation Authority:

- (1) such further Information as the Water Services Regulation Authority reasonably requires in respect of the quality of Services; and
- (2) Information in respect of the quality of Services in respect of any reasonable period other than a Charging Year and/or more frequently than once in a Charging Year (but not more frequently than is reasonable) as may be specified by the Water Services Regulation Authority. Such Information, at the Appointee's option, may consist of updating Information previously furnished to the Water Services Regulation Authority under sub-paragraph 1.1, 1.2 or 1.3(1).

1.4 In this Condition references to the quality of Services shall include references to the manner in which the Appointee carries out the Regulated Activities.

## 2 Reports, certificates etc

Information furnished to the Water Services Regulation Authority by the Appointee under paragraph 1 (other than under sub-paragraph 1.3) and, where the Water Services Regulation Authority so requires, Information furnished to it by the Appointee under that sub-paragraph, ("**Levels of Service Information**") shall be accompanied by:

- (1) a report, signed by or on behalf of the Appointee, containing such information as the Water Services Regulation Authority may reasonably specify as to the methods used, and the steps taken, by the Appointee for the purpose of monitoring, assessing and reporting on the matters in respect of which Levels of Service Information has been furnished; and
- (2) a statement, signed by or on behalf of the Appointee, of the reasons why, and the extent to which, (if such be the case) the quality of any Services shall have been such that any standard by reference to which Levels of Service Information has been furnished shall not have been

met. The statement shall include, without limitation, information as to the categories of persons to whom those Services have been so provided or who have been affected by the carrying on of the Appointed Business in that manner and their geographical distribution.

Part II. Service Targets

3 Setting of Service Targets by the Appointee

- 3.1 The Appointee shall once in each Charging Year, starting with the Charging Year commencing on 1<sup>st</sup> April 1990, notify the Water Services Regulation Authority of its intentions as to the quality of such Services as are specified in Appendix B to the Levels of Service Letter in respect of each Charging Year falling within the period beginning at the start of the Charging Year in which the notification falls to be given and ending on the expiry of such number of Charging Years as is specified in that Appendix and otherwise in accordance with the procedures specified in that Appendix.
- 3.2 Where the Water Services Regulation Authority considers it requisite or expedient for the purpose of enabling it properly to keep the quality of Services under review the Water Services Regulation Authority may require the Appointee to notify it of its intentions as to the quality of such other Services in accordance with such requirements as the Water Services Regulation Authority may reasonably specify.
- 3.3 The Appointee's intentions shall be expressed in any notification under sub-paragraph 3.1 or 3.2 as a target (a "**Service Target**") for achievement by such date or over such period or at such times during such period as may be specified in Appendix B to the Levels of Service Letter or, as the case may be, as the Water Services Regulation Authority may have specified when it requires the Appointee to notify it of its intentions under sub-paragraph 3.2 and in respect of the whole or such part of the Area as may be specified in the said Appendix B or, as the case may be, as the Water Services Regulation Authority may have so specified and so as to be capable of verification in accordance with this Condition.

#### 4 Monitoring of Service Targets

The Appointee shall keep under review during each Charging Year the quality of Services as compared with any relevant Service Target notified by it to the Water Services Regulation Authority under paragraph 3 as a target for achievement during that Charging Year or by a date or at a time during that Charging Year or over a period including that Charging Year. For this purpose the Appointee shall take such steps to monitor and assess the quality of Services as may be necessary to enable such comparison to be made and to enable the Appointee to make the report referred to in paragraph 5.

#### 5 Reporting on Service Targets

5.1 The Appointee shall furnish to the Water Services Regulation Authority a written report (a "**Service Target Report**") as to the quality of Services as compared with any relevant Service Target.

5.2 A Service Target Report shall include:

- (1) all such Information as in the opinion of the Appointee is necessary to provide a proper explanation of the Report and of the quality of Services as compared with any relevant Service Target; and
- (2) a statement of the methods used by the Appointee to keep the quality of Services under review in accordance with paragraph 4 and the steps taken by it to monitor and assess the quality of Services in accordance with that paragraph.

5.3 Without prejudice to the generality of sub-paragraph 5.2 a Service Target Report may include a statement of:

- (1) any matters which, in the opinion of the Appointee, will or may result in the Appointee being unable to achieve any Service Target or which have resulted in the Appointee being unable to achieve any Service Target to the extent that it was expressed in the notification to the Water Services Regulation Authority under paragraph 4 to be a target

for achievement during the relevant Charging Year or by a date or at a time during that Charging Year;

- (2) any matters which have made it impossible for the Appointee to ascertain, either at all or with reasonable accuracy, whether or not any Service Target has been, or is likely to be, achieved; and
- (3) any exceptional matters or matters out of the ordinary course and in each case outside the reasonable control of the Appointee which have affected the quality of any Services and which could fairly be said to render or to have rendered the achievement of any Service Target substantially more onerous.

5.4 The Appointee may also specify in a Service Target Report any revision of any Service Target which the Appointee has determined to make having regard to any matters included in that Service Target Report, including, without limitation, such matters as are referred to in sub-paragraph 5.3. Such revision may be, without limitation, as to the date by, or the period over, or the times at, which during any period the relevant Service Target was intended to be achieved, or the part of the Area in respect of which the relevant Service Target was intended to be achieved. Any such revised Service Target is hereinafter referred to as a "**Revised Service Target**". Paragraphs 4, 5 (including this sub-paragraph) and 6 to 13 inclusive shall apply mutatis mutandis to any Revised Service Target.

5.5 The Appointee shall once in each Charging Year furnish a Service Target Report to the Water Services Regulation Authority in respect of that Charging Year, provided that, if the Water Services Regulation Authority considers it requisite or expedient for the purpose of deciding whether to make an application to the Secretary of State under section 39 of the Water Industry Act 1991 (and, if so, what provisions should be set out in the application) the Appointee shall furnish a Service Target Report more frequently (but not more frequently than is reasonable).

## 6 Measures to achieve Service Targets

Where, following receipt by the Water Services Regulation Authority of any Service Target Report, it considers it requisite or expedient for the purpose of deciding whether to make an application to the Secretary of State under section 39 of the Water Industry Act 1991 (and, if so, what provisions should be set out in the application), the Appointee shall furnish to the Water Services Regulation Authority in writing within such reasonable period as the Water Services Regulation Authority may specify such further Information as the Water Services Regulation Authority may reasonably require, including, but not limited to, Information as to:

- (1) the respective measures required to be taken to achieve any Service Target and the respective costs of such measures (and, where more than one measure is available, whether or not subject to the expenditure of money, the Appointee shall give details of the alternative measures); and
- (2) the measures being taken or proposed to be taken to achieve any Service Target.

### Part III. Certification and Verification of Information

- 7 Levels of Service Information and Service Target Reports required to be furnished once in each Charging Year shall be accompanied by a certificate, signed by the Auditors (or by such other person as the Water Services Regulation Authority may approve, such approval not to be unreasonably withheld) stating whether, in their opinion, the relevant Levels of Service Information and Information contained in the relevant Service Target Report has been ascertained by the use of the methods and the taking of the steps which the Appointee has informed the Water Services Regulation Authority it has used and taken and whether, in their opinion, the methods used and the steps taken are adequate for the purpose of ascertaining that Levels of Service Information and the Information contained in that Service Target Report. To the extent that Levels of Service Information and a Service Target Report contain the same Information and are furnished at the same time only one certificate need be provided under this paragraph. Levels of Service

Information and Service Target Reports furnished in accordance with any requirement of the Water Services Regulation Authority under sub-paragraph 1.3 or sub-paragraph 5.5 shall also be accompanied by a like certificate if the Water Services Regulation Authority so requires.

8 The Appointee shall co-operate fully with the Water Services Regulation Authority in any investigation of:

- (1) the accuracy and sufficiency of any Information furnished by the Appointee to the Water Services Regulation Authority under this Condition;
- (2) the methods used and steps taken by the Appointee to ascertain any such Information; and
- (3) whether any Service Target has been achieved

which the Water Services Regulation Authority may carry out for the purpose of deciding whether to make an application to the Secretary of State under section 39 of the Water Industry Act 1991.

9 Such co-operation shall include, without limitation:

- (1) subject to reasonable prior notice to the Appointee, giving to the Water Services Regulation Authority access at reasonable hours to any Relevant Plant and to any premises occupied by the Appointee in relation to carrying out the Regulated Activities; and
- (2) subject to reasonable prior notice to the Appointee, allowing the Water Services Regulation Authority at reasonable hours:
  - (a) to inspect and make photocopies of, and take extracts from, any books and records of the Appointee maintained in relation to the Appointed Business;
  - (b) to carry out inspections, measurements and tests on or in relation to any such premises or Relevant Plant; and

- (c) to take on to or in to any such premises or Relevant Plant such other persons and such equipment as may be necessary for the purpose of such investigation.

10 Nothing in paragraphs 8 and 9 shall require the Appointee:

- (1) to do anything which is outside its reasonable control; or
- (2) to do, or to allow the Water Services Regulation Authority to do, anything which would materially disrupt the Appointee's business (unless it is essential for the purposes of the investigation that that thing be done).

11 The Appointee shall not be liable to the Water Services Regulation Authority for any loss or damage to persons or property which arises out of the Water Services Regulation Authority having such access or doing any such thing as is mentioned in paragraphs 8 and 9 except to the extent that such loss or damage is caused by the Appointee's negligence or wilful default.

12 In paragraphs 9, 10 and 11:

- (1) references to the Water Services Regulation Authority include references to its employees and agents; and
- (2) "**Relevant Plant**" means any plant used by the Appointee for the purpose of the Appointed Business including, without limitation, water mains and other pipes and their accessories.

Part IV. Publication of Information

13 Unless the Water Services Regulation Authority otherwise consents in writing (such consent not to be unreasonably withheld) pursuant to an application to it in that behalf by the Appointee when the relevant Information and Reports are furnished to the Water Services Regulation Authority under this Condition the Appointee shall:

- (1) draw the attention of customers to the existence of Levels of Service Information (excluding any report or statement furnished under

paragraph 2) and Service Target Reports furnished to the Water Services Regulation Authority under this Condition in respect of a Charging Year;

- (2) make a copy of the most recent Levels of Service Information (excluding any report or statement furnished under paragraph 2) and Service Target Report available for inspection at each Relevant Premises; and
- (3) send a copy of the most recent Levels of Service Information (excluding any report or statement furnished under paragraph 2) and Service Target Report to any person requesting it.

14. This Condition J shall apply separately to those parts of the Appointed Business which relate to the South Staffordshire Area and the Cambridge Area. However:

(a) the Appointee may combine provision by it of Information for the purposes described in Part I in respect of each of the parts of the Appointed Business which relate to the South Staffordshire Area and the Cambridge Area or provide information separately in respect of those parts of the Appointed Business; and

(b) in respect of each of those parts of the Appointed Business, the Appointee may notify the Water Services Regulation Authority of different intentions as to Service Targets, may deploy different monitoring procedures and may provide different forms of Service Target Reports, in relation to the quality of its Services, in each case as described in Part II and may establish different Revised Service Targets in accordance with Part II.

## **Condition K: "Ring Fencing", and Disposals of Land**

### 1 Introduction

The purposes of this Condition are to ensure:

- (1) that the Appointee retains sufficient rights and assets for the purpose described in sub-paragraph 3.1; and
- (2) that the best price is received from disposals of land to which this Condition applies so as to secure benefits to customers through the application of the proceeds of such disposals to reduce charges as provided in, and subject to the provisions of, Condition B.

### 2 Interpretation and Construction

2.1 In this Condition and for the purposes of this Condition:

a "**Disposal Certificate**" means a certificate signed by all the directors of the Appointee for the time being or approved by a duly convened meeting of the board of directors of the Appointee for the time being and signed by a director or the secretary of the Appointee confirming that it has been so approved and having attached to it a certified copy of an extract of the minutes of the relevant meeting containing the resolution to approve the certificate;

"**formal tender**" means a tender, acceptance of which creates a binding obligation to purchase;

"**land**" includes any interest or right in or over any land;

"**the Materiality Amount**" for the purpose of any disposal of land

is £1 million

or such greater amount as may from time to time be determined by the Water Services Regulation Authority so as to allow for movements in the Retail Prices Index or as may from time to time otherwise be determined by the Water Services Regulation Authority and approved by the Secretary of State;

"**nominee**" of any person includes any person acting at the direction of, or in concert with, that first-mentioned person or pursuant to any agreement or understanding with that first mentioned person;

a "**proposed disposal**" is any such disposal to which paragraphs 4, 5 or 6 applies;

"**protected land**" and "**disposal**" have the meanings respectively given to them in section 219 of the Water Industry Act 1991 and cognate expressions shall be construed accordingly;

"**Short term Disposal**" means a disposal which consists of the creation of any interest or right in or over protected land which the Appointee has an unconditional right to terminate without penalty at any time and from time to time by not more than thirty months' notice or which expires or otherwise ceases in accordance with its terms within thirty months of the date of its creation without any other interest or right arising on such expiry or cessation;

"**the Transfer Threshold**" for the purpose of any disposal of land to an Associated Company is

£500,000

or such greater amount as may from time to time be determined by the Water Services Regulation Authority so as to allow for movements in the Retail Prices Index or as may from time to time otherwise be determined by the Water Services Regulation Authority and approved by the Secretary of State;

"**value**" includes value of any kind including, without limitation, cash, the value of real or personal property or any interest in such property and the value of any right or benefit, actual or prospective, and the value of any release, in whole or in part, of any obligation or claim.

2.2 For the purpose of calculating "best price":

(1) for the purpose of any valuer's certificate required to be furnished under sub-paragraph 4.6(1)(a)(i), or 5.1(1)(b);

- (a) no reduction shall be made on account of the method, terms and timing of the proposed disposal (if relevant) in respect of which the relevant certificate is required to be furnished, but "best price" shall be calculated on the basis of a disposal of the land in question, the method, terms and timing of which are most likely to secure that the best price is obtained; and
  - (b) where the proposed disposal or, as the case may be, the change of use is related to, or connected or interdependent with, any other proposed disposal, then, subject to sub-paragraph (a), no account shall be taken of that fact; and
- (2) for any purpose under this Condition, "best price" shall include value of any kind as "value" is defined in sub-paragraph 2.1.

### 3 "Ring Fencing"

- 3.1 The Appointee shall at all times ensure, so far as reasonably practicable, that if a special administration order were made in respect of the Appointee the Appointee would have available to it sufficient rights and assets (other than financial resources) to enable the special administrator so to manage the affairs, business and property of the Appointee that the purposes of such order could be achieved, provided that this paragraph shall not require the Appointee to seek to re-negotiate the terms of any contract or obligation which, in accordance with a scheme under Schedule 2 of the Water Industry Act 1991, is transferred to the Appointee.
- 3.2 The Appointee shall publish with its audited accounts for each financial year a statement as to whether the Appointee was in compliance with sub-paragraph 3.1 as at the end of that financial year.
- 3.3 Where any such rights and assets as are mentioned in sub-paragraph 3.1 are provided or made available by any Group Company, the Appointee's obligations under sub-paragraph 3.1 in respect of such rights and assets shall be such as they would be if the words "so far as reasonably practicable" and the proviso were omitted from that sub-paragraph.

3.4 The state, condition and capacity of assets used by the Appointee in the Appointed business are the subject of Conditions J and L and accordingly sub-paragraph 3.1 shall not apply thereto.

4 Disposals of protected land other than disposals by auction or formal tender or to Associated Companies

4.1 Subject to sub-paragraph 4.2, the Appointee shall not make any disposal of any protected land, unless the Appointee shall have complied with the provision of sub-paragraph 4.3.

4.2 Sub-paragraph 4.1 shall not apply:

- (1) to any Short-term Disposal;
- (2) to any disposal of any protected land the value of which, when aggregated with:
  - (a) the value of any other protected land which affects or might affect the value of such protected land or the value of which is or might be affected by such protected land; and
  - (b) to the extent not taken into account under (a), the value of any other protected land the subject of any other disposal which has taken place, is proposed or contemplated and which in the honestly held and reasonable opinion of the Appointee is or might be related to, or connected or interdependent with, the first mentioned disposal

does not exceed the Materiality Amount;

(3) to any such disposal of protected land as is referred to in paragraphs 5 and 6;

- (4) to any disposal of any protected land made in accordance with any such provision as is referred to in section 156 of the Water Industry Act 1991 to the relevant person referred to in that section; or

- (5) to any disposal of any protected land made pursuant to any obligation entered into by the Water Authority prior to the transfer date.

4.3 Subject to sub-paragraph 4.6, the Appointee shall:

- (1) not less than 10 working days prior to the Appointee entering into an obligation (whether unconditional or subject to conditions) which requires or might require it to make the proposed disposal, furnish to the Water Services Regulation Authority a Disposal Certificate which:
  - (a) identifies the protected land the subject of the proposed disposal both by written description and by a plan showing:
    - (i) such protected land; and
    - (ii) all other land contiguous or adjacent to such protected land in or over which the Appointee or, to the best of the knowledge, information and belief of the Appointee, having made due and careful enquiry, any Associated Company has any interest or right and which affects or might affect the value of such protected land or the value of which is or might be affected by such protected land;
  - (b) describes the interest or right in or over the protected land to be disposed of;
  - (c) sets out the terms of the proposed disposal;
  - (d) describes:
    - (i) the consideration to be received or expected to be received; and
    - (ii) separately, any other value which, in the reasonable opinion of the Appointee, is to be received or derived, or expected to be received or derived

in each case from or in connection with the proposed disposal by the Appointee and the timing of the receipt or derivation thereof;

- (e) sets out details as required by (a) to (d) inclusive above in respect of any other disposal of protected land which has taken place, is proposed or contemplated and which in the honestly held and reasonable opinion of the Appointee is or might be related to, or connected with or interdependent with, the proposed disposal or, if none, a statement to that effect;
- (f) confirms that the protected land the subject of the proposed disposal is, or at the time the Appointee is required to give vacant possession will be, no longer required for carrying out the Regulated Activities and will not be so required in the foreseeable future;
- (g) confirms:
  - (i) that the proposed disposal is an arms length transaction;
  - (ii) that the consideration and other value (if any) certified under (d) above to be received or derived, or expected to be received or derived, by the Appointee from or in connection therewith is the total value to be received or derived, or expected to be received or derived, from the proposed disposal, whether by the Appointee or any other person;
  - (iii) except where a certificate is furnished under subparagraph 4.5, that in the honestly held and reasonable opinion of the Appointee, taking account of proper professional advice obtained by the Appointee for that purpose, the consideration certified under (ii) is the best price that could reasonably be obtained for the protected land in question, having regard to all the circumstances at

the time when the certificate is given (including, but without limitation, any reasonable prospect of planning permissions being obtained); and

- (iv) that neither the Appointee nor, to the best of the knowledge, information and belief of the Appointee, having made due and careful enquiry, any Associated Company or any company or business in which the Appointee, or, to the best of the knowledge, information and belief of the Appointee, having made due and careful enquiry, any Associated Company, has a material direct or indirect interest, shall, following the proposed disposal or any other transaction, a continuing interest whether direct or indirect in the protected land the subject of the proposed disposal or in any development involving or connected with that protected land; and

- (2) prior to entering into the relevant obligation, furnish to the Water Services Regulation Authority in writing such further Information regarding the proposed disposal which the Water Services Regulation Authority may reasonably request.

4.4 For the purpose of sub-paragraph 4.3(1)(g)(iv), "interest" includes an entitlement to a share of profits or participation in assets, rights or benefits but excludes any interest which consists solely of an entitlement to receive instalments of consideration which as to amount and timing are certain or variable only by reference to the grant of planning permissions.

4.5 The Appointee may, instead of giving the confirmation required by sub-paragraph 4.3(1)(g)(iii), furnish to the Water Services Regulation Authority a certificate by a valuer appointed by the Appointee ("**the Valuer**") addressed to the Water Services Regulation Authority which states that in the opinion of the Valuer the consideration certified under sub-paragraph 4.3(1)(g)(iii) is the best price that could reasonably be obtained for the protected land in question, having regard to all the circumstances at the time when the certificate is given

(including, but without limitation, any reasonable prospect of planning permissions being obtained).

4.6 Where the Appointee proposes to make any such disposal as is mentioned in sub-paragraph 4.1 and the terms or circumstances of the proposed disposal are such that a Disposal Certificate giving the full confirmation required by (f) or (g) of sub-paragraph 4.3(1) (including, where relevant, such a certificate as is referred to in sub-paragraph 4.5) cannot properly be given, the Appointee shall not enter into any obligation (whether unconditional or subject to conditions) which requires or might require it to make that proposed disposal unless:

(1) in any case where the full confirmation required by (g) of sub-paragraph 4.3(1) (including, where relevant, such a certificate as is referred to in sub-paragraph 4.5) cannot properly be given:

(a) either:

(i) not less than 10 working days prior to the Appointee entering into the relevant obligation, the Appointee has furnished to the Water Services Regulation Authority a Disposal Certificate as required by sub-paragraph 4.3 including such of the matters specified in (g) as can properly be certified and a certificate by a valuer appointed by the Appointee and approved by the Water Services Regulation Authority for the purpose of this sub-paragraph ("**the Valuer**") addressed to the Water Services Regulation Authority which states:

(A) that in the opinion of the Valuer the consideration to be received by the Appointee from the proposed disposal is the best price likely to be obtained from the land in question, having regard to all the circumstances at the time when the certificate is given (including, but without limitation, any

reasonable prospect of planning permissions being obtained); and

(B) the amount of the consideration to be received or expected to be received by the Appointee from the proposed disposal, expressed in cash according to when that consideration is to be, or is expected to be, received; or

(ii) the Water Services Regulation Authority gives its prior written consent to the proposed disposal, such consent not to be unreasonably withheld or delayed; and

(b) prior to entering into the relevant obligation, the Appointee shall have furnished to the Water Services Regulation Authority in writing such further Information regarding the proposed disposal which the Water Services Regulation Authority may reasonably request; and

(2) in any case where the full confirmation required by (f) of sub-paragraph 4.3(1) cannot properly be given, the prior written consent of the Water Services Regulation Authority to the proposed disposal has been obtained, such consent not to be unreasonably withheld or delayed.

## 5 Disposals of protected land by auction or formal tender

5.1 Where the Appointee proposes to dispose by auction or formal tender of any protected land, the value of which (when aggregated with the value of any other such protected land as is described in sub-paragraphs 4.2(2) (a) and (b)), exceeds the Materiality Amount, it shall:

(1) not less than 10 working days prior to the date of the auction or the invitation to tender:

(a) furnish to the Water Services Regulation Authority a Disposal Certificate which:

- (i) contains the information and confirmations required to be contained in a Disposal Certificate furnished under sub-paragraph 4.3(1) under items (a), (b), (c), (e), (f) and (g)(iv) of that sub-paragraph (but so that for this purpose references in the said item (e) to items (a) to (d) inclusive shall be taken to be references to items (a) to (c) inclusive);
    - (ii) sets out the reserve price (if any); and
    - (iii) confirms that the auction will be conducted on the basis that bids will be accepted only on condition that they are not made by an Associated Company or any nominee of any Associated Company or, as the case may be, that, it will be a term of the invitation to tender that it is not capable of acceptance by an Associated Company or any nominee of any Associated Company;
  - (b) furnish to the Water Services Regulation Authority a certificate by a valuer appointed by the Appointee ("**the Valuer**") addressed to the Water Services Regulation Authority which states that in the opinion of the Valuer the disposal of the protected land by auction or, as the case may be, formal tender and the timing of the proposed disposal are respectively the method and timing of disposal most likely to secure that the best price is obtained for the land in question;
- (2) prior to the date of the auction or the invitation to tender, furnish to the Water Services Regulation Authority in writing such further Information regarding the proposed disposal which the Water Services Regulation Authority may reasonably request.
- 5.2 In any case where the full confirmation required by sub-paragraph 5.1(1)(a)(i) or (iii) cannot properly be given, the Appointee shall not proceed with the proposed disposal without the prior written consent of the Water Services Regulation Authority.

6 Disposals of Protected Land to Associated Companies

6.1 Subject to sub-paragraph 6.2, the Appointee shall not make any disposal, other than a Short Term Disposal, of any protected land to any Associated Company, unless it has complied with the provisions of sub-paragraph 6.3.

6.2 Sub-paragraph 6.1 shall not apply:

to any disposal of any protected land the value of which, when aggregated with:

- (a) the value of any other protected land which affects or might affect the value of such protected land or the value of which is or might be affected by such protected land; and
- (b) to the extent not taken into account under (a), the value of any other protected land the subject of any other disposal which has taken place, is proposed or contemplated and which in the honestly held and reasonable opinion of the Appointee is or might be related to, or connected or interdependent with, the first mentioned disposal

does not exceed the Transfer Threshold.

6.3 Subject to sub-paragraph 6.4, the Appointee shall:

- (1) not later than 10 working days (or such other period to be agreed in advance between the Appointee and the Water Services Regulation Authority) prior to the Appointee entering into any obligation (whether unconditional or subject to conditions) which requires or might require it to make that disposal (a "**relevant obligation**"), furnish to the Water Services Regulation Authority:
  - (i) a Disposal Certificate, which contains the information and confirmations required to be contained in a Disposal Certificate

furnished under sub-paragraph 4.3(1), including such of the matters specified in (g) as can properly be certified; and

- (ii) a certificate by a valuer appointed by the Appointee and approved by the Water Services Regulation Authority for the purpose of this sub-paragraph ("**the Valuer**") addressed to the Water Services Regulation Authority which states:
  - (A) that in the opinion of the Valuer the consideration to be received by the Appointee from the proposed disposal is the best price likely to be obtained from a disposal of the land in question to an unconnected third party, having regard to all the circumstances at the time when the certificate is given (including, but without limitation, any reasonable prospect of planning permissions being obtained); and
  - (B) the amount of the consideration to be received or expected to be received by the Appointee from the proposed disposal, expressed in cash according to when that consideration is to be, or is expected to be, received; and
- (2) shall furnish to the Water Services Regulation Authority in writing such further information regarding the proposed disposal which the Water Services Regulation Authority may reasonably request; and
- (3) ensure that the terms on which the proposed disposal is made are in accordance with any terms which may have been specified by the Water Services Regulation Authority, either in relation to disposals of protected land to Associated Companies generally or in relation to the particular proposed disposal, being such terms as the Water Services Regulation Authority considers appropriate to secure that the Appointee receives such share of any value to be derived or expected to be derived by the Associated Company from the land in question as the Water Services Regulation Authority considers appropriate, having

regard to the duty imposed on the Water Services Regulation Authority under section 2(3)(c) of the Water Industry Act 1991.

- 6.4 In any case where the full confirmation required by (f) of sub-paragraph 4.3(1) cannot properly be given, the Appointee shall not enter into a relevant obligation unless the prior written consent of the Water Services Regulation Authority to the proposed disposal has been obtained, such consent not to be unreasonably withheld or delayed.

7 Disclosure of Information to Valuers

The Appointee shall disclose to the Valuer appointed for the purpose of any provision of this Condition all Information which, in the reasonable opinion of the Appointee, has or is likely to have a material bearing on the Valuer's certificate to be given under that provision and such other Information as the Valuer may reasonably require to enable him to give his certificate.

## **Condition L: Underground Asset Management Plans**

### 1 Interpretation and Construction

In this Condition:

**"the Appointment Obligations"** means the Appointee's obligations under the Appointment and for this purpose and for this purpose only the Appointee shall be deemed to be subject to an obligation under the Appointment to achieve any Service Target or Revised Service Target notified to the Water Services Regulation Authority by the Appointee under Condition J;

**"Network Assets"** means

- (1) water mains and trunk mains (other than any pumps, valves and hydrants);
- (2) resource mains and discharge pipes; and
- (3) so much of any service pipe as is vested in the Appointee;

**"Network Expenditure"** means expenditure in relation to any Network Assets (whether, having regard to the respective purposes referred to in sub-paragraph 2.1, such expenditure is to be made or incurred in or in relation to creating, acquiring, renewing, repairing, maintaining or improving any Network Assets or executing works or procuring the execution of works by other persons in relation to any Network Assets or otherwise);

**"the Plan Period"** means such period as the Appointee shall specify, being a period of not less than fifteen years commencing on:

- (1) in the case of the Underground Asset Management Plan required to be furnished under sub-paragraph 2.1, 1<sup>st</sup> April 1990;
- (2) in the case of any revised Underground Asset Management Plan required to be furnished under sub-paragraph 2.4, the date of such revised Underground Asset Management Plan or, in the case of a revised Underground Asset Management Plan prepared for the

purposes of a Periodic Review, the start of the relevant Review Charging Year;

a "**Review Date**" means the first date specified in the relevant paragraphs of Condition B by which the Appointee is required to furnish Information to the Water Services Regulation Authority for the purpose of any Periodic Review.

## 2 Duty to furnish information

2.1 The Appointee shall prepare and furnish to the Secretary of State an underground asset management plan (an "**Underground Asset Management Plan**") showing separately:

- (1) an estimate and other Information in respect of Network Expenditure required to be made or incurred by the Appointee in each year during the Plan Period for the purposes of ensuring:
  - (a) that Network Assets used by the Appointee as at the transfer date (or, in the case of a revised Underground Asset Management Plan, as at the date of that revised Underground Asset Management Plan) are, and will throughout the Plan Period be, maintained in such a state or condition as is necessary for the purposes described in sub-paragraph 2.2 ("**the Relevant Purposes**"), in so far as Network Assets are necessary for, or relevant to, the Relevant Purposes; and
  - (b) that the capacity of the system of water supply comprising solely those Network Assets (but not including any other part of the Appointee's system of water supply) is maintained

and the estimate and other Information shall show expenditure to be capitalised and, separately, expenditure to be expensed; and

- (2) an estimate and other Information in respect of Network Expenditure required to be made or incurred by the Appointee in each year during the Plan Period for the purpose of ensuring that, taking into account the

expenditure to be made or incurred for the purposes referred to in sub-paragraph 2.1(1):

- (a) the Appointee will at all times and from time to time have available to it for use all Network Assets (and in such a state or condition) as are necessary for the Relevant Purposes, in so far as Network Assets are necessary for, or relevant to, the Relevant Purposes; and
- (b) that the capacity of the system of water supply comprising solely those Network Assets (but not including any other part of the Appointee's system of water supply) is and will be such as is necessary for the Relevant Purposes.

2.2 The Relevant Purposes referred to in sub-paragraph 2.1 are:

- (1) to enable the Appointee to carry out the Regulated Activities in respect of the whole of the Area in accordance with the provisions of the Water Industry Act 1991 and of any other enactment or subordinate legislation relating to the Regulated Activities and in accordance with any service objectives which the Appointee has set itself in preparing the Underground Asset Management Plan and to carry out the Regulated Activities in such manner economically and efficiently; and
- (2) to enable the Appointee to perform the Appointment Obligations in respect of the whole of the Area (or, in the case of a Service Target or a Revised Service Target which applies only to part of the Area, then in respect of that part)

but so that, unless the context otherwise requires, references in this Condition to the Relevant Purposes shall be read and construed subject to any assumptions as may be specified by the Appointee in the Underground Asset Management Plan as to the nature and scope of the Regulated Activities or, as the case may be, the Appointment Obligations and as to the effect of any provision of the Water Industry Act 1991 or any other enactment or subordinate legislation relating to the Regulated Activities.

- 2.3 Where the Appointee has specified any such assumptions as are referred to in sub-paragraph 2.2, the Appointee shall also furnish an estimate and other Information as described in sub-paragraphs 2.1(1) and (2) on the basis of such other assumptions as to the matters referred to in sub-paragraph 2.2 as may be specified by the Secretary of State.
- 2.4 The Appointee shall keep the Underground Asset Management Plan prepared under sub-paragraph 2.1 under review and shall prepare a revised Underground Asset Management Plan in respect of the Plan Period from time to time and in any event by each Review Date, to the extent that such revision is necessary having regard to the Relevant Purposes, this Condition and Condition B and shall furnish to the Water Services Regulation Authority any such revised Underground Asset Management Plan. Sub-paragraph 2.3 shall apply to any such revised Underground Asset Management Plan (and so that for this purpose the reference in that sub-paragraph to the Secretary of State shall be taken to be a reference to the Water Services Regulation Authority) and references in this Condition to a revised Underground Asset Management Plan shall include references to any estimate and other Information which the Appointee is required to furnish under sub-paragraph 2.3 in respect of that revised Underground Asset Management Plan.
- 2.5 For the purposes of sub-paragraphs 2.1 and 2.4:
- (1) due allowance shall be made for Network Assets ceasing to be required for the Relevant Purposes during the Plan Period;
  - (2) the Appointee shall include in any Underground Asset Management Plan furnished to the Secretary of State under sub-paragraph 2.1 or, as the case may be, to the Water Services Regulation Authority under sub-paragraph 2.4 a description of any agreement or arrangement under which the Appointee uses Network Assets which are owned by, or used in conjunction with, another water undertaker (including, without limitation, a description of any arrangements, as between the Appointee and the other undertaker, for the repair, renewal, maintenance and improvement of any such Network Assets) and an

estimate and other Information in respect of any expenditure required to be made or incurred by the Appointee during the Plan Period in respect of such Network Assets for the Relevant Purposes; and

- (3) there shall be taken into account any changes in the nature of the Regulated Activities and the Appointment Obligations which the Appointee knows have occurred or will occur or which the Appointee reasonably believes will, or are likely to, occur (including, without limitation, any change in demand for the provision by the Appointee of any services provided by it in the course of carrying out the Regulated Activities).

### 3 Information Systems

3.1 The Appointee shall establish and maintain methods and procedures for the purposes of:

- (1) keeping under review, collecting Information in respect of, and carrying out surveys of, the state, condition, capacity and performance of Network Assets; and
- (2) preparing, keeping under review and revising from time to time the Underground Asset Management Plan for the purposes of:
  - (a) providing Information to the Water Services Regulation Authority in accordance with Condition B to enable it to carry out Periodic Reviews; and
  - (b) providing Information to the Water Services Regulation Authority in accordance with paragraph 17 of Condition B.

3.2 The Appointee shall furnish to the Secretary of State a written description of such methods and procedures. The Appointee shall keep under review and shall revise such methods and procedures from time to time to the extent necessary having regard to the purposes for which such systems and procedures are intended to be used, this Condition and Condition B and shall

furnish to the Water Services Regulation Authority a written description of any revision of such methods and procedures.

#### 4 Reports

4.1 Any revised Underground Asset Management Plan and any revision of the methods and procedures referred to in paragraph 3 (which in the reasonable opinion of the Water Services Regulation Authority is material having regard to the purposes for which the Underground Asset Management Plan and such methods and procedures are intended, to this Condition and to Condition B) shall, if so required by the Water Services Regulation Authority, be reported on by a person appointed by the Appointee and approved by the Water Services Regulation Authority (such approval not to be unreasonably withheld) ("**the Assessor**").

4.2 The Appointee shall enter into a written contract of engagement with the Assessor which shall:

(1) where such a report is required by the Water Services Regulation Authority under sub-paragraph 4.1, require the Assessor to prepare and furnish to the Water Services Regulation Authority, and separately to the Appointee, a written report addressed jointly to the Water Services Regulation Authority and Appointee:

(a) in the case of a revised Underground Asset Management Plan, stating whether, in his opinion, the estimate included in the revised Underground Asset Management Plan has been prepared in accordance with the methods and procedures established and maintained by the Appointee under sub-paragraph 3.1 at the date at which the revised Underground Asset Management Plan has been prepared and if the action to be taken as described in the other Information included in the Underground Asset Management Plan were taken it would be sufficient for the Relevant Purposes, in so far as Network Assets are necessary for, or relevant to, the Relevant Purposes, (both on the basis of any assumptions specified by the Appointee and

on the basis of any assumptions specified by the Water Services Regulation Authority) and, if not, what other action would need to be taken; and

- (b) in the case of a revision of the methods and procedures referred to in paragraph 3, stating whether, in his opinion, the methods and procedures (as so revised) are sufficient for the purposes described in sub-paragraph 3.1 and if not, what changes would need to be made to those methods and procedures so that they were sufficient for those purposes; and
- (2) include a term that the Assessor will provide such further explanation or clarification of his report as the Water Services Regulation Authority may reasonably require and that where, by reason of anything in the Assessor's report, it appears to the Water Services Regulation Authority:
- (a) that the state or condition or capacity of Network Assets is such that they are or may be materially inadequate for the Relevant Purposes, in so far as Network Assets are necessary for, or relevant to, the Relevant Purposes, (either on the basis of the assumptions specified by the Appointee or on the basis of the assumptions specified by the Water Services Regulation Authority, if any); or
  - (b) that the methods and procedures are insufficient for the purposes described in sub-paragraph 3.1 and that as a result information as to the state, condition, capacity or performance of Network Assets is or may be materially inaccurate or incomplete

the Assessor will provide such further Information in respect of, or verification of, the matters which are the subject of his report as the Water Services Regulation Authority may reasonably require.

The contract of engagement may also include provisions requiring the Assessor, his employees and agents to keep confidential and not to disclose,

except to the Water Services Regulation Authority or as required by law, any Information which the Assessor obtains in the course of preparing his report.

4.3 The Appointee shall co-operate fully with the Assessor to enable him to prepare his report, including without limitation, so far as is necessary for that purpose:

- (1) subject to reasonable prior notice to the Appointee, giving to the Assessor access at reasonable hours to any Network Assets used by the Appointee and to any premises occupied by the Appointee in relation to the carrying out of the Regulated Activities; and
- (2) subject to reasonable prior notice to the Appointee, allowing the Assessor at reasonable hours:
  - (a) to inspect and make photocopies of, and take extracts from, any books and records of the Appointee maintained in relation to the carrying out of the Regulated Activities;
  - (b) to carry out inspections, measurements and tests on or in relation to any such premises or Network Assets; and
  - (c) to take on to such premises or on to or in to any Network Assets such other persons and such equipment as may be necessary for the purposes of preparing and completing his report.

4.4 Nothing in sub-paragraph 4.3 shall require the Appointee:

- (1) to do anything which is outside its reasonable control; or
- (2) to do, or to allow the Assessor to do, anything which would materially disrupt the Appointee's business (unless it is essential that that thing be done to enable the Assessor to prepare his report).

4.5 In sub-paragraphs 4.3 and 4.4 references to the Assessor include references to his employees and agents.

## 5 General

- 5.1 The Underground Asset Management Plan and the written description of the Appointee's relevant methods and procedures required to be furnished to the Secretary of State by the Appointee under sub-paragraphs 2.1 and 3.2 shall be so furnished not later than 31<sup>st</sup> January 1990 and if accepted by him shall be deemed to satisfy the obligations of the Appointee under those sub-paragraphs (insofar as sub-paragraph 3.2 requires the Appointee to furnish a written description of the methods and procedures established by it).
- 5.2 Any other Information required to be furnished by the Appointee to the Water Services Regulation Authority under this Condition shall be furnished within three months of the revision which gives rise to the requirement to furnish Information.
- 5.3 The Appointee shall deliver to the Water Services Regulation Authority, at the same time as it delivers to it accounting statements in respect of a financial year prepared under paragraph 4 of Condition F, a statement of the expenditure made or incurred in relation to Network Assets during that financial year, distinguishing between amounts which have been expensed and amounts which have been capitalised, together with the details necessary to explain any difference between that expenditure and the expenditure which the Appointee had informed the Secretary of State or, as the case may be, the Water Services Regulation Authority under this Condition it intended to make or incur in relation to Network Assets during that financial year.
- 6 This Condition shall apply separately in relation to those parts of the Appointed Business which relate to the South Staffordshire Area and the Cambridge Area. However:
- (a) the Appointee may furnish to the Water Services Regulation Authority a single Underground Asset Management Plan; or
  - (b) separate Underground Asset Management Plans in respect of those parts of the Appointed Business which relate respectively to the South Staffordshire Area and the Cambridge Area.

- 7 If the Appointee furnishes a single Underground Asset Management Plan, that plan shall make separate provision in respect of each of the South Staffordshire Area and the Cambridge Area and such provision may be different in each case.
- 8 If the Appointee furnishes two Underground Asset Management Plans:
  - (a) those underground asset management plans may be different; and
  - (b) the provisions of paragraphs 1-5 of this Condition shall apply separately in relation to each of them.

## **Condition M: Provision of Information to the Water Services Regulation**

### **Authority**

- 1 Subject to paragraphs 3, 4 and 5 the Appointee shall furnish the Water Services Regulation Authority with such Information as the Water Services Regulation Authority may reasonably require for the purpose of carrying out any of its functions under the Water Industry Act 1991.
- 2 Information required to be furnished under this Condition shall be furnished in such form and manner and at such times and be accompanied or supplemented by such explanations as the Water Services Regulation Authority may reasonably require.
- 3 This Condition shall not require the Appointee to furnish the Water Services Regulation Authority with Information in respect of any function of the Water Services Regulation Authority under sections 14, 27 and 201 of the Water Industry Act 1991 but the Appointee shall, if requested by the Water Services Regulation Authority, give reasoned comments on the accuracy and text of any information or advice which the Water Services Regulation Authority proposes to publish pursuant to section 201 of the Water Industry Act 1991 and, subject always to section 206 of the Water Industry Act 1991, nothing in this paragraph shall prevent the Water Services Regulation Authority from using or disclosing any Information with which it has been furnished under this Condition or any other Condition of this Appointment for the purpose of carrying out its functions under the Water Industry Act 1991 (including, without prejudice to the generality, under sections 14, 27 and 201 of the Water Industry Act 1991).
- 4 Neither this Condition nor any other Condition of this Appointment shall require the Appointee to furnish any Information for any such purpose as is referred to in section 203 of the Water Industry Act 1991 which it could not be compelled to produce or furnish under that section.
- 5 Neither this Condition nor any other Condition of this Appointment shall require the Appointee to furnish any Information which it would be entitled to

refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court.

- 6 Where, under any other Condition of this Appointment, the Appointee is or can be required to furnish Information to the Water Services Regulation Authority there shall be a presumption that the furnishing of that Information in accordance with that Condition is sufficient for the relevant purposes of that Condition but this presumption shall be rebutted, and shall not limit the right of the Water Services Regulation Authority to call for further Information under paragraph 1, if it states in writing that in its opinion such Information is or is likely to be necessary for the purpose of carrying out any of its functions under the Water Industry Act 1991.
7. Subject to the foregoing paragraphs of this Condition, the information which may be required to be furnished under this Condition may, to the extent that no other provision of this Appointment entitles the Water Services Regulation Authority to require its provision, include information concerning demand for the Appointee's services and the resources it has available to it to make water supplies, in particular where the situation regarding resources is significantly different in the South Staffordshire Area and the Cambridge Area.

## **Condition N:Fees**

### 1 Interpretation and Construction

In this Condition a "**Periodic Review Year**" means the Charging Year starting on 1<sup>st</sup> April immediately preceding the start of a Review Charging Year.

### 2 Fees

The Appointee shall render the following payments to the Secretary of State at the times stated:

- (1) spent;
- (2) on 1<sup>st</sup> April 1990 and at the start of each subsequent Charging Year an amount equal to the costs estimated by the Water Services Regulation Authority (in consultation with the Competition Commission) as having been incurred in the preceding Charging Year by the Competition Commission following:
  - (a) references under section 14 of the Water Industry Act 1991 which mention the Appointments (or either of them) only; and
  - (b) references under Condition B or Condition C;
- (3) on 1<sup>st</sup> April 1990 and at the start of each subsequent Charging Year an amount, which shall represent a fair proportion, to be determined each year by the Water Services Regulation Authority according to a method which has been disclosed in writing to the Appointee, of the costs estimated by the Water Services Regulation Authority (in consultation with the Competition Commission) as having been incurred in the preceding Charging Year by the Competition Commission following any reference under section section 14 of the Water Industry Act 1991 which mentions both the Appointments (or either of them) and also any other appointment held under Chapter I of Part II of the Water Industry Act 1991;

- (4) Within thirty days of the date on which the Water Services Regulation Authority notifies the Appointee of the amount payable under this sub-paragraph, an amount equal to the costs determined by the Water Services Regulation Authority as having been or likely to be incurred by it in respect of any reference by the Appointee under paragraph 13 of Condition B and any determination by the Water Services Regulation Authority under paragraph 14 of Condition B made in the Charging Year in which the Water Services Regulation Authority's notification for the purposes of this sub-paragraph is given;
- (5) on 1<sup>st</sup> April 1990 and at the start of each subsequent Charging Year a renewal fee, which shall represent a fair proportion, to be determined each year by the Water Services Regulation Authority according to a method which has been disclosed in writing to the Appointee, of the costs estimated by the Water Services Regulation Authority as being likely to be incurred in that Charging Year by it in the regulation and enforcement of appointments held under Chapter I of Part II of the Water Industry Act 1991 (including the Appointments) and in the carrying out of its other functions under the Water Industry Act 1991, including payments made by it under schedule 4 of the Water Industry Act 1991;
- (6) on 1<sup>st</sup> April of the first Charging Year after the announcement by the Water Services Regulation Authority of its intention to carry out a Periodic Review, and at the start of each Charging Year up to but not including the Periodic Review Year, an additional fee, which shall represent a fair proportion, to be determined each year by the Water Services Regulation Authority according to a method which has been disclosed in writing to the Appointee, of additional costs estimated by the Water Services Regulation Authority as being likely to be incurred in that Charging Year by it in the preparation for or the carrying out of a Periodic Review, over and above the costs estimated by the Water Services Regulation Authority as being likely to be incurred in that Charging Year under paragraph 2(5) above;

(7) where the Water Services Regulation Authority so determines, on 1<sup>st</sup> January in any year, a special fee, which shall represent a fair proportion, to be determined each year by the Water Services Regulation Authority according to a method which has been disclosed in writing to the Appointee, of the amount, if any, by which the aggregate of the costs estimated by the Water Services Regulation Authority to have been already incurred in that Charging Year and to be incurred in the remainder of that Charging Year by the Water Services Regulation Authority in the regulation and enforcement of appointments held under Chapter I of Part II of the Water Industry Act 1991 (including the Appointments) and in the carrying out of his other functions under the Water Industry Act 1991, including payments made by it under Schedule 4 of the Water Industry Act 1991, exceeds the aggregate of:

- (a) all renewal and additional fees payable at the start of that Charging Year under the Appointments and all other appointments held under the said Chapter I; and
- (b) all amounts (if any) payable in that Charging Year under subparagraph 2(4) and the equivalent provisions in other appointments held under the said Chapter I in respect of references and determinations of the kind described in subparagraph 2(4);

subject to its apportioning the special fee, according to the nature of the costs intended to be covered by it, between the renewal fee, the additional fee and the amounts referred to in paragraph (b);

(8) within 30 days of the date on which the Water Services Regulation Authority notifies the Appointee of the amount payable under this subparagraph, the amount derived from the following formula:

$$I = M \times \frac{t}{T}$$

Where

I is the amount payable under this sub-paragraph;

M is the expenses, attributed by the Water Services Regulation Authority to the Charging Year in which the notification is given, of the Water Services Regulation Authority, the Secretary of State and the National Assembly for Wales in relation to the establishment of the Consumer Council for Water;

t is equal to the turnover of the Appointed Business as shown in the accounting statements prepared by the Appointee under Paragraph 4 of Condition F for the financial year ending twelve months before the start of the Charging Year in which the payment under this sub-paragraph is payable;

T is equal to the aggregate of the turnover of the Appointed Business of all of the companies holding an Appointment under Chapter 1 of Part 2 of the Water Industry Act 1991, as shown in their accounting statements prepared under Paragraph 4 of Condition F for the financial year ending twelve months before the start of the Charging Year in which the payment under this paragraph is payable; and

- (9) within 30 days of the date on which the Water Services Regulation Authority notifies the Appointee of the amount payable under this sub-paragraph, as derived from the following formula:

$$J = G \times \frac{t}{T}$$

Where

J is the amount payable under this sub-paragraph

G is:

- (a) for that part of the current Charging Year commencing on 1 October 2005, the sum of £2.9 million;

- (b) for the following Charging Year, an amount to be specified by the Secretary of State for this purpose (the "Base Amount"); and
- (c) for each Charging Year following that one, the Base Amount, increased by the percentage increase in the Retail Price Index between that published for November 2005 and that published for November in the Prior Year;

t is equal to the turnover of the Appointed Business as shown in the accounting statements prepared by the Appointee under paragraph 4 of Condition F for the financial year ending 12 months before the start of the Charging Year in which the payment under this sub-paragraph is payable;

T is equal to the aggregate of the turnover of the Appointed Business of all of the companies holding an Appointment under Chapter I of Part II of the Water Industry Act 1991 as shown in their accounting statements prepared under paragraph 4 of Condition F for the financial year ending 12 months before the start of the Charging Year in which the payment under this sub-paragraph is payable

PROVIDED THAT if, in respect of any Charging Year to which sub-paragraph (c) above applies, the Secretary of State issues to the Water Services Regulation Authority any direction or directions under section 37(8) of the Water Act 2003, which requires or require it to recover under this Condition any amount or amounts greater than that produced by the calculation in sub-paragraph (c) above, the amount of that excess shall also be recoverable under this sub-paragraph (9).

### 3 Limits on renewal fee, special fee and additional fee applied to Ofwat

- 3.1 The aggregate of the renewal fee payable in respect of any Charging year starting on or after 1 April 2000 (other than a Periodic Review Year) and part of any special fee apportioned to the renewal fee payable in the same Charging Year shall not exceed X, where X shall be calculated in any year by the equation:

$$X = S \times \frac{t}{T}$$

Where the figures in the equation are defined as follows:

"S" is equal to the figure £11.9M, increased by the percentage increase in Retail Prices Index between that published for the month of November 1998 and that published for the month of November immediately preceding the start of the Charging Year in which that renewal fee and special fee are payable;

"t" is equal to the turnover of the Appointed Business as shown in the accounting statements prepared by the Appointee under paragraph 4 of Condition F for the financial year ending twelve months before the start of the Charging Year in which that renewal fee and special fee are payable;

"T" is equal to the aggregate of the turnover of the Appointed Business of all of the Appointees as shown in their accounting statements prepared under Paragraph 4 of Condition F for the financial year ending twelve months before that start of the Charging Year in which that renewal fee and special fee are payable.

3.2 The aggregate of the renewal fee and any special fee payable in any Periodic Review Year and of the additional fees payable under paragraph 2(6), in the years immediately preceding that Periodic Review Year, shall not exceed X derived from sub-paragraph 3.1 plus a figure of 0.1, calculated as the sum of the percentages which each such fee represents of the turnover of the Appointed Business, as shown in the Accounting Statements prepared by the Appointee under paragraph 4 of Condition F, as an average over the five years concluding with the previous Periodic Review Year.

3.3 Where:

- (1) a Review Notice has been given under paragraph 7 of Condition B;
- (2) a Periodic Review falls to be carried out under paragraph 8 of Condition B; or
- (3) a Reference Notice has been given under paragraph 9 of Condition B

the Water Services Regulation Authority may, by notice to the Secretary of State, refer to the Secretary of State for determination by him not later than twelve months after the date which is the Review Notice Date for the purpose of the relevant Periodic Review, the question whether the limits on the fees specified in sub-paragraph 3.1 and 3.2 payable in respect of any Charging Year starting on or after 1<sup>st</sup> April 2000 should be changed (and if so what change should be made to that limit).

3.4 This Condition shall be modified by the change or changes (if any) to the said limits necessary to give effect to any determination made by the Secretary of State following a reference under sub-paragraph 3.3.

4 **[Not used]**

5 For the purposes of this Condition, the turnover of the Appointed Business in relation to any period prior to [insert date of variation] shall include the equivalent turnover of the Appointed Business of Cambridge Water as shown in the Accounting Statements prepared by it under paragraph 4 of Condition F of its appointment as a water undertaker.

**Condition O: Circumstances in which a replacement appointment may be made**

For the purposes of paragraph (c) of Section 7(4) of the Water Industry Act 1991, the only circumstances in which an appointment or variation may be made, in relation to the area for which the Appointee holds the Appointment as water undertaker or, as the case may be, sewerage undertaker under this instrument, are where the Secretary of State has given the Appointee at least 25 years' notice to terminate the relevant Appointment in relation to the whole of its area and that period of notice has expired.

**Condition P: The role of the Appointee's Ultimate Controller and UK holding company**

- 1 (1) The Appointee shall, not later than the effective date of this modification (or, in the event of a subsequent change of control of the Appointee, the date on which each such change of control takes effect), procure from the Ultimate Controller of the Appointee and, when the Ultimate Controller is not the UK holding company, procure from the UK holding company of the Appointee, legally enforceable undertakings in favour of the Appointee in a form specified by the Water Services Regulation Authority and expressed to remain in force for as long as the Appointee retains the Appointment.
- (2) The undertakings referred to in sub-paragraph (1) above shall provide that:
- (a) those persons providing the undertakings will, and will procure that each of their subsidiaries (other than the Appointee and its subsidiaries) will, give to the Appointee all such information as may be necessary to enable the Appointee to comply with its obligations under the Water Industry Act 1991 or the conditions of the Appointment;
  - (b) those persons providing the undertakings will, and will procure that each of their subsidiaries (other than the Appointee and its subsidiaries) will, refrain from any action which would or may cause the Appointee to breach any of its obligations under the Water Industry Act 1991 or the conditions of the Appointment; and
  - (c) those persons providing the undertakings will ensure that at all times the Board of the Appointee contains not less than three independent non-executive directors, who shall be persons of standing with relevant experience and who shall collectively have connections with and knowledge of the areas within which the Appointee holds the Appointment and an understanding of

the interests of the customers of the Appointee and how these can be respected and protected.

- 2 The Appointee shall, not later than the date referred to in paragraph 1(1) above, produce to the Water Services Regulation Authority the original of each of the undertakings given to it in accordance with paragraph 1 of this Condition and provide to it such certified copies of those undertakings as the Water Services Regulation Authority may require.
- 3 The Appointee shall immediately inform the Water Services Regulation Authority in writing if it becomes aware that any one of the undertakings referred to in paragraph 1 of this Condition has ceased to be legally enforceable or that there has been any breach of its terms.
- 4 The Appointee shall not, except with the written consent of the Water Services Regulation Authority, enter (directly or indirectly) into any contract or arrangement with the Ultimate Controller of the Appointee (or the UK holding company of the Appointee as the case may be) or any Associated Company (other than subsidiaries of the Appointee) at a time when:
  - (i) any one of the undertakings complying with paragraph 1 of this Condition does not subsist; or
  - (ii) there is an unremedied breach of any one of those undertakings.
- 5 For the purposes of this Condition P, "Ultimate Controller" means any person who or which (alone or jointly with others and whether directly or indirectly) is (in the reasonable opinion of the Water Services Regulation Authority) in a position to control, or to exercise material influence over, the policy or affairs of the Appointee or of any holding company of the Appointee.
- 6 For the purposes of this Condition P "person" includes, without limitation, a corporate body.

## **Condition Q: Interruptions in Supply because of Drought**

### 1 Interpretation

"**business customer**" means the person who is liable to pay the Appointee's charges in respect of a supply of water to premises other than domestic premises;

"**drought order**" means an order made under section 73 of the Water Resources Act 1991;

"**household customer**" means the person who is liable to pay the Appointee's charges in respect of a supply of water to domestic premises.

### 2 Liability and amounts of payments

2.1 Where a supply of water to premises is interrupted or cut off under the authority of a drought order the Appointee shall, subject to sub-paragraph 2.2, pay to the customer (or credit to his account) whichever of the amounts referred to in paragraph 3 is applicable.

2.2 The Appointee shall not be liable to make any payments under this Condition where the circumstances were so exceptional that it would have been unreasonable to have expected the interruption or cut-off to have been avoided.

### 3 Amounts payable to household and business customers

#### 3.1 **[Not used]**

3.1.1 The Appointee shall pay to a household customer £10 for each day during which (or during part of which) the supply is interrupted or cut off.

3.1.2 The amount payable to any household customer in any Charging Year shall not exceed the average amount of water charges payable to the Appointee by household customers for the Charging Year preceding that in which the interruption or cut-off happens.

#### 3.2 **[Not used]**

- 3.2.1 The Appointee shall pay to a business customer £50 for each day during which (or during part of which) the supply is interrupted or cut off.
- 3.2.2 The amount payable to any business customer in any Charging Year shall not exceed -
- (a) the amount of water charges payable by that customer for the supply of water to those premises for the Charging Year preceding that in which the interruption or cut-off happens or
  - (b) if that customer was not liable to pay those charges, £500.
- 3.2.3 When calculating the charges payable by a business customer for the supply of water services, amounts payable in respect of any separate supply which was provided solely for purposes other than domestic purposes shall be excluded.
- 3.3 If, when a payment becomes due under this Condition, a customer owes money to the Appointee and the debt has been outstanding for more than 6 weeks, any payment from the Appointee to which the customer is entitled under this Condition shall, to the extent that it does not exceed the amount so owed, be made by way of credit to that customer's account.

#### 4 Determination of Disputes

- 4.1 Where any dispute arises between the Appointee and a customer as to the right of that customer to a payment or credit under this Condition, the matter may be referred to the Water Services Regulation Authority by either party for determination.
- 4.2 Any determination under this Condition shall be final and, if the Appointee fails to give effect to the determination, the customer may set off the amount in question against any payment which is due to the Appointee.

#### 5 Cessation or Modification of this Condition

- 5.1 This Condition shall cease to have effect in relation to any interruptions or cut-offs occurring on or after the commencement date of any Regulations made

by the Secretaries of State pursuant to Section 38 of the Water Industry Act 1991, implementing the recommendations made to them by the Water Services Regulation Authority in May 1996 for the making of payments to customers for interruptions or cut-offs because of drought.

- 5.2 If the Regulations referred to in sub-paragraph 5.1 relate to either household customers or business customers only, this Condition shall cease to have effect in so far as it relates to those customers.

## **Condition R: Provision of combined and wholesale water supplies**

### The Access Code

- 1 (1) The Appointee shall have an Access Code which complies with paragraphs 2 to 4 of this condition.
  - (2) The Appointee shall comply with its Access Code.
- 2 (1) The Access Code shall -
  - (a) conform to the guidance for the time being issued under section 66D(4); and
  - (b) set out -
    - (i) the Appointee's procedure (including timetables) for dealing with a request made to it by a licensed water supplier under sections 66A, 66B or 66C (which procedure shall itself conform to any relevant guidance);
    - (ii) the types of feasibility studies which the Appointee may undertake in response to any of those possible applications, including the method of calculation of any costs associated with any such study with a view to recovering them from any such applicant (all of which feasibility studies and the method of calculation shall themselves conform to any relevant guidance); and
    - (iii) the terms (including the basis for calculating charges in accordance with the costs principle in section 66E) upon which the Appointee will offer to perform each duty under sections 66A to 66C and indicative charges for performing each duty under sections 66A and 66B (which indicative charges shall themselves be calculated in accordance with any relevant guidance).

- (2) In this paragraph and in paragraph 3 below, "relevant guidance" means guidance -
- (a) in relation to the matters specified in sub-paragraph (1)(b) above;
  - (b) for the time being issued by the Authority where -
    - (i) before issuing such guidance, the Authority has consulted such persons as it considers appropriate; and
    - (ii) the Authority has published such guidance in such a manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- 3 (1) Subject to sub-paragraph (2), the Appointee -
- (a) shall review its Access Code, and make any revisions to its Access Code consequent upon that review, annually not later than 15 October in each year; and
  - (b) may also at any other time revise it.
- (2) If the Authority revises its guidance under section 66D(4), the Appointee shall revise its Access Code to conform to the revised guidance within the timescales set out by the Authority.
- (3) If the Authority revises any relevant guidance, the Appointee shall revise its Access Code to conform to such revised relevant guidance, within the timescales set out by the Authority, provided that the Authority has -
- (a) consulted such persons as it considers appropriate before revising that relevant guidance; and

- (b) published that revised relevant guidance in such a manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- 4 (1) The Appointee shall -
  - (a) include the text of its Access Code, as revised from time to time, on any Internet website which it may maintain; and
  - (b) in response to any request, provide a copy of it free of charge.
- (2) The Appointee shall provide to the Authority -
  - (a) free of charge a copy of its Access Code; and
  - (b) within seven days of making them, written particulars of any modifications of it.

#### Anti-competitive behaviour

- 5 (1) If and for so long as the Appointee is related to any licensed water supplier -
  - (a) it shall not without the consent of the Authority sell (or otherwise make available) to that licensed water supplier any water, or any of its other assets; and
  - (b) otherwise, it shall ensure that every other transaction between the Appointed Business and that licensed water supplier is at arm's length.
- (2) For the purpose of this paragraph the Appointee is related to a licensed water supplier if their enterprises are under common ownership or common control (within the meaning those expressions have in section 26(1) of the Enterprise Act 2002).
- (3) The Appointee shall by notice inform the Authority if at any time it becomes, or ceases to be, related to a licensed water supplier.

(4) This paragraph is without prejudice to anything contained in paragraph 6 of Condition F (Transactions entered into by the Appointee or the Appointed Business with or for the benefit of Associated Companies or other businesses or activities of the Appointee).

6 The Appointee shall not show undue preference towards, or undue discrimination against -

- (a) customers or potential customers (or classes of customers) of a licensed water supplier, as compared with either the Appointee's own customers or potential customers (or classes of customers) or the customers or potential customers (or classes of customers) of any other licensed water supplier; or
- (b) a licensed water supplier, as compared with any other licensed water supplier or the Appointee itself.

#### Obligations about information

7 (1) Whenever the Appointee is -

- (a) negotiating with a licensed water supplier the period for which and terms and conditions on which it might discharge any of its duties under sections 66A to 66C; or
- (b) discharging any of those duties,

it shall ensure that legally enforceable terms exist about the confidentiality of information provided to or by it for those purposes.

(2) Without prejudice to the generality of sub-paragraph (1) above, the Appointee shall not use or disclose information received from or in relation to a licensed water supplier in the course or contemplation of the discharge of its duties under sections 66A to 66C or in the course or contemplation of its dealings with or in relation to that licensed water supplier under sections 66A to 66C, except -

- (a) for the purpose for which it was furnished and to the minimum extent necessary to discharge those duties or for those dealings;
  - (b) where required or permitted by law; or
  - (c) where otherwise agreed with the licensed water supplier.
- (3) Without prejudice to the generality of sub-paragraph (1) and (2) above, and subject to sub-paragraphs (2)(a), (b) and (c) above, the Appointee shall ensure that information received from or in relation to a licensed water supplier in the course or contemplation of the discharge of its duties under sections 66A to 66C or in the course or contemplation of its dealings with or in relation to that licensed water supplier under sections 66A to 66C is not used or disclosed or otherwise distributed or disseminated within the Appointed Business otherwise than for the purposes for which the information was furnished.
- (4) (a) The Appointee shall have a Compliance Code which complies with Compliance Guidance issued by the Authority.
- (b) Compliance Guidance means guidance -
- (i) in relation to the matters specified in this paragraph; in relation to the Appointee's compliance with its obligations under this paragraph and under paragraph 5(1)(b) above; and generally in relation to any obligation of confidentiality on the Appointee in relation to information provided to or by it under or for the purposes of this Condition or Condition S, and its compliance with those obligations; and
  - (ii) for the time being issued by the Authority where -
    - a. before issuing such guidance, the Authority has consulted such persons as it considers appropriate; and



- (2) The Appointee may impose reasonable conditions on the use which any licensed water supplier makes of information provided under this paragraph.
- (3) Any question as to the reasonableness of -
- (a) any requirement to provide information under sub-paragraph (1);
- or
- (b) any condition proposed by the Appointee under sub-paragraph (2);
- shall be resolved by referring that question to the Authority for its determination.
- (4) A reference under sub-paragraph (3) shall have the effect of suspending the requirement so referred pending the Authority's determination.
- (5) The Appointee shall not be required under this paragraph to disclose any information or produce any document which it would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court.
- (6) (a) The Appointee shall immediately inform the licensed water supplier of relevant details if the Appointee is or becomes aware that a special consumer occupies or is likely to occupy any premises which the licensed water supplier is proposing to supply.
- (b) For the purpose of sub-paragraph (a) above, a special consumer is a person or a member of a class of persons who -
- (i) the Appointee and the relevant licensed water supplier agree; or
  - (ii) the Authority specifically or generally determines by relevant notice,

regularly requires water urgently on medical or other grounds.

- (7) Under sub-paragraph (6) -
- (a) a determination shall not have effect unless, before making the determination, the Authority has consulted such persons as it considers appropriate; and
  - (b) a "relevant notice" is a notice published in such manner as the Authority considers appropriate and served on the Appointee.
- (8) (a) The Appointee shall immediately inform each licensed water supplier which is supplying water to premises in its Water Supply Area of every actual or potential incident which affects adversely, or is likely to affect adversely -
- (i) water quality;
  - (ii) water pressure;
  - (iii) continuity of supply; or
  - (iv) any other matter related to the Appointee's supply system as defined in section 17B(5);
- but the foregoing obligation applies only if and to the extent that the supply or supplies being made by such licensed water supplier to premises in the Appointee's Water Supply Area is or are, or is or are likely to be, affected by any such actual or potential incident; and
- (b) information provided by the Appointee under sub-paragraph (a) above shall be as detailed as the information which the Appointee uses or intends to use or would use, when dealing with complaints from its own customers arising out of the same matters.

(9) For the purposes of sub-paragraph (8), an incident includes regulatory infringements which may put the Appointee or relevant licensed water supplier at risk of supplying water which is unwholesome as determined under section 67 (standards of wholesomeness) or unfit for human consumption within the meaning of section 70 (offence of supplying water unfit for human consumption).

9 In so far as the provision of information to the Appointee is not provided for by or under any enactment, the Appointee shall not seek -

(a) from a licensed water supplier; or

(b) from a person supplied or seeking to be supplied by a licensed water supplier;

more information than the Appointee reasonably requires -

(i) for the purposes of carrying out its functions;

(ii) to ascertain whether the licensed water supplier has sufficient product and public liability insurance for the activities authorised by its water supply licence;

(iii) to comply with any condition of the Appointee's appointment;

(iv) in relation to national security or civil emergencies; or

(v) to comply with any reasonable request for information made by the Environment Agency.

### General

10 (1) Until the coming fully into force of section 36(1) of the Water Act 2003 (transfer to the Water Services Regulation Authority and the Consumer Council for Water of functions, property etc), any reference to the Authority in this Condition shall have effect as if it were a reference to the Water Services Regulation Authority.

- (2) Unless the contrary intention appears, references in this Condition to sections are references to sections of the Water Industry Act 1991.

## **Condition S: Customer transfer protocol**

- 1 For the purposes of this condition -
  - (a) **"the Protocol"** means the **"Customer Transfer Protocol"** -
    - (i) complying with the requirements of paragraphs 3 to 6 below;
    - (ii) served by the Authority on the Appointee on or after the date on which this condition comes into force; and
    - (iii) as subsequently amended from time to time in accordance with this Condition; and
  - (b) until the coming fully into force of section 36(1) of the Water Act 2003 (transfer to the Water Services Regulation Authority and the Consumer Council for Water of functions, property etc), any reference to the Authority in this Condition shall have effect as if it were a reference to the Water Services Regulation Authority.
- 2 The Appointee shall comply with the Protocol.
- 3 The Protocol shall provide a clear, simple and standardised process for the timely and efficient transfer of supplies to premises of customers-
  - (a) between any water undertaker and any licensed water supplier; and
  - (b) between any two licensed water suppliers.
- 4 The Protocol shall -
  - (a) make the same provision for all of the transfers referred to in paragraph 3 above; and
  - (b) include provisions for its amendment which shall -
    - (i) allow the Authority and such other persons as the Protocol shall specify to propose amendments;

- (ii) subject to (iii) below, require the agreement of the Authority and such majorities, as the Protocol shall specify, of water undertakers and of licensed water suppliers, before any amendment can be made; and
- (iii) in the case of such disagreements as the Protocol shall specify, about any amendment to the Protocol which has been proposed other than by the Authority, allow the Authority to determine whether that amendment shall be made.

5 The Protocol shall include provisions to the effect that, where -

- (a) any water undertaker or licensed water supplier ("the old supplier") is supplying water to premises of a customer;
- (b) that customer has failed to pay the old supplier's charges for that supply;
- (c) those charges have been demanded by notice served on the customer; and
- (d) they have remained unpaid for 30 days or more after the date of that notice,

the old supplier may suspend the transfer of the supply of water to those premises of that customer until satisfactory provision has been made for the outstanding debt to be paid to the old supplier.

6 Where the Authority so determines, the Protocol shall provide for such matters as are specified or are of a type specified in the Protocol to be referred to and determined by the Authority.