

Dated [●]

PROJECT LICENCE

[Name of Infrastructure Provider]

Project Licence granted to [●] by the Water Services Regulation Authority (the “Authority”) under section 17FA of the Water Industry Act 1991 (as has effect under paragraph 3(2) of Schedule 1 of the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013) (“the SIP Regulations”)

Made on [●] 2015

Coming into effect on [●] 2015

Pursuant to the powers conferred by Regulation 8(1) of the SIP Regulations, the Authority by notice dated [●] designated [●] as an infrastructure provider to be wholly responsible for the project specified in the Project Specification Notice.

The Authority now, in exercise of the powers conferred on it by section 17FA of the Water Industry Act 1991 (as has effect under the SIP Regulations) hereby grants this Project Licence to [●] (“**the Infrastructure Provider**”).

Before granting this Project Licence, and in accordance with section 17FA(2) of the Water Industry Act 1991 (as has effect under the SIP Regulations), the Authority consulted Thames Water Utilities Limited, the Secretary of State for Environment, Food and Rural Affairs, the Environment Agency and such other persons as it thought to be appropriate.

The Infrastructure Provider’s principal duties

In accordance with the Project Specification Notice (other than works to be carried out by the Incumbent Undertaker pursuant to the Preparatory Works Notice) and the Licence Conditions set out in Schedule 1 and in Appendices 1 - 4, the Infrastructure Provider will:

- (a) design, construct, finance, test and commission, operate and maintain,¹ and achieve acceptance of the IP Regulated Assets in accordance with Annex 1 of Schedule 1 (as may be amended from time to time with the consent of the Authority) to the Interface Agreement by the Longstop Date;
- (b) from the date of Acceptance, own, finance, operate and maintain the IP Regulated Assets so that they are available for use and the Thames Tideway Tunnel² is capable of being operated in each case in accordance with the Environmental Permit and with the Operating Techniques agreed between Thames Water Utilities Limited and the Environment Agency.

¹ Explanatory note: the operation and maintenance of the tunnel in this context is in the initial operational period – ie during the commissioning period for the assets.

²This reference to the Thames Tideway Tunnel (which is not currently a defined term in the Project Licence) may be amended following further discussion in due course on the interface between the IP assets and the wider assets operated by Thames Water.

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Schedule 1
Conditions of the Project Licence

Condition A
Interpretation and Construction

1 Definitions

Unless the context otherwise requires, defined terms are set out in Appendix 4 (*Defined Terms*).

2 Construction of these Conditions

2.1 Unless the contrary intention appears:

- (a) words and expressions used in these Conditions and references in these Conditions to enactments must be construed as if they were in legislation and the Interpretation Act 1978 applied to them;
- (b) references in these Conditions to enactments shall include any statutory modification thereof after the date of this Project Licence;
- (c) references in these Conditions to the Project Specification Notice, the Preparatory Works Notice or the Project Documents includes, subject to paragraph 1.4 of Appendix 2, any modification thereof after the Commencement Date;
- (d) words and expressions used in these Conditions have the same meanings as in any provision of the Water Industry Act or the SIP Regulations;
- (e) references in these Conditions to the Water Industry Act, include references to that Act as has effect with modifications (if any) by the SIP Regulations;
- (f) references in these Conditions to sections and Schedules are references to sections of, and Schedules to, the Water Industry Act (as has effect with modifications (if any) by the SIP Regulations); and
- (g) references in these Conditions to Parts, paragraphs or sub-paragraphs are references to Parts, paragraphs or sub-paragraphs of the Condition in which the reference appears.

2.2 In construing these Conditions:

- (a) the Appendices to these Conditions form part of these Conditions and a reference to these Conditions includes a reference to the Appendices to these Conditions;
- (b) the heading or title of any Condition or of any paragraph of any Condition shall be disregarded;
- (c) 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;

- (d) references to a liability must be taken to include the creation of any mortgage, charge, pledge, lien or other form of security of encumbrance, the making of a loan and the taking on of a debt; and
- (e) references to a loan must be taken to include the transfer or lending, by any means, of any sum of money or rights in respect of that sum.

3 Notices

Any notification required or permitted to be given under any Condition must be given in writing.

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Condition B Allowed Revenue

Part I: Explanatory Provisions

- 1 Application of this Condition and of Appendices 1 and 2 to these Conditions
 - 1.1 Allowed Revenue from the Commencement Date until 1 April following the Post Construction Review will be calculated in accordance with Part A (*Construction Revenue*) of Appendix 1 (*Calculation of Allowed Revenue*).
 - 1.2 Allowed Revenue from 1 April following the Post Construction Review until 1 April following the First Periodic Review will be calculated at the Post Construction Review in accordance with Part B (*Operation Revenue*) of Appendix 1 (*Calculation of Allowed Revenue*).
 - 1.3 Allowed Revenue from 1 April following the First Periodic Review will be calculated at the First Periodic Review and at all subsequent Periodic Reviews in terms of Part III of this Condition B.
 - 1.4 Unless the Authority determines otherwise by notice to the Infrastructure Provider, Appendices 1 and 2 to these Conditions will cease to have effect from 1 April following the First Periodic Review.
- 2 Purposes of this Condition

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

 - 2.1 To empower the Authority to determine the Infrastructure Provider's Allowed Revenue (having regard to its costs) for carrying out the Licensed Activities. This is dealt with in Part II of this Condition B under the heading "Allowed Revenue".
 - 2.2 Following the Post Construction Review, to provide for reviews of the Licensed Business to be carried out by the Authority so that the Authority can determine whether the Infrastructure Provider's Allowed Revenue should be changed. This is dealt with in Part III of this Condition B under the heading "Periodic Reviews".
 - 2.3 Following the Post Construction Review, and where notice to revoke this Project Licence has been given, to enable the Infrastructure Provider to refer to the Authority for determination the question what the Allowed Revenue should be in the future, on the assumption that the Project Licence were to continue in force, for the purpose of facilitating consideration of the terms on which a new infrastructure provider could accept transfers of property, rights and liabilities from the Infrastructure Provider. This is also dealt with in Part III of this Condition B under the heading "Periodic Reviews".
 - 2.4 Following the Post Construction Review, to enable the Infrastructure Provider:
 - (a) to refer to the Authority for determination from time to time the question of changing the Allowed Revenue to allow for Notified Items and Relevant Changes of Circumstance; and

- (b) to refer to the Authority for determination at any time the question of changing the Infrastructure Provider's Allowed Revenue where circumstances have a substantial adverse effect on the Licensed Business.

These matters are dealt with in Part IV of this Condition B under the heading "Interim Determinations."

- 2.5 Following the Post Construction Review, to provide for the Authority to initiate changes to the Allowed Revenue to allow for Notified Items and Relevant Changes of Circumstance. This is also dealt with in Part IV of this Condition B.
- 2.6 [To enable the Infrastructure Provider to require the Authority to refer to the Competition and Markets Authority matters arising out of determinations by the Authority referred to in paragraphs 2.2 and 2.5 and references referred to in paragraph 2.3 and 2.4. These matters are dealt with in Part V of this Condition B under the heading "References to the Competition and Markets Authority".]³
- 2.7 To require the Infrastructure Provider to give Information to the Authority to enable it to make determinations under this Condition B. This is dealt with in Part VI of this Condition B under the heading "Provision of Information to the Authority".

Part II: Allowed Revenue and IP Charge

3 Application of this Part

This Part applies from the Commencement Date.

4 Allowed Revenue

The Infrastructure Provider must ensure that in any Charging Year (or part thereof) from the Commencement Date, the IP Charge must not exceed the Allowed Revenue as calculated in accordance with Appendix 1 (*Calculation of Allowed Revenue*) to these Conditions or with this Condition.

5 Verification of compliance with the Allowed Revenue and IP Charge

- 5.1 Unless the provisions of this Project Licence relating to direct charging of End Users apply, the Infrastructure Provider must deliver to the Authority not later than 1 November in the Charging Year prior to the start of each Charging Year a written Revenue Statement setting out:
 - (a) the Allowed Revenue in the Prior Charging Year;
 - (b) the amounts received by the Infrastructure Provider from the Incumbent Undertaker in respect of Allowed Revenue in the Prior Charging Year and in the Charging Year immediately preceding the Prior Charging Year;
 - (c) the Allowed Revenue in the current Charging Year; and

³References to referrals to the Competition and Markets Authority remain in square brackets pending the SIP Regulations being amended by the Secretary of State so as to confer powers on Ofwat to allow for such referrals.

- (d) the Infrastructure Provider's calculation of the Allowed Revenue for the forthcoming Charging Year (the figure resulting from such calculation (as revised or updated pursuant to paragraphs 5.4 and 5.5) being the IP Charge).
- 5.2 The Revenue Statement must be accompanied by the Information necessary to calculate the Allowed Revenue and the amounts received by the Infrastructure Provider from the Incumbent Undertaker in respect of Allowed Revenue, and a written statement of those calculations.
- 5.3 Unless the Authority determines an alternative verification procedure, any Revenue Statement shall be accompanied by a report by the Auditors as to whether, in their opinion, the Information included in that Revenue Statement has been properly extracted from the relevant accounting statements prepared and delivered by the Infrastructure Provider under Condition F (*Regulatory Accounts*) and from the Infrastructure Provider's accounting records and such other records of the Infrastructure Provider as the Auditors consider relevant for the purpose of making their report and as to whether, in their opinion, the calculations delivered by the Infrastructure Provider with that Revenue Statement are in accordance with this Condition B and with the Infrastructure Provider's accounting and such other relevant records.
- 5.4 Unless the provisions of this Project Licence relating to direct charging of End Users apply, the Infrastructure Provider must, no later than 1 December in each Charging Year, deliver to the Authority either:
- (a) the Revenue Statement provided to the Authority under paragraph 5.1 revised by the Infrastructure Provider in order to reflect:
 - (i) any changes requested by the Authority prior to that time and which the Infrastructure Provider, acting reasonably, has had sufficient time to consider and has accepted; or
 - (ii) any changes required by a determination by the Authority under Part IV of this Condition; or
 - (b) a notice informing the Authority that, as at 1 December, no changes to the Revenue Statement provided to the Authority under paragraph 5.1 have been made.
- 5.5 Unless the provisions of this Project Licence relating to direct charging of End Users apply, the Infrastructure Provider must, no later than 15 January in each Charging Year, deliver to the Authority an updated revised Revenue Statement which has been changed only to reflect any correction required to the revised Revenue Statement following the publication by the Office for National Statistics of the Retail Prices Index for the month of November in that Charging Year.
- 5.6 At the same time that the Infrastructure Provider delivers to the Authority the Revenue Statement pursuant to paragraph 5.1 (and any revised or updated Revenue Statement pursuant to paragraphs 5.4 and 5.5), the Infrastructure Provider shall notify the Incumbent Undertaker (copied to the Authority) of the IP Charge which is, in respect of the Project:
- (a) payable by the Incumbent Undertaker to the Infrastructure Provider; and
 - (b) the amounts required to be added to the TWUL Wastewater Charges for the relevant Charging Year;

in each case, in accordance with the terms of the Revenue Agreement and the Incumbent Undertaker's Instrument of Appointment.

- 5.7 The Infrastructure Provider must not, without the prior written consent of the Authority, agree to an amendment of the Revenue Agreement.
- 5.8 Unless the provisions of this Project Licence relating to direct charging of End Users apply, in the event that the Infrastructure Provider does not within the timeframes set out in paragraph 5.6 notify the Incumbent Undertaker of a revised or updated IP Charge, then, unless otherwise directed by the Authority, the Incumbent Undertaker shall be entitled to rely on the most recent IP Charge notified to it by the Infrastructure Provider pursuant to paragraph 5.6.

Part III: Periodic Reviews

6 Periodic Reviews following the Post Construction Review

- 6.1 There will be no Periodic Reviews until after, or concurrently with, the Post Construction Review.
- 6.2 The First Periodic Review will be timed to occur concurrently with the first periodic review of the Incumbent Undertaker's wholesale activities that takes place following Acceptance and may coincide with the Post Construction Review.
- 6.3 The Infrastructure Provider must provide the Authority with such Information as the Authority may by notice reasonably require, to enable it to carry out a Periodic Review.
- 6.4 The Authority must determine at a Periodic Review (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 (as has effect with modifications made by Regulation 3 of the SIP Regulations) in relation to the Authority's determinations including, without limitation, any change in circumstance which has occurred since the last Periodic Review or which is to occur):
- (1) the Infrastructure Provider's Allowed Revenue which will consist of, in each Charging Year:
 - (a) 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 Charging Year and that published for the immediately preceding November; and
 - (b) a number, "K", which may be a positive number or a negative number or zero, which together will be expressed as a percentage, and which will limit the change in the charges to be levied by and/or Allowed Revenue of the Licensed Business in each Charging Year; and
 - (2) how the Infrastructure Provider must demonstrate compliance with paragraph 4.
- 6.5 The Allowed Revenue determined under paragraph 6.4 pursuant to a Periodic Review will be set:
- (1) for the five consecutive Charging Years starting on 1 April after the First Periodic Review; and

- (2) thereafter, 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.

6.6 If, at any time after the Post Construction Review, the Authority is unable to conduct a Periodic Review by 31 December in the Charging Year before the Review Charging Year, then:

- (1) the previous determination pursuant to paragraph 6.4 in respect of the final Charging Year of the period that was set in that previous determination will continue to apply for consecutive Charging Years until the next relevant determination under paragraph 6.4 [(or equivalent determination by the Competition and Markets Authority pursuant to paragraph 13)]⁴ or the next relevant Interim Determination⁵ becomes effective; and
- (2) the Authority will conduct a Periodic Review as soon as reasonably practicable thereafter[, provided the Infrastructure Provider has not given a relevant notice under paragraph 13]⁶.

6.7 Where there is a material change to the basis of compiling the Retail Prices Index or the Construction Indices (or such indices cease to be published), this Condition and Appendix 1 (*Calculation of Allowed Revenue*), in so far as it relates to that part of the calculation of the Allowed Revenue to which the Retail Prices Index or the Construction Indices is relevant, will be modified in such a manner as the Authority, after prior consultation with the Infrastructure Provider, may determine to be appropriate to take account of such change or cessation.

7 Allowed Revenue Publication

The Infrastructure Provider may from time to time be required to publish charges fixed for the purposes of demonstrating compliance with the Allowed Revenue determined. Such requirement shall be made by way of a notice from the Authority to the Infrastructure Provider specifying the information to be provided, the method of publication, the time by which publication is required (being a reasonable period of time) and the period for which the published charges are to be effective. The Infrastructure Provider must comply with the said requirement by notice and adhere to the charges accordingly published.

8 Periodic Reviews relating to the Licensed Business where a Revocation Notice has been given

From the 1 April following the Post Construction Review, where a Revocation Notice has been given by the Secretary of State to the Infrastructure Provider, the Infrastructure Provider may refer to the Authority for determination by the Authority the question whether, on the assumption that such a Revocation 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 (as has effect with modifications made by regulation 3 of the SIP Regulations) in relation to the Authority's determination or determinations,

⁴ References to referrals to the Competition and Markets Authority remain in square brackets pending the SIP Regulations being amended by the Secretary of State so as to confer powers on Ofwat to allow for such referrals.

⁵ Explanatory note: although an interim determination will not deal with the whole price control it will have the effect of setting a new default control.

⁶ References to referrals to the Competition and Markets Authority remain in square brackets pending the SIP Regulations being amended by the Secretary of State so as to confer powers on Ofwat to allow for such referrals.

including, without limitation, any change in circumstance which has occurred since the most recent one or more Periodic Reviews or which is to occur), the Allowed Revenue should be changed (and, if so, what change should be made to the Allowed Revenue) for one or more periods (as decided by the Authority) of consecutive Charging Years starting with the Charging Year beginning 1 April prior to the Revocation Notice expiring (the relevant Charging Year). A reference to the Authority under this paragraph shall be made by notice given to the Authority not earlier than 1 July and not later than 14 July in the Charging Year commencing two years before the relevant Charging Year.

Part IV: Interim Determinations

9 Application of this Part

This Part applies from the 1 April following the Post Construction Review.

10 Interpretation and construction

10.1 For the purposes of this Part and the definition of "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;
- (3) without prejudice to paragraph 10.1(1) above, "Operating Expenditure" in paragraph 11.2(5) includes third party services as defined in pro forma A7 and A8 of the Authority's Accounting Guideline 3.07. 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.

11 References to the Authority relating to Notified Items and Relevant Changes of Circumstance and circumstances having a substantial effect on the Licensed Business

11.1 The Infrastructure Provider may from time to time refer to the Authority for determination by it (having considered the proposals of the Infrastructure Provider) the questions set out in paragraph 11.2 or, as the case may be, paragraph 11.3. Such reference shall be made by notice given to the Authority, which, in the case of questions set out in paragraph 11.2, shall be given in accordance with paragraph 11.4. For the purposes of paragraph 11.2 a single reference may be made in respect of any number of Notified Items and Relevant Changes of Circumstance and paragraph 11.2 shall be construed accordingly.

11.2 In the case of a Notified Item or where there has been or is to be a Relevant Change of Circumstance, the questions to be determined are:

- (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 (b) of the definition thereof, the costs, receipts and savings reasonably connected with the Relevant Disposal of Land;
- (2) both of the following:
 - (a) what costs are reasonably attributable to, or connected with, the Relevant Item as determined under sub-paragraph (1) and what timing of incurring of such costs is appropriate and reasonable for the Infrastructure Provider 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 are reasonably attributable to, or connected with, the Relevant Item as determined under sub-paragraph (1) and what timing of such receipts and savings is appropriate and reasonable for the Infrastructure Provider 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) above, 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 1 April following the Post Construction Review (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 Infrastructure Provider at the relevant time);
 - (C) any savings achieved by management action taken since the 1 April following the Post Construction Review 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 such an 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 (2) and sub-paragraph (1) by virtue of the definitions of a Notified Item and a Relevant Change of Circumstance; and

- (ii) in the case of a Relevant Change of Circumstance falling within limb (a) of the definition thereof ('legal requirements'), regard shall be had as to whether either:
 - (A) the Secretary of State has notified the Authority of any change of policy, concerning any environmental or water-quality standard, which has been made since the last Relevant Determination; or
 - (B) the Infrastructure Provider has itself given notice to the Authority of the application to it of, or any change to, any legal requirement, before referring that legal requirement to the Authority under paragraph 11.1;
- (3) having determined under sub-paragraph (2) 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 sub-paragraph (2) (those annual cash flows being hereinafter referred to as "the Base Cash Flows");
- (4) what is the annual aggregate of:
 - (a) one half of the Base Cash Flows in respect of Relevant Changes of Circumstance falling within limb (b) of the definition thereof ('disposal of land'); 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(s) under paragraph 11.4 or paragraph 12.
- (5)
 - (a) where any part of an annual aggregate derived under sub-paragraph (4) 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 (4) consists of revenue and/or Operating Expenditure,⁷ 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**");
- (6) is the Materiality Amount equal to or does it exceed ten per cent of the turnover attributable to the Licensed Business in the latest financial year for which accounting statements have been prepared and delivered to the Authority under Condition F

⁷ This term is defined in paragraph 10.1 (3) of this Condition.

(Regulated Accounts), 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;

(7) 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 limb (b) of the definition thereof, 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 Current Value of the sum 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 Current Value of the sum 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 Current Value of the sum of all Allowable Infrastructure Asset Expenditure occurring up to and including the relevant year (“**Allowable Infrastructure Asset Value**”); and
- (vii) the Appropriate Discount Rate, adjusted so as to exclude any allowance for changes in the Retail Prices 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");

- (8) what change to the Allowed Revenue over the period 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 Infrastructure Provider to make such charges for the Allowed Revenue over the Relevant Period ("**Adjusted Charges**"), in such a manner as to secure that the increase, or, as the case may be, decrease, in revenue attributable to the making of such Adjusted Charges would, in each year of the Relevant Period, be equal to:
- (a) the Annual Allowable Amount for that year; plus
 - (b) 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.

11.3 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 Licensed 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 1 April following the Post Construction Review or any subsequent periodic review conducted under paragraph 6; or
 - (b) a substantial favourable effect on the Licensed Business, or on its assets, liabilities, financial position, or profits or losses, being one which is fortuitous and not attributable to prudent management action; and
- (2) if so, what change should be made to the Allowed Revenue.

For this purpose:

- (a) 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 Infrastructure Provider at the relevant time; and
- (b) 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 paragraph 11.2 were to be asked in relation to the circumstance giving rise to it, the answer to that in paragraph 11.2(7) (taking the reference in it to 10 per cent. as a reference to 20 per cent.) would be in the affirmative.

11.4 A Reference Notice in respect of paragraph 11.2 shall contain (or be accompanied by) reasonable details of the Relevant Item and shall not (unless the Authority agrees otherwise) be given to the Authority later than:

- (1) 15 September immediately preceding the first of the Charging Years in respect of which the Infrastructure Provider wishes the change to the Allowed Revenue to take effect; or,
- (2) where the Authority has given a notice to the Infrastructure Provider under paragraph 12.1 in respect of the same Charging Year, within 14 days from the receipt by the Infrastructure Provider of that notice or by no later than 15 September, whichever is the later.

12 Changes to the Allowed Revenue initiated by the Authority relating to Notified Items and Relevant Changes of Circumstance and circumstances within paragraph 11.3(1)(b)

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

- (1) 15 September immediately preceding the first of the Charging Years in respect of which the Authority wishes the change to the Allowed Revenue to take effect; or
- (2) where the Infrastructure Provider has given a Reference Notice to the Authority in respect of paragraph 11.2 and falling within paragraph 11.4(1) in respect of the same Charging Year, within 14 days of the receipt by the Authority of that Reference Notice, or by no later than 15 September, whichever is the later,

determine the questions set out in paragraph 11.2 in respect of that Notified Item or, as the case may be, that Relevant Change of Circumstance.

12.2 Where both the Infrastructure Provider and the Authority have given notice in respect of Notified Items and Relevant Changes of Circumstance, the questions set out in paragraphs 11.2(4) to (8) inclusive shall be determined in relation to the Notified Items and Relevant Changes of Circumstance as a whole.

12.3 The Authority may give notice to the Infrastructure Provider of its intention to determine the questions set out in paragraph 11.3(1)(b) and 11.3(2).

[Part V: References to the Competition and Markets Authority⁸

13 References to the Competition and Markets Authority

13.1 Where:

- (1) pursuant to paragraph 6, or following a reference under paragraph 8, the Authority has not given notice to the Infrastructure Provider of its determination or determinations within one year of the Review Notice Date or, in the case of a

⁸References to referrals to the Competition and Markets Authority remain in square brackets pending the SIP Regulations being amended by the Secretary of State so as to confer powers on Ofwat to allow for such referrals.

reference under paragraph 8, within one year of the date of the relevant Reference Notice;

- (2) following a reference under paragraph 11, the Authority has not given notice to the Infrastructure Provider of its determinations (including any determinations under paragraph 12 which fall to be taken into account in determining the questions the subject of the reference under paragraph 11) within three months of the date of the relevant Reference Notice; or
- (3) the Infrastructure Provider disputes any determination made by the Authority under this Condition B in respect of Periodic Reviews and Interim Determinations of Allowed Revenue,

the Infrastructure Provider may, by notice to the Authority within:

- (a) 13 months of the Review Notice Date or, in the case of a reference under paragraph 8, from the date of the relevant Reference Notice (if applicable);
- (b) four months of the date of the relevant Reference Notice (in the case referred to in sub-paragraph (2)); or
- (c) two months of the date on which the Authority gives notice of its determination or determinations to the Infrastructure Provider (in the case referred to in sub-paragraph (3)),

require the Authority to refer to the Competition and Markets Authority for determination (such determination to be effective as if made by the Authority) 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 12); or
- (ii) in any case referred to in sub-paragraph (3), the disputed determination.

13.2 Where the Infrastructure Provider requires the Authority to make a reference to the Competition and Markets Authority under paragraph 13.1 in the case referred to in sub-paragraph (3) of that paragraph, the Allowed Revenue will be the Allowed Revenue as determined by the Authority as if a reference had not been made until the Competition and Markets Authority makes its determination following such reference. The determination made by the Competition and Markets Authority shall then take effect as if it had been made by the Authority.]

Part VI: Provision of Information to the Authority

14 Necessary information for determinations⁹

14.1 On the dates or times set out in paragraph 14.2, the Infrastructure Provider must provide the Authority with such Information as the Infrastructure Provider reasonably believes is necessary to enable the Authority to make a determination.

⁹ Paragraph 6.4 deals with information requirements for periodic reviews.

- 14.2 The information referred to in paragraph 14.1 must be provided:
- (1) not later than 30th September immediately following the date of a Reference Notice (in the case of a reference under paragraph 8);
 - (2) at the time when it gives the relevant Reference Notice to the Authority (in the case of a reference under paragraph 11);
 - (3) as soon as reasonably practicable and in any event not later than the expiry of one month from the date of the Authority's notice to the Infrastructure Provider under paragraph 12.
- 14.3 The Infrastructure Provider shall also furnish to the Authority as soon as reasonably practicable such Information as the Authority may from time to time by notice to the Infrastructure Provider reasonably require to make a determination or to make a decision whether or not to make a determination.
- 15 The role of the Reporter¹⁰
- 15.1 Any Information furnished to the Authority under this paragraph 15 or under paragraph 6 shall, if the Authority so requires to make its determination, be reported on by a person appointed by the Infrastructure Provider and approved by the Authority (such approval not to be unreasonably withheld) ("**the Reporter**").
- 15.2 The Infrastructure Provider shall enter into a written contract of engagement with the Reporter which shall:
- (1) where such a report is required by the Authority under paragraph 15.1 require the Reporter to prepare and furnish to the Authority, and separately to the Infrastructure Provider, a written report addressed jointly to the Authority and the Infrastructure Provider in form and substance such as may be specified by, or consistent with any guidelines specified by, the Authority at the time when it requires the report to be furnished, the matters so specified being reasonably appropriate to enable the 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 its report as the Authority may reasonably require and such further Information in respect of, or verification of, the matters which are the subject of his or her report as the Authority may reasonably require. The contract of engagement may also include provisions requiring the Reporter, its employees and agents to keep confidential and not to disclose, except to the Authority or as required by law, any Information which the Reporter obtains in the course of preparing his or her report.
- 15.3 The Infrastructure Provider shall co-operate fully with the Reporter to enable him or her to prepare his or her report, including without limitation, so far as is necessary for that purpose:

¹⁰ Please note we are considering whether to delete these provisions as in practice Ofwat does not require companies to engage reporters.

- (1) subject to reasonable prior notice to the Infrastructure Provider giving to the Reporter access at reasonable hours to any Relevant Plant and to any premises occupied by the Infrastructure Provider in relation to the Licensed Business; and
- (2) subject to reasonable prior notice to the Infrastructure Provider, allowing the Reporter at reasonable hours:
 - (a) to inspect and make photocopies of, and take extracts from, any books and records of the Infrastructure Provider maintained in relation to the Licensed 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.

15.4 Nothing in paragraph 15.3 shall require the Infrastructure Provider:

- (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 Infrastructure Provider's business (unless it is essential that that thing be done to enable the Reporter to prepare his or her report).

15.5 In paragraphs 15.2 and 15.3:

- (1) references to the Reporter include references to his or her employees and agents; and
- (2) "Relevant Plant" means any plant used by the Infrastructure Provider for the purpose of carrying out the Licensed Activities including, without limitation, the IP Regulated Assets and any other water mains, sewers and other pipes and their respective accessories.

Part VII Developing the Price Control

16 The Infrastructure Provider will use all reasonable endeavours to work with the Authority subject to the Infrastructure Provider's legal duties and obligations, in a constructive and cooperative manner on the development of the price review process so that it might be appropriately targeted or operated more effectively in respect of specific activities undertaken as part of the Licensed Business.

Part VIII Mandatory Variation Disputes

17 The Infrastructure Provider must refer all Mandatory Variation Disputes to the Authority if required to do so pursuant to the Operation and Maintenance Agreement setting out:

- (1) details of the Proposed Variation; and
- (2) objections to the Proposed Variation.

- 18 The Authority must determine a Mandatory Variation Dispute on such terms as it considers to be appropriate including determining that:
- (1) the Proposed Variation should be implemented by the Infrastructure Provider or the Incumbent Undertaker (as applicable) with or without modification; or
 - (2) the Proposed Variation should not be implemented,
- and any such determination shall be binding on the Infrastructure Provider.
- 19 In determining a Mandatory Variation Dispute, the Authority must have regard to:
- (1) its duties and obligations under the Water Industry Act;
 - (2) the duties and obligations of the Infrastructure Provider;
 - (3) the duties and obligations of the Incumbent Undertaker;
 - (4) the interests of customers; and
 - (5) any representations received from the Infrastructure Provider, the Incumbent Undertaker, the Secretary of State or any other interested party.

Part IX Direct charging of end user customers

See Appendix 3 (*Direct Charging Conditions*).

Condition C
Not used

DRAFT

**Condition D
Charges Schemes**

See Appendix 3 (*Direct Charging Conditions*)

DRAFT

Condition E
Prohibition on Undue Discrimination and Undue Preference and Information on
Charges

See Appendix 3 (*Direct Charging Conditions*)

DRAFT

Condition F Regulatory Accounts

1 Introduction

- 1.1 The purposes of this Condition are to ensure that the Infrastructure Provider keeps adequate accounting records, which include:
- (a) appropriate information on the financial affairs of the Infrastructure Provider, the Licensed Business and any Relevant Business Unit; and
 - (b) revenues, costs, assets and liabilities of the Licensed Business and any Relevant Business Units.

2 Regulatory Accounting Guidelines

- 2.1 The Authority must publish Regulatory Accounting Guidelines, which:
- (a) specify and define any Relevant Business Units of the Licensed Business for which separate information must be provided in the regulatory accounts; and
 - (b) may make further provision in relation to the regulatory accounts to be prepared by the Infrastructure Provider and in relation to documents or information to be provided in support of the regulatory accounts.
- 2.2 The Authority may modify the Regulatory Accounting Guidelines from time to time having consulted the Infrastructure Provider. Before modifying the Regulatory Accounting Guidelines, the Authority must give the Infrastructure Provider reasonable notice.
- 2.3 [Within one month of the date of any notice given to the Infrastructure Provider by the Authority under paragraph 2.2, the Infrastructure Provider may, by notice to the Authority, require the Authority to refer to the Competition and Markets Authority for determination by it the question whether the modified Regulatory Accounting Guidelines are appropriate and reasonable for the purposes of this Condition.]¹¹

3 Preparation of regulatory accounts

- 3.1 The Infrastructure Provider must prepare a set of regulatory accounts in respect of the twelve month period ending on 31 March, which are:
- (a) prepared in accordance with the Regulatory Accounting Guidelines; and
 - (b) subject to sub-paragraph (a), prepared on a basis which is consistent with the sets of regulatory accounts prepared in respect of previous twelve month periods.

¹¹References to referrals to the Competition and Markets Authority remain in square brackets pending the SIP Regulations being amended by the Secretary of State so as to confer powers on Ofwat to allow for such referrals.

4 Audit of regulatory accounts and Condition K Certificate

4.1 Where the Regulatory Accounting Guidelines state that the Auditors should prepare a report in respect of a set of regulatory accounts and accompanying Condition K Certificate, the Infrastructure Provider must ensure that:

- (a) the Auditors prepare such a report; and
- (b) the report complies with any requirements set out in the Regulatory Accounting Guidelines.

4.2 The Infrastructure Provider must ensure that the contract of appointment entered into between it and the Auditors obliges the Auditors to comply with any reasonable requests from the Authority:

- (a) for an explanation or clarification of any part of a report which the Auditors have prepared; and
- (b) for further information in respect of the matters referred to in such a report.

5 Publication of regulatory accounts and reports

5.1 Where the Regulatory Accounting Guidelines require the Infrastructure Provider to publish:

- (a) any set of regulatory accounts that are prepared pursuant to paragraph 3.1; and
- (b) any report prepared pursuant to paragraph 4.1 in support of the set of regulatory accounts,

the Infrastructure Provider must ensure that any such set of regulatory accounts or any such report is published, to the extent specified in the Regulatory Accounting Guidelines, unless and to the extent that the Authority gives notice to the Infrastructure Provider specifying information that is not required to be published.

5.2 Any part of a document which the Infrastructure Provider is required to publish in accordance with paragraph 5.1 must be published with:

- (a) the annual accounts of the Infrastructure Provider; or
- (b) the annual accounts of its Holding Company,

which are prepared under the 2006 Act.

Condition G
Customer Information

See Appendix 3 (*Direct Charging Conditions*)

DRAFT

Condition H
Not used

DRAFT

Condition I
Not used

DRAFT

Condition J
Not used

DRAFT

Condition K

Regulatory ring-fence

1 Introduction

1.1 The purpose of this Condition is to ensure that:

- (a) the Licensed Business is conducted in such a way as to ensure the Infrastructure Provider's ability to carry out the Licensed Activities;
- (b) any transfers or transactions entered into by the Infrastructure Provider do not adversely affect the Infrastructure Provider's ability to carry out the Licensed Activities;
- (c) there is no cross-subsidy between the Licensed Business and any other business of the Infrastructure Provider, or between the Licensed Business and any Associated Company; and
- (d) the Infrastructure Provider retains sufficient rights and assets so that, if a special administration order were made in relation to it, the special administrator would be able to manage the affairs, business and property of the Infrastructure Provider in accordance with the purposes of the special administration order.

2 Conduct of the Licensed Business

2.1 The Infrastructure Provider must, at all times, acting economically and efficiently, conduct the Licensed Business as if the Licensed Business were:

- (a) substantially the Infrastructure Provider's sole business; and
- (b) a public limited company separate from any other business carried out by the Infrastructure Provider.

2.2 The Infrastructure Provider should have particular regard to the following in the application of paragraph 2.1:

- (a) the composition of the Board of the Infrastructure Provider which should be such that the directors of the Infrastructure Provider act exclusively in the interests of the Infrastructure Provider and independently of the Ultimate Controller and any United Kingdom Holding Company of the Infrastructure Provider;
- (b) the Infrastructure Provider must ensure that its Directors disclose, to the Infrastructure Provider and to the Authority, any conflict between a director's duties as such a director and any other duty held by that Director;
- (c) where the interests of the Infrastructure Provider have the potential to conflict with the interests of a Group Company, the Directors of the Infrastructure Provider must have regard exclusively to the interests of the Infrastructure Provider in carrying out their duties;
- (d) a Director of the Infrastructure Provider may not vote on a decision of the Board where that Director has an interest in the decision by virtue of another directorship.

This arrangement must be underpinned by the Infrastructure Provider's articles of association;

- (e) the dividend policy adopted by the Infrastructure Provider and the implications of paragraph 3 of this Condition; and
- (f) the Principles of Good Governance and Code of Best Practice.

3 Dividend Policy

3.1 The Infrastructure Provider must, at all times, have in place a dividend policy which effectively embodies:

- (a) the principle that dividends declared or paid should not impair the ability of the Infrastructure Provider to finance the Licensed Business; and
- (b) the principle that dividends should be an incentive which is expected to reward efficiency and the management of economic risk,

and has been approved by the Board of the Infrastructure Provider.

3.2 The Infrastructure Provider must ensure that any dividends are declared or paid in accordance with the current dividend policy made in accordance with paragraph 3.1.

4 Assets, rights and resources

4.1 The Infrastructure Provider must, at all times, act in a manner which is best calculated to ensure that it has in place adequate:

- (a) financial resources and facilities (including, without limitation, the IP Regulated Assets);
- (b) management resources; and
- (c) systems of planning and internal control,

to enable it to carry out the Licensed Activities.

4.2 The Infrastructure Provider must ensure that its systems of planning and internal control comply with any Guidelines on systems of planning and internal control which may be published by the Authority and revised from time to time having consulted the Infrastructure Provider. Before revising Guidelines under this paragraph, the Authority must give the Infrastructure Provider reasonable notice.

4.3 [Within one month of the date of any notice given to the Infrastructure Provider by the Authority under paragraph 4.2, the Infrastructure Provider may, by notice to the Authority, require the Authority to refer to the Competition and Markets Authority for determination by it the question whether the modified Guidelines are appropriate and reasonable for the purposes of this Condition.]¹²

¹² References to referrals to the Competition and Markets Authority remain in square brackets pending the SIP Regulations being amended by the Secretary of State so as to confer powers on Ofwat to allow for such referrals.

- 4.4 The Infrastructure Provider must ensure that, as far as reasonably practicable, it has available to it sufficient rights and resources (including, without limitation, the IP Regulated Assets) other than financial resources so that if, at any time, a special administration order were to be made in relation to it, the special administrator would be able to manage the affairs, business and property of the Infrastructure Provider in accordance with the purposes of the special administration order.
- 4.5 The Infrastructure Provider may not transfer any rights and/or resources referred to in paragraph 4.4 to an Associated Company without the consent of the Authority. In giving consent, the Authority may issue directions concerning the valuation of those resources and the treatment of their consideration in the Infrastructure Provider's accounts.
- 4.6 Where rights and resources which are required to be made available pursuant to paragraph 4.4 are made available by a Group Company, the Infrastructure Provider must ensure that if, at any time, a special administration order were to be made in relation to it, the rights and resources would be available to the special administrator to enable the special administrator to manage the affairs, business and property of the Infrastructure Provider.¹³
- 4.7 The Infrastructure Provider must not, without the prior approval of the Authority, create any liability in relation to the IP Regulated Assets.

5 Credit Ratings and "Cash Lock-Up"

- 5.1 The Infrastructure Provider must use all reasonable endeavours to ensure that it and any Associated Company which issues corporate debt on its behalf maintains, at all times, an Issuer Credit Rating which is an Investment Grade Rating.
- 5.2 The "Cash Lock-Up" provisions set out in paragraph 5.3 apply in any circumstances where:
- (a) the Infrastructure Provider does not hold an Issuer Credit Rating which is an Investment Grade Rating;
 - (b) the Infrastructure Provider holds more than one Issuer Credit Rating and one or more Issuer Credit Ratings held by it is not an Investment Grade Rating; or
 - (c) any Issuer Credit Rating held by the Infrastructure Provider is the Lowest Investment Grade Rating and:
 - (i) the rating is on review for possible downgrade or is on "Credit Watch" or "Rating Watch" with a negative designation; or
 - (ii) otherwise where the rating outlook of the Infrastructure Provider as specified by the Credit Rating Agency which has assigned the Lowest Investment Grade Rating has been changed from stable or positive to negative.
- 5.3 Where this paragraph applies, the Infrastructure Provider must not, without the prior approval of the Authority, transfer, lease, licence or lend any sum, asset, right or benefit to any Associated Company, other than where:

¹³ A reference to ordinary administration will also be included, but only if regulations are made by the Secretary of State to make ordinary administration available to licensed infrastructure providers under proposed insolvency law reforms for the water industry.

- (a) the Infrastructure Provider makes a payment to an Associated Company which is:
 - (i) pursuant to an agreement entered into prior to the circumstances referred to in paragraph 5.2 arising, which provides for goods, services or assets to be provided on an arm's length basis and on normal commercial terms; and
 - (ii) properly due in respect of the goods, services or assets;
- (b) the Infrastructure Provider transfers, leases, licenses or lends any sum, asset, right or benefit to any Associated Company (excluding a dividend payment, a distribution out of distributable reserves or a repayment of capital), where:
 - (i) the transaction is on an arm's length basis on normal commercial terms; and
 - (ii) the value due in respect of the transaction is payable wholly in cash and is paid in full when the transaction is entered into;
- (c) the Infrastructure Provider makes a repayment of, a payment of interest on or payments in respect of fees, costs or other amounts incurred in respect of:
 - (i) a loan made from a Financing Subsidiary to the Infrastructure Provider, provided that the Financing Subsidiary continues to be an Associated Company of the Infrastructure Provider; or
 - (ii) a loan made prior to the circumstances referred to in paragraph 6.2 arising which is otherwise in accordance with these Conditions, provided that payment in respect of such a loan is not made earlier than provided for in accordance with its terms;or
- (d) the Infrastructure Provider makes a payment for group corporation tax relief calculated on a basis not exceeding the value of the benefit received, provided that the payment is not made before the date on which the amounts of tax subject to the relief would have become due.

6 Listing of financial instruments

6.1 The Infrastructure Provider must use all reasonable endeavours to maintain the listing of a financial instrument, whose market price should reflect the financial position of the Licensed Business, on:

- (a) the London Stock Exchange; or
- (b) with prior agreement of the Authority, another exchange of similar standing,

unless the Authority, following an application by the Infrastructure Provider, determines that market conditions are such that it would be inappropriate for the Infrastructure Provider to maintain the listing of such a financial instrument.

7 Transfer Pricing and Cross-Default Obligations

7.1 The Infrastructure Provider must ensure that:

- (a) every transaction between the Licensed Business and any Associated Company is at arm's length, so that neither the Licensed Business nor the Associated Company gives a cross-subsidy to the other; and
- (b) the Licensed Business neither gives nor receives any cross-subsidy from any other business or activity of the Infrastructure Provider.

7.2 The Infrastructure Provider must not make any payment to an Associated Company in respect of services provided by the Associated Company which exceeds:

- (a) the price of such services ascertained by market testing, which is carried out in accordance with the Guidelines on transfer pricing published by the Authority and revised from time to time having consulted the Infrastructure Provider; before revising Guidelines under this sub-paragraph, the Authority must give the Infrastructure Provider reasonable notice; or
- (b) where the Infrastructure Provider has satisfied the Authority that pricing ascertained by such market testing is inappropriate or would have a prejudicial effect on the proper carrying out of the Licensed Business, an amount determined by the Authority, made up of:
 - (i) a proportion of the Associated Company's costs in providing the services; and
 - (ii) a reasonable return.

7.3 The Infrastructure Provider must not, without the prior approval of the Authority:

- (a) give a guarantee in relation to any liability of an Associated Company;
- (b) create a liability to an Associated Company; or
- (c) enter into an agreement or other legal instrument incorporating a Cross-Default Obligation.

7.4 The Infrastructure Provider must not continue or permit to remain in effect an agreement or other legal instrument incorporating a Cross-Default Obligation unless:

- (a) prior approval has been given by the Authority; or
- (b) the Cross-Default Obligation would only arise on a default by a Subsidiary of the Infrastructure Provider and the Infrastructure Provider ensures that:
 - (i) the period for which the Cross-Default Obligation is in effect is not extended;
 - (ii) liability under the Cross-Default Obligation is not increased; and
 - (iii) no change is made to the circumstances in which liability under the Cross-Default Obligation may arise.

8 The Role of the company's Ultimate Controller and United Kingdom Holding Company

8.1 The Infrastructure Provider must ensure that, at all times:

- (a) there is an undertaking in place which is given by the Ultimate Controller of the Infrastructure Provider in favour of the Infrastructure Provider; and
- (b) where the United Kingdom Holding Company of the Infrastructure Provider is not the Ultimate Controller of the Infrastructure Provider, there is an undertaking in place which is given by the United Kingdom Holding Company of the Infrastructure Provider in favour of the Infrastructure Provider.

8.2 The Infrastructure Provider must ensure that any undertaking given pursuant to paragraph 8.1 provides:

- (a) that the person giving the undertaking must, and must procure that each of its Subsidiaries other than the Infrastructure Provider and its Subsidiaries:
 - (i) provides to the Infrastructure Provider such information as is necessary to enable the Infrastructure Provider to comply with; and
 - (ii) does not take any action which may cause the Infrastructure Provider to breach any of,

its obligations under the Water Industry Act or under these Conditions; and
- (b) that the person giving the undertaking must ensure that, at all times, the Board of the Infrastructure Provider includes not less than three independent non-executive directors, each of whom must be a person of standing and have relevant experience, and whom must collectively have:
 - (i) connections with and knowledge of the services to be provided by the Infrastructure Provider; and
 - (ii) an understanding of the interests of customers and how those interests can be respected and protected.

8.3 Where:

- (a) an undertaking required to be given by a person in accordance with paragraph 8.1 is not in place; or
- (b) there has been a breach of the terms of such an undertaking by the person that gave it and that breach has not been remedied,

the Infrastructure Provider must not enter into any contract or arrangement with such a person or the Subsidiaries of such a person other than Subsidiaries of the Infrastructure Provider, without the prior written approval of the Authority.

Condition L Disposal of Protected Land

1 Introduction

The purpose of this Condition is to ensure 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 (*Allowed Revenue*).

2 Interpretation and Construction

2.1 For the purpose of calculating “best price”:

- (1) for the purpose of any Valuer’s certificate required to be furnished under paragraph 3.6(1)(a)(i) or 4.1(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) above, 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 Appendix 4 (*Defined Terms*).

2.2 For the purposes of any disposal of land, the “**Materiality Amount**” is £1 million or such greater amount as may from time to time be determined by the Authority so as to allow for movements in the Retail Prices Index or as may from time to time otherwise be determined by the Authority.

3 Disposals of Protected Land other than disposals by auction or formal tender or to Associated Companies

3.1 Subject to paragraph 3.2, the Infrastructure Provider shall not make any disposal of any Protected Land, unless the Infrastructure Provider shall have complied with the provisions of paragraph 3.3.

3.2 Paragraph 3.1 shall not apply to any:

- (1) Short Term Disposal;
- (2) 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 sub-paragraph (a) above, 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 Infrastructure Provider, is or might be related to, or connected or interdependent with, the first mentioned disposal,

does not exceed the Materiality Amount; or

- (3) disposal of Protected Land by auction or formal tender or to an Associated Company as referred to in paragraphs 4 and 5.

3.3 Subject to paragraph 3.6, the Infrastructure Provider shall:

- (1) not less than 10 working days prior to the Infrastructure Provider entering into an obligation (whether unconditional or subject to conditions) which requires or might require it to make the proposed disposal, furnish to the 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 Infrastructure Provider or, to the best of the knowledge, information and belief of the Infrastructure Provider, 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 Infrastructure Provider, 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 Infrastructure Provider and the timing of the receipt or derivation thereof;

- (e) sets out details as required by sub-paragraphs (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 Infrastructure Provider, 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 Infrastructure Provider is required to give vacant possession will be, no longer required for carrying out the Licensed Activities and will not be so required in the foreseeable future;
- (g) confirms:
 - (i) that the proposed disposal is an arm's length transaction;
 - (ii) that the consideration and other value (if any) certified under subparagraph (d) above to be received or derived, or expected to be received or derived, by the Infrastructure Provider 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 Infrastructure Provider or any other person;
 - (iii) except where a certificate is furnished under paragraph 3.5, that in the honestly held and reasonable opinion of the Infrastructure Provider, taking account of proper professional advice obtained by the Infrastructure Provider for that purpose, the consideration certified under (ii) above 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 Infrastructure Provider nor, to the best of the knowledge, information and belief of the Infrastructure Provider, having made due and careful enquiry, any Associated Company or any company or business in which the Infrastructure Provider, or, to the best of the knowledge, information and belief of the Infrastructure Provider, 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 Authority in writing such further Information regarding the proposed disposal which the Authority may reasonably request.

3.4 For the purpose of paragraph 3.3(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.

3.5 The Infrastructure Provider may, instead of giving the confirmation required by paragraph 3.3(1)(g)(iii), furnish to the Authority a certificate by a Valuer addressed to the Authority which states that, in the opinion of the Valuer, the consideration certified under paragraph 3.3(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).

3.6 Where the Infrastructure Provider proposes to make any such disposal as is mentioned in paragraph 3.1 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 paragraph 3.3(1) (including, where relevant, such a certificate as is referred to in paragraph 3.5) cannot properly be given, the Infrastructure Provider 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 paragraph 3.3(1) (including, where relevant, such a certificate as is referred to in paragraph 3.5) cannot properly be given:

(a) either:

(i) not less than 10 working days prior to the Infrastructure Provider entering into the relevant obligation, the Infrastructure Provider has furnished to the Authority a Disposal Certificate as required by paragraph 3.3, including such of the matters specified in (g) as can properly be certified and a certificate by a Valuer addressed to the Authority which states:

(A) that, in the opinion of the Valuer, the consideration to be received by the Infrastructure Provider 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 Infrastructure Provider from the proposed disposal, expressed in cash, according to when that consideration is to be, or is expected to be, received; or

(ii) the 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 Infrastructure Provider shall have furnished to the Authority in writing such further Information regarding the proposed disposal which the Authority may reasonably request; and

(2) in any case where the full confirmation required by (f) of paragraph 3.3(1) cannot properly be given, the prior written consent of the Authority to the proposed disposal has been obtained, such consent not to be unreasonably withheld or delayed.

4 Disposals of Protected Land by auction or formal tender

4.1 Where the Infrastructure Provider 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 paragraphs 3.2(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 Authority a Disposal Certificate which:

(i) contains the information and confirmations required to be contained in a Disposal Certificate furnished under paragraph 3.3(1) under items (a), (b), (c), (e), (f) and (g)(iv) of that 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 (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 Authority a certificate by a Valuer addressed to the 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 Authority in writing such further Information regarding the proposed disposal which the Authority may reasonably request.

4.2 In any case where the full confirmation required by paragraph 4.1(1)(a)(i) or (iii) cannot properly be given, the Infrastructure Provider shall not proceed with the proposed disposal without the prior written consent of the Authority.

5 Disposals of Protected Land to Associated Companies

5.1 Subject to paragraph 5.2, the Infrastructure Provider 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 paragraph 5.3.

5.2 Paragraph 5.1 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) above, 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 Infrastructure Provider is or might be related to, or connected or interdependent with, the first mentioned disposal,

does not exceed the Transfer Threshold.

5.3 Subject to paragraph 5.4, the Infrastructure Provider shall:

- (1) not later than 10 working days (or such other period to be agreed in advance between the Infrastructure Provider and Authority) prior to the Infrastructure Provider entering into any obligation (whether unconditional or subject to conditions) which requires or might require it to make that disposal, furnish to the Authority:
 - (i) a Disposal Certificate, which contains the information and confirmations required to be contained in a Disposal Certificate furnished under paragraph 3.3(1), including such of the matters specified in (g) thereof as can properly be certified; and
 - (ii) a certificate by a Valuer appointed by the Infrastructure Provider and approved by the Authority addressed to the Authority which states:
 - (A) that in the opinion of the Valuer the consideration to be received by the Infrastructure Provider 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 Infrastructure Provider 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 Authority in writing such further information regarding the proposed disposal which the 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 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 Authority considers appropriate to secure that the Infrastructure Provider 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 Authority considers appropriate, having regard to the duties imposed on the Authority under section 2 of the Water Industry Act.

5.4 In any case where the full confirmation required by (f) of paragraph 3.3(1) cannot properly be given, the Infrastructure Provider shall not enter into a relevant obligation unless the prior written consent of the Authority to the proposed disposal has been obtained, such consent not to be unreasonably withheld or delayed.

6 Disclosure of Information to Valuers

The Infrastructure Provider shall disclose to a Valuer all Information which, in the reasonable opinion of the Infrastructure Provider, 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 or her to give his or her certificate.

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Condition M
Provision of Information to the Authority

1 General obligations to provide Information

1.1 Subject to paragraph 2.1 and paragraph 2.2, the Infrastructure Provider must provide the Authority with any Information which it:

- (a) requests from the Infrastructure Provider; and
- (b) reasonably requires for the purpose of carrying out any of its functions under the Water Industry Act.

1.2 The Infrastructure Provider must ensure that Information which it provides to the Authority pursuant to this Condition is provided:

- (a) in the form and manner;
- (b) at such times; and
- (c) with such accompanying explanation,

as is reasonably requested by the Authority.

2 Restrictions on obligations to provide Information

2.1 Under this Condition the Infrastructure Provider is not required to provide:

- (a) Information in respect of any function of the Authority under section 14 or section 27 of the Water Industry Act; or
- (b) Information to be used for a purpose referred to in section 203 of the Water Industry Act, which it could not be required to produce under that section; or
- (c) Information which it would be entitled to refuse to disclose on grounds of legal professional privilege.

2.2 In respect of any of the Authority's functions under section 201 of the Water Industry Act, the Infrastructure Provider may only be required to provide reasoned comments on the accuracy and text of any information or advice which the Authority proposes to publish pursuant to section 201 of the Water Industry Act.

3 Provision of information for the purposes of Condition F (Regulatory Accounts)

3.1 The Infrastructure Provider must ensure that:

- (a) any set of regulatory accounts that are prepared pursuant to paragraph 3.1 of Condition F; and
- (b) any report prepared pursuant to paragraph 4.1 of Condition F in support of the set of regulatory accounts,

is submitted to the Authority no later than 15 July following the end of the twelve month period in respect of which the regulatory accounts were prepared.

4 Provision of Information for the purposes of Condition K (Regulatory ring-fence)

4.1 The Infrastructure Provider must provide the Authority with any Information about the costs of an Associated Company which provides services to the Infrastructure Provider which the Authority reasonably requests.

4.2 The Infrastructure Provider must notify the Authority as soon as possible where:

- (a) a new Director is appointed to the Board of the Infrastructure Provider;
- (b) the resignation or removal of a Director of the Board of the Infrastructure Provider takes effect;
- (c) there is an important change in the functions or executive responsibilities of a Director of the Board of the Infrastructure Provider.

4.3 Any notification given pursuant to paragraph 4.2 must include any relevant dates, whether the position involved is executive or non-executive and the nature of any function or responsibility.

4.4 The Infrastructure Provider must provide to the Authority:

- (a) the original of any undertaking given pursuant to paragraph 8.1 of Condition K (*Regulatory ring-fence*); and
- (b) such certified copies of any such undertaking as are requested by the Authority.

4.5 The Infrastructure Provider must immediately inform the Authority in writing if the Infrastructure Provider becomes aware that:

- (a) an undertaking given by a person pursuant to paragraph 8.1 of Condition K (*Regulatory ring-fence*) has ceased to be legally enforceable; or
- (b) there has been a breach of the terms of such an undertaking by the person that gave it.

5 Condition K Statement and Certificate

5.1 The Infrastructure Provider must publish with its audited accounts for each twelve month period a statement as to whether or not (as at the end of the period) the Infrastructure Provider has available to it sufficient rights and resources other than financial resources, as required by paragraph 4.4 of Condition K (*Regulatory ring-fence*).

5.2 No later than the date on which the Infrastructure Provider is required to submit a set of regulatory accounts in respect of a twelve month period in accordance with paragraph 3.1 of Condition F (*Regulatory Accounts*), the Infrastructure Provider must submit a Condition K Certificate to the Authority.

5.3 Where the Board of the Infrastructure Provider becomes aware of (i) any activity or (ii) any proposal to embark on any activity of the Infrastructure Provider or any Group Company

which does not form part of the Licensed Activities, and which may be material in relation to the Infrastructure Provider's ability to finance the Licensed Activities, the Infrastructure Provider must:

- (a) inform the Authority; and
- (b) in the case of (i) above within fourteen days of becoming aware of the activity, submit a new Condition K Certificate to the Authority.

5.4 Where the Board of the Infrastructure Provider becomes aware of any circumstances which would change its opinion such that it would not give the opinion contained in the Condition K Certificate, the Infrastructure Provider must inform the Authority of this in writing.

5.5 Whenever the Infrastructure Provider submits a Condition K Certificate to the Authority, the Infrastructure Provider must submit a statement of the main factors which the Board of the Infrastructure Provider has taken into account in giving its opinion for the certificate.

5.6 A Condition K Certificate must be:

- (a) signed by all Directors of the Infrastructure Provider on the date of submission; or
- (b) approved at a meeting of the Board of the Infrastructure Provider, convened in accordance with the Infrastructure Provider's articles of association, in which case the certificate must:
 - (i) be signed by a Director of the Infrastructure Provider or the Infrastructure Provider's company secretary; and
 - (ii) have appended to it a certified copy of the minutes of the approval.

Condition N Fees

1 Fees due prior to the 1 April following the First Periodic Review

See Appendix 2 (*Non-Revenue Conditions*).

2 Fees due from the 1 April after the First Periodic Review

2.1 The Infrastructure Provider must pay to the Secretary of State:

- (a) the Annual General Fee[; and
- (b) the Competition and Markets Authority's Reference Costs]¹⁴,

30 days after receipt of an invoice for the same, or on the first day of each Charging Year, whichever is the earlier.

2.2 The Infrastructure Provider must pay to the Secretary of State any Special Fee on 1 January in each Charging Year.

2.3 The Infrastructure Provider must pay to the Secretary of State any Interim Determination Fee within 30 days of having been notified by the Authority of the Interim Determination Fee payable.

2.4 The Infrastructure Provider must pay to the Secretary of State any Mandatory Variation Determination Fee within 30 days of having been notified by the Authority of the Mandatory Variation Determination Fee payable.

3 Cap on Annual General and Special Fees

3.1 Unless paragraph 3.4 applies, the aggregate of the Annual General Fees and any Special Fees payable by the Infrastructure Provider must not exceed the Regulation Fee Cap.

3.2 For the purposes of paragraph 3.1, the Regulation Fee Cap is an amount which is the sum of:

- (i) an amount equal to $S \times (t / T)$ in relation to each Charging Year in each Relevant Five Year Period; and
- (ii) an amount equal to Y in relation to each Relevant Five Year Period.

3.3 For the purposes of paragraph 3.2:

“Relevant Five Year Period” means:

- (i) the five year period starting from 1 April following the First Periodic Review; and
- (ii) every subsequent period of five consecutive Charging Years;

¹⁴References to referrals to the Competition and Markets Authority remain in square brackets pending the SIP Regulations being amended by the Secretary of State so as to confer powers on Ofwat to allow for such referrals.

“S” is an amount:

- (i) prescribed by the Authority at the First Periodic Review, taking into account the fees paid to the Authority by the Infrastructure Provider in the five year period preceding the First Periodic Review; and
- (ii) in respect of any subsequent Charging Year, that amount as increased by the proportion by which the Retail Prices Index for November immediately preceding the Charging Year differs from the Retail Prices Index for November in the year preceding the First Periodic Review;

“t” means, in relation to a payment to be made in a Charging Year, an amount equal to the turnover of the Licensed Business as shown in the accounting statements prepared by the Infrastructure Provider pursuant to Condition F (*Regulatory Accounts*) for the twelve month period ending twelve months before the start of the Charging Year;

“T” means, in relation to a payment to be made in a Charging Year, an amount equal to the sum of:

- (i) the turnover of the Licensed Business as shown in the accounting statements prepared by the Infrastructure Provider pursuant to Condition F (*Regulatory Accounts*); and
- (ii) the turnover of the licensed businesses of all other companies holding a project licence under section 17FA of the Water Industry Act as shown in their accounting statements prepared pursuant to the equivalent provisions of their project licences,

for the twelve month period ending twelve months before the start of the Charging Year; and

“Y” is an amount equal to 0.3% of the average annual turnover of the Licensed Business, as shown in the accounting statements prepared by the Infrastructure Provider pursuant to Condition F (*Regulatory Accounts*), over the five consecutive Charging Years preceding the Relevant Five Year Period.

3.4 Where a Periodic Review falls to be carried out under Condition B (*Allowed Revenue*), the Authority may, by notice to the Secretary of State, refer to the Secretary of State for determination the question whether the Regulation Fee Cap should be changed (and if so what change should be made).

3.5 Where:

- (a) a reference has been made in accordance with paragraph 3.4; and
- (b) the Secretary of State makes a determination by 31 December in the Charging Year before the Review Charging Year,

the Regulation Fee Cap set out in paragraphs 3.1 and 3.2 above shall be modified to the extent required to give necessary effect to any such determination.

4 Definitions

Unless the context indicates otherwise, terms used in this Condition N have the following meaning:

- 4.1 **“Annual General Fee”** means, in relation to a payment to be made in a Charging Year, an amount determined by the Authority which represents a fair proportion of the Authority’s estimation of the costs likely to be incurred by it in the Charging Year in the regulation and enforcement of the Infrastructure Provider and any other infrastructure providers (together the **“Infrastructure Provider Regime”**) and in the carrying out of its other functions under the Water Industry Act (including the preparation for or the carrying out of a Periodic Review), provided that:
- (i) any fair proportion must be determined in accordance with a method which the Authority has disclosed to the Infrastructure Provider in writing; and
 - (ii) the Annual General Fee must not be such as to lead to the Regulation Fee Cap referred to in paragraph 3 being exceeded.
- 4.2 **“Competition and Markets Authority’s Reference Costs”** means, in relation to a payment to be made in a Charging Year, an amount determined by the Authority which is the sum of:
- (i) the Authority’s estimation, after consulting the Competition and Markets Authority, of the costs incurred by the Competition and Markets Authority in the previous Charging Year in relation to references under section 17K of the Water Industry Act (provided that any reference is solely in relation to the Licensed Business), or in relation to references under Condition B (*Allowed Revenue*); and
 - (ii) a fair proportion of the Authority’s estimation, after consulting the Competition and Markets Authority, of the costs incurred by the Competition and Markets Authority in the previous Charging Year in relation to references under either section 17K of the Water Industry Act or under section 14 of the Water Industry Act (provided that any reference is in relation to the Licensed Business and the businesses of other companies either holding a project licence under section 17FA of the Water Industry Act or holding an appointment under Chapter I of Part II of the Water Industry Act),
- provided that any fair proportion must be determined in accordance with a method which the Authority has disclosed to the Infrastructure Provider in writing.]¹⁵
- 4.3 **“Interim Determination Fee”** means, in relation to a payment to be made in a Charging Year, an amount determined by the Authority which represents the Authority’s estimation of any costs already incurred or likely to be incurred by the Authority in the Charging Year in relation to any determination by the Authority under Part IV (Interim Determinations) of Condition B (*Allowed Revenue*).
- 4.4 **“Mandatory Variation Determination Fee”** means, in relation to a payment to be made in a Charging Year, an amount determined by the Authority which represents the Authority’s estimation of any costs already incurred or likely to be incurred by the Authority in the

¹⁵ References to referrals to the Competition and Markets Authority remain in square brackets pending the SIP Regulations being amended by the Secretary of State so as to confer powers on Ofwat to allow for such referrals.

Charging Year in relation to any determination by the Authority under Part VIII (Mandatory Variation Disputes) of Condition B (*Allowed Revenue*).

4.5 “**Special Fee**” means, in relation to a payment to be made in a Charging Year, an amount determined by the Authority which represents a fair proportion of the Authority’s estimation of any costs already incurred or likely to be incurred by the Authority in the Charging Year in the regulation and enforcement of the Infrastructure Provider Regime and in the carrying out of its other functions under the Water Industry Act (including the preparation for or the carrying out of a Periodic Review) that were not included in the estimate used by the Authority to determine the Annual General Fee for the Charging Year, provided that:

- (i) any fair proportion must be determined in accordance with a method which the Authority has disclosed to the Infrastructure Provider in writing; and
- (ii) the Special Fee must not be such as to lead to the Regulation Fee Cap referred to in paragraph 3 being exceeded.

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Condition O

Revocation and Variation

1 Revocation

- 1.1 From the Post Construction Review, the Secretary of State may revoke the Project Licence by giving the Infrastructure Provider at least 25 years' written notice.
- 1.2 The Authority may revoke this Project Licence by giving not less than two complete Charging Years' written notice to the Infrastructure Provider in the event that the regulatory capital value of the Infrastructure Provider has depreciated to [zero] or will have depreciated to [zero] by the expiry of the Depreciation Notice. If notice under this paragraph 1.2 is given on or before the last Business Day in March, the revocation will take effect on the 1 April two years after the notice was given.
- 1.3 The Authority may at any time revoke this Project Licence on notice in circumstances where:
- (a) the appointment of a special administrator in relation to the Infrastructure Provider ceases to have effect pursuant to the Insolvency Act 1986 (as it applies to the special administration of an infrastructure provider pursuant to the Water Industry Act)¹⁶ and:
 - (i) this Project Licence has not been transferred to a replacement infrastructure provider; and
 - (ii) the Infrastructure Provider has not been rescued as a going concern; or
 - (b) the Authority grants a project licence to another company to carry on activities relating to functions formerly carried on by the Infrastructure Provider as envisaged by paragraph 1(3B) of Schedule 2 to the Water Industry Act (as inserted by the SIP Regulations) read with section 17FA of the Water Industry Act (as inserted by the SIP Regulations).
- 1.4 If notice of revocation is given under either paragraphs 1.1, 1.2 or 1.3, the Authority may issue a direction to the Infrastructure Provider requiring the Infrastructure Provider to:
- (a) take specified steps to effect the transfer to another company or companies of so much of the undertaking of the Infrastructure Provider, including so much of the Project Documents, as is necessary to transfer in order to ensure that a new company or companies can (i) continue to operate and maintain the IP Regulated Assets in a way that ensures the Thames Tideway Tunnel is capable of being operated in conjunction with the Incumbent Undertaker's network assets in accordance with the Environmental Permit or (ii) secure and make safe the IP Regulated Assets; and
 - (b) secure and make safe the IP Regulated Assets pending a transfer to another company or companies in accordance with sub paragraph 1.4 (a) (the cost of which shall be treated as expenditure incurred or to be incurred by the Infrastructure Provider in connection with the Project).

¹⁶ A reference to ordinary administration will also be included, but only if regulations are made by the Secretary of State to make ordinary administration available to licensed infrastructure providers under proposed insolvency law reforms for the water industry.

The Infrastructure Provider must comply with a direction given under this paragraph.

- 1.5 The direction issued to the Infrastructure Provider by the Authority under paragraph 1.4:
- (a) may be subject to conditions including in respect of the valuation of the IP Regulated Assets; and
 - (b) must give the Infrastructure Provider reasonable time to take the necessary steps.
- 1.6 The Authority will consult the Infrastructure Provider and the Incumbent Undertaker before:
- (a) revoking this Project Licence under paragraph 1.3(b);
 - (b) issuing a direction under paragraph 1.4; or
 - (c) consenting to a revocation of this Project Licence under paragraph 1.7.
- 1.7 The Infrastructure Provider and the Authority may revoke this Project Licence by consent.

2 Revocation on Discontinuation of the Project

See Appendix 2 (*Non-Revenue Conditions*).

3 Variation

Subject to sections 17IA and 17K of the Water Industry Act (as has effect under the SIP Regulations), the Infrastructure Provider will use all reasonable endeavours to work with the Authority, in a constructive and cooperative manner to improve the conditions that attach to this Project Licence.

Appendix 1 Calculation of Allowed Revenue

1 Definitions¹⁷

Unless the context indicates otherwise, terms used in Appendix 1 have the meanings given below:

1.1 “[2010/11]”¹⁸ RPI Adjustment Factor” means:

- (a) in respect of Forecast Allowable Project Spend for Y_{t+1} , a discount calculated as the sum of $\frac{3}{4}$ of the Forecast RPI Adjustment Factor for the calendar year in which Charging Year Y_{t+1} commences and $\frac{1}{4}$ of the Forecast RPI Adjustment Factor for the calendar year in which Charging Year Y_{t+1} ends;
- (b) in respect of Y_{t-1} , the discount that applies to the sum of the Estimated Allowable Project Spend for 1 April Y_{t-1} to 30 November Y_{t-1} and Forecast Allowable Project Spend 1 Dec Y_{t-1} to 31 March Y_{t-1} is calculated as the sum of (i) the movement in the RPI (All Items) index as published by Office for National Statistics for the period April to November in the calendar year in which Charging Year Y_{t-1} commenced, (ii) $\frac{1}{12}$ of the Forecast RPI Adjustment Factor for the calendar year in which Charging Year Y_{t-1} commenced, and (iii) $\frac{1}{4}$ of the Forecast RPI Adjustment Factor for the calendar year in which Charging Year Y_{t-1} ends;
- (c) in respect of Forecast Allowable Project Spend for Y_t , a discount calculated as the sum of $\frac{3}{4}$ of the Forecast RPI Adjustment Factor for the calendar year in which Charging Year Y_t commenced and $\frac{1}{4}$ of the Forecast RPI Adjustment Factor for the calendar year in which Charging Year Y_t ends; and
- (d) where Charging Year Y_{t-2} is after the Base RPI Index year, in respect of each of paragraphs A 1.1.1 to 1.1.3 (inclusive) a further discount to [2010/11] prices by applying the result of dividing the average RPI (RPI All Items) as published by Office for National Statistics for Charging Year Y_{t-2} by the Base RPI Index.

1.2 “AAPS Cap” has the meaning given in paragraph A 11.3.1.

1.3 “Actual Cumulative Project Spend” means the aggregate of Annual Actual Project Spend incurred by the Infrastructure Provider in connection with the Project in each Charging Year.

1.4 “Additional Allowable Project Spend” means expenditure above the Threshold Outturn incurred or to be incurred by the Infrastructure Provider in connection with the Project prior to the Post Construction Review (in the case of the Ex-Ante Approach, up to the AAPS Cap), but (unless otherwise determined by the Authority as part of the Ex-Post Approach, if applicable), excluding the Excluded Project Spend.

¹⁷ The definitions will be updated once all the project documents are finalised as some of the definitions rely on definitions in those documents.

¹⁸ [2010/2011] is used throughout this document but this will be rebased on 2013/2014 prices or such other year as may be agreed.

- 1.5 “**Administrative Penalty End Date**” means the date which is 18 months following the Planned System Acceptance Date.
- 1.6 “**Allowable Project Spend**” means capital expenditure incurred or to be incurred by the Infrastructure Provider in connection with the Project prior to the Post Construction Review up to the point at which the Actual Cumulative Project Spend is equal to the Threshold Outturn, but excluding any Excluded Project Spend.
- 1.7 “**Annual Actual Project Spend**” means, in respect of a Charging Year, the Allowable Project Spend incurred by the Infrastructure Provider in connection with the Project in that Charging Year, as verified by the Independent Technical Assessor in accordance with this Project Licence and the Liaison Agreement stated in [2010/11] prices by way of deflation for such Charging Year based on the Applicable Change in Cost RPI for that Charging Year.
- 1.8 “**Annual Base Case Forecast**” means, in respect of any Charging Year and subject to the adjustments made pursuant to paragraph A 5 and/or A 9 (as applicable), the amount stated in [2010/11] prices set out in Annex A to this Appendix 1 in respect of the Charging Year in question, as indexed based on the Applicable Change in Cost Indices and then deflated based on the Applicable Change in Cost RPI, such indexation and deflation to be carried out in respect of each Charging Year falling within the period from (and including) the Commencement Date until (and including) the Charging Year in question;
- 1.9 “**Applicable Change in Cost RPI**” for any Charging Year means an adjustment calculated as follows:

$$\text{Applicable Change in Cost RPI} = \frac{\text{RPI}_t}{\text{RPI}_{\text{base}}}$$

where:

RPI_t is the average RPI in the Charging Year in question as published by the Office for National Statistics; and

RPI_{base} is the Base RPI Index.

- 1.10 “**Applicable Change in Construction Index**” in respect of any Construction Index for any Charging Year means an adjustment calculated as follows:

$$\text{Applicable Change in Construction Index} = \frac{\text{CI}_t}{\text{CI}_{\text{base}}}$$

where:

CI_t is the average of the relevant Construction Index in the Charging Year in question; and

CI_{base} is the Base CI Index for the relevant Construction Index.

1.11 “**Applicable Change in Cost Indices**” for any Charging Year means an adjustment to the relevant proportion of the Annual Base Case Forecasts calculated as follows:¹⁹

- (a) [X]% linked to the Applicable Change in Construction Index in respect of the index for PAFI 1990 Series Civil Engineering Indices 90/1 Labour & Supervision;
- (b) [X]% linked to the Applicable Change in Construction Index in respect of the index for PAFI 1990 Series Civil Engineering Indices 90/2 Plant and Road Vehicles;
- (c) [X]% linked to the Applicable Change in Construction Index in respect of the index for PAFI 1990 Series Civil Engineering Indices 90/3 Aggregates;
- (d) [X]% linked to the Applicable Change in Construction Index in respect of the index for PAFI 1990 Series Civil Engineering Indices 90/13 Steel Reinforcement;
- (e) [X]% linked to the Applicable Change in Construction Index in respect of the index for PAFI 1990 Series Civil Engineering Indices 90/15 Sheet Piling;
- (f) [X]% linked to the Applicable Change in Construction Index in respect of the index for PAFI Series 3 Building Indices 3/09 Pre cast all in cost;
- (g) [X]% linked to the Applicable Change in Construction Index in respect of the index for PAFI Series 3 Specialist Engineering Formulae Indices;
- (h) [X]% linked to the Applicable Change in Cost RPI;
- (i) [X]% non-adjustable.

1.12 “**Applicable Change in Revenue RPI**” for any Charging Year means an adjustment calculated as follows:

$$\text{Applicable Change in Revenue RPI} = \frac{\text{RPI}_t}{\text{RPI}_{\text{base}}}$$

where:

RPI_t is the RPI for November in the preceding Charging Year $t-1$ published by the Office for National Statistics in December of Charging Year $t-1$; and

RPI_{base} is the Base RPI Index.

¹⁹ The [X] value against each index will represent the pre-agreed proportion of costs that will be subject to that index. These figures will take into account the indexation that the IP faces on its construction contracts and other costs. For construction costs, the values will be based on the proportions for each index included within the Construction Contracts, while RPI will be used as the index for other remaining costs. It has been assumed for Round 1 of the procurement that 67% of the costs will be adjusted based on the indices in the Construction Contracts with the remaining 33% being adjusted based on the changes in RPI. However, the specified percentages may be revisited during the procurement process and a portion may not be subject to indexation at all.

- 1.13 “**Base CI Index**” in respect of a Construction Index means the year average of that Construction Index for the period April [2010] to March [2011] as published in June [2011].
- 1.14 “**Base RPI Index**” is the year average RPI for the period April [2010] to March [2011] as published by the Office for National Statistics in June [2011].
- 1.15 “**Beckton Sewage Treatment Works**” means the Incumbent Undertaker’s sewage treatment facility at Beckton.
- 1.16 “**BWACC**” is the weighted average cost of capital bid by the Infrastructure Provider stated in [2010/11] prices for the period up to and including 31 March following the Post Construction Review.
- 1.17 “**Catchment Design**” means [●].
- 1.18 “**Charging Year**” means a period of 12 months commencing on the 1 April and ending on 31 March.
- 1.19 “**Commercial Insurances**” means [●].
- 1.20 “**Construction Building Block**” means each of the Return on Capital Building Block, the Liquidity Building Block, the Opex Building Block, the Financing Cost Adjustment Building Block, the Tax Building Block and the Additional Return on Capital Building Block.
- 1.21 “**Construction Indices**” means each of the following indices:
- (a) the index for PAFI 1990 Series Civil Engineering Indices 90/1 Labour & Supervision;
 - (b) the index for PAFI 1990 Series Civil Engineering Indices 90/2 Plant and Road Vehicles;
 - (c) the index for PAFI 1990 Series Civil Engineering Indices 90/3 Aggregates;
 - (d) the index for PAFI 1990 Series Civil Engineering Indices 90/13 Steel Reinforcement;
 - (e) the index for PAFI 1990 Series Civil Engineering Indices 90/15 Sheet Piling;
 - (f) the index for PAFI Series 3 Building Indices 3/09 Pre cast all in cost;
 - (g) the index for PAFI Series 3 Specialist Engineering Formulae Indices.

The indices referred to above are those entitled “Price Adjustment Formulae Indices (Building) Series 3”, “Price Adjustment Formulae Indices (Civil Engineering) 1990 Series” and “Price Adjustment Formulae Indices (Specialist Engineering) Series 3”, all as published by the Building Cost Information Service (BCIS).

- 1.22 “**Construction Period**” means the period from (and including) the Commencement Date until (and including) the date of the Post Construction Review.

- 1.23 **“Distributions”** means any payments (other than payments made to such persons pursuant to arrangements entered into for the provision of management and other services incurred in connection with the Project and which are entered into on *bona fide* arm's length terms in the ordinary and usual course of trading), including any payment of dividends, bonus issues, return of capital, fees, interest, principal or other amounts whatsoever (by way of loan or repayment of any loan or otherwise) (in cash or in kind) to any person who has an interest, directly or indirectly, in the Infrastructure Provider or any Subsidiary or a Holding Company of such person or any other Subsidiary of that Holding Company.
- 1.24 **“Estimated Allowable Project Spend”** means Allowable Project Spend estimated to have been incurred by the Infrastructure Provider in accordance with the Liaison Agreement but not yet verified by the Independent Technical Assessor in accordance with this Project Licence and the Liaison Agreement stated in [2010/11] prices by way of deflation based on [2010/11] RPI Adjustment Factor.
- 1.25 **“Ex-Ante Approach”** is the approach to determining Additional Allowable Project Spend described in paragraph A 11.3.
- 1.26 **“Ex-Post Approach”** is the approach to determining Additional Allowable Project Spend described in paragraph A 11.4.
- 1.27 **“Excluded Project Spend”** means the following expenditure incurred or to be incurred by the Infrastructure Provider in connection with the Project prior to the Post Construction Review:
- (a) financing costs, fees and expenses, including any fees payable under the Government Support Package (other than the Supplemental Compensation Agreement provided that additional premium payable under the Supplemental Compensation Agreement entered into between the Infrastructure Provider and the Secretary of State as a consequence of a Failure Event shall constitute Excluded Project Spend) and/or in relation to lender advisers;
 - (b) operating costs, including the Opex Building Block (save for operating costs which are accounted for as a capital expenditure either in accordance with the generally accepted accounting principles and policies adopted in the water industry or are recognised by the Authority as such, in which case such costs shall be included in the Allowable Project Spend or the Additional Allowable Project Spend, as applicable);
 - (c) tax (other than non-recoverable tax or levies (if any) imposed by HM Revenue & Customs or any other competent authority incurred in respect of the Allowable Project Spend or the Additional Allowable Project Spend, as applicable²⁰);
 - (d) Distributions;
 - (e) any expenditure funded by Insurance Proceeds;

²⁰ For example, landfill tax will be a legitimate project cost that is non-recoverable and therefore will not be excluded project spend.

- (f) any expenditure incurred due to the fraud, Wilful Misconduct or Gross Negligence of the Infrastructure Provider;
 - (g) costs which are not justified by the Infrastructure Provider's accounts and records;
 - (h) costs which should not have been paid by the Infrastructure Provider to its contractors or suppliers in accordance with their contracts; and
 - (i) fines payable under law or regulation and financial remedies payable under contract;
 - (j) expenditure incurred by the Infrastructure Provider as a consequence of an event within the scope of the cover provided by the Supplemental Compensation Agreement, but which is not reimbursed due to the application of additional deductibles under the Supplemental Compensation Agreement following a Failure Event;
 - (k) [others].
- 1.28 **"Failure Event"** has the meaning given in the Discontinuation Agreement.
- 1.29 **"Financing Cost Adjustment Index Yield"** is as defined in paragraph A 7.3.
- 1.30 **"First Charging Year"** or **"Charging Year Y₁"** or **"Y₁"** means the Charging Year commencing on the Commencement Date and ending on the immediately following 31 March.
- 1.31 **"Forecast Allowable Project Spend"** means Allowable Project Spend estimated on a forward looking basis to be incurred by the Infrastructure Provider in accordance with the Liaison Agreement but not yet verified by the Independent Technical Assessor in accordance with this Project Licence and the Liaison Agreement stated in [2010/11] prices by way of deflation based on [2010/11] RPI Adjustment Factor.
- 1.32 **"Forecast RPI Adjustment Factor"** means the average independent (new forecasts) for RPI as stated in Table M3 of the document entitled "Forecasts for the UK economy: a comparison of independent forecasts" (or such replacement document setting out the average independent forecast for RPI) published from time to time by HM Treasury.
- 1.33 **"Insurance Proceeds"** means [any amount payable by insurers or reinsurers in respect of the Commercial Insurances and/or by the Secretary of State in respect of the Supplemental Compensation Agreement, including proceeds of claims, return premiums and ex gratia payments].
- 1.34 **"Market Cost of Debt Adjustment Factor"** is as defined in paragraph A 6.7.
- 1.35 **"Notional Debt to RCV Ratio"** is the debt to RCV ratio, being [62.5%] of the RCV.
- 1.36 **"Original Base Case Forecast"** means, at any time, the sum of the Annual Base Case Forecasts at that time.

1.37 “**Planned System Acceptance Date**” means the date on which Acceptance is scheduled to be achieved being [28] February 2027;

1.38 “**Post Construction Review Applicable Change in Revenue RPI**” for any Charging Year means an adjustment calculated as follows:

$$\text{Applicable Change in Revenue RPI} = \frac{\text{RPI}_t}{\text{RPI}_{\text{pcr}_{\text{base}}}}$$

where:

RPI_t is the RPI for November in the preceding Charging Year_{t-1} published by the Office for National Statistics in December of Charging Year_{t-1}; and

$\text{RPI}_{\text{pcr}_{\text{base}}}$ is the base RPI as determined by the Authority as part of the Post Construction Review.

1.39 “**Post Construction Review RCV**” is as defined in paragraph 2.1.2 of Part B of this Appendix 1.

1.40 “**Post Construction Review WACC**” is as defined in paragraph 3.1 of Part B of this Appendix 1.

1.41 “**Predicted Overrun**” means the amount (if any) by which the aggregate of the Actual Cumulative Project Spend at any point in time and the Forecast Allowable Project Spend from that point in time is estimated to exceed the Threshold Outturn.

1.42 “**Project Fixed Requirements**” means:

- (a) catchment characteristics of the Sewer Network, including:
 - (i) physical location and configuration of the Sewer Network, including sizes, arrangements, materials and operating capacities; and
 - (ii) dry weather flows, operating levels and storm response as defined in the Thames Tideway Tunnel catchment models;
- (b) sewage characteristics and design flows into the London Tideway Tunnels as set out in the hydraulic specifications for the Project included in the Works Information forming part of the Construction Contracts at WI.GEN.7706 Design Specifications – Hydraulics and in respect of the Incumbent Undertaker’s standalone sites included in the Works Information forming part of the Construction Contracts at 2710.GEN Employer’s design specification – Hydraulics;
- (c) categorisation of the CSOs and those CSOs to be directly intercepted and actively managed and those CSOs that are influenced as set out in the Operating Techniques;
- (d) Catchment Model dated [] as may be updated from time to time;
- (e) minimum storage volume in the London Tideway Tunnels of [1.5] million cubic meters, including a minimum volume in the Thames Tideway Tunnel of 1.24 million cubic metres in accordance with the SIP Regulations;

- (f) diameter and gradient requirements of the Main Tunnel, and Greenwich and Frogmore connection tunnels as follows:

	Maximum Gradient	Minimum Gradient
6.5m internal diameter main tunnel between Acton Storm Tanks and Carnwath Road Riverside	1:650	1:750
7.2m internal diameter main tunnel between Carnwath Road Riverside and Abbey Mills pumping station	1:750	1:850
5m internal diameter Greenwich connection tunnel	1:500	1:550
2.6m internal diameter Frogmore connection tunnel	1:500	1:550

- (g) the 'self-cleansing' (sewage solids transport and deposition) performance within the Main Tunnel and Greenwich and Frogmore long connection tunnels;
- (h) the requirements of the Environmental Permit and the Operating Techniques;
- (i) the requirements of the DCO;
- (j) scope and specification of the Lee Tunnel and sewage treatment works upgrades, Tideway Pumping Station and interconnection works at Beckton as may be updated from time to time.
- 1.43 **"Second Charging Year"** or **"Charging Year Y₂"** or **"Y₂"** means the Charging Year commencing on 1 April immediately following the end of the First Charging Year.
- 1.44 **"Sewer Network"** means the Incumbent Undertaker's network of sewers, including all necessary component parts and lateral drains, draining the London area of effluent, trade effluent and stormwater, including the Lee Tunnel and any pumping stations and treatment works operated by the Incumbent Undertaker.
- 1.45 **"Third Charging Year"** or **"Charging Year Y₃"** or **"Y₃"** means the Charging Year commencing on 1 April immediately following the end of the Second Charging Year.
- 1.46 **"Threshold Outturn"** means £[x] billion stated in [2010/11] prices (or such other amount as shall be agreed by the Authority, the Secretary of State, the Infrastructure Provider and the Incumbent Undertaker from time to time).
- 1.47 **"Tideway Pumping Station"** means the pumping station at the Beckton Sewage Treatment Works at the downstream end of the Lee Tunnel.
- 1.48 **"Water Services Regulation Authority Stated RCV ([2010/11] Prices)"** is as defined in paragraph 2.1 of Part A of this Appendix 1.

Part A: Construction Revenue

A	1	Allowed Revenue	1.1	The Allowed Revenue from the Commencement Date to (and including) 31 March immediately following the
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			<p>Post Construction Review will be calculated in accordance with this Part A of Appendix 1.</p> <p>1.2 Subject to paragraph A 1.3, Allowed Revenue for any Charging Year Y_t, will be calculated no later than [the first Business Day following 1 January] of Charging Year Y_{t-1}.</p> <p>1.3 Allowed Revenue for the First Charging Year will be calculated by the Infrastructure Provider no later than [the first Business Day following 1 January] immediately prior to the commencement of the Second Charging Year, and will be payable in the Second Charging Year together with the Allowed Revenue for the Second Charging Year; provided that, where the Allowed Revenue for the First Charging Year and/or the Second Charging Year has not been calculated by [the first Business Day following 1 January] immediately prior to the commencement of the Second Charging Year, then the Allowed Revenue for the First Charging Year and/or the Second Charging Year (as applicable) will be calculated by [the first Business Day following 1 January] immediately prior to the commencement of the Third Charging Year and will be payable in the Third Charging Year together with the Allowed Revenue for the Third Charging Year. The Allowed Revenue for the First Charging Year and (where the Allowed Revenue for the Second Charging Year is payable in the Third Charging Year in accordance with this paragraph A 1.3) the Allowed Revenue for Second Charging Year will be subject to a net present value adjustment as follows:</p> $AR Y_t \times (1 + BWACC)^{(0.5 + \frac{PD}{2})}$ <p>where:</p> <p>AR Y_t means the Allowed Revenue for the First Charging Year or the Second Charging Year (as applicable);</p> <p>PD means:</p> <p>(i) in respect of the First Charging Year, the proportion of the First Charging Year, calculated by reference to the number of days from the Commencement Date until the end of the First Charging Year (if the Allowed Revenue for the First Charging Year is payable in the Second Charging Year) or the Second Charging Year (if the Allowed Revenue for the First Charging Year is payable in the Third Charging Year); or</p> <p>(ii) in respect of the Second Charging Year, the</p>
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			<p>proportion of the Second Charging Year, calculated by reference to the number of days during the Second Charging Year.</p> <p>1.4 The Infrastructure Provider’s calculation of Allowed Revenue will be included in the Infrastructure Provider’s Revenue Statement issued to the Authority in accordance with Condition [B 3].</p> <p>1.5 The Allowed Revenue payable to the Infrastructure Provider shall be calculated in accordance with the following formula:</p> <p>$(RoC + Li + Op + FCA + Tax) +/- RA +/- BBRA + ARoC + ALi$</p> <p>where:</p> <p><i>RoC or Return on Capital Building Block</i> means the return on capital calculated in accordance with paragraph A 3;</p> <p><i>Li or Liquidity Building Block</i> means the liquidity allowance calculated in accordance with paragraph A 4;</p> <p><i>Op or Opex Building Block</i> means the operating expenditure allowance calculated in accordance with paragraph A 5;</p> <p><i>FCA or Financing Cost Adjustment Building Block</i> means the financing cost adjustment calculated in accordance with paragraph A 6;</p> <p><i>Tax or Tax Building Block</i> means zero, unless there is a Change in Tax Law that results in the Infrastructure Provider being required to pay an amount in respect of corporation tax or other income based tax imposed by HM Revenue & Customs or any other competent authority (“Income Tax”) in the relevant Charging Year, in which case Tax shall mean such Income Tax payable in that Charging Year net of any Income Tax losses and any Income Tax credits or refunds to which the Infrastructure Provider is or may become entitled to in that Charging Year;</p> <p><i>RA</i> means the revenue adjustment for under/over recovered Allowed Revenue calculated in accordance with paragraph A 7;</p> <p><i>BBRA</i> means the building block reconciliation adjustment calculated in accordance with paragraph A 8;</p> <p><i>ARoC or Additional Return on Capital Building Block</i> means the return on capital permitted in respect of Additional Allowable Project Spend (if any) (as adjusted by the incentive regime applicable thereto), determined in accordance with paragraph A</p>
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			<p>11 following an IAR Overrun Application;</p> <p>ALi or Additional Liquidity Building Block means the liquidity allowance permitted in respect of Additional Allowable Project Spend (if any), determined in accordance with paragraph A 11 following an IAR Overrun Application.</p>
	2	The Water Services Regulation Authority Stated RCV	<p>2.1 From and including the Second Charging Year, the Authority shall no later than 1 September of each Charging Year state the regulatory capital value as at 31 March of the immediately preceding Charging Year in [2010/11] prices which shall be the Actual Cumulative Project Spend for the period up to 31 March of the immediately preceding Charging Year (the "Water Services Regulation Authority Stated RCV ([2010/11] Prices)").</p> <p>2.2 From and including the Third Charging Year, the Authority shall, in addition, state the Water Services Regulation Authority Stated RCV ([2010/11] Prices) as at 31 March in Charging Year Y_{t-2} in then current prices. This will be calculated as the Water Services Regulation Authority Stated RCV ([2010/11] Prices) as indexed to the year-end RPI as published by the Office for National Statistics for Y_{t-2} (the "Water Services Regulation Authority Adjusted RCV (Current Prices)").</p>
	3	Return on Capital	<p>3.1 The Return on Capital Building Block shall be calculated in accordance with this paragraph A 3.</p> <p>3.2 The Return on Capital Building Block in the First Charging Year will be calculated as follows: $(YARCV Y_1 \times BWACC) \times \text{Applicable Change in Revenue RPI for the First Charging Year}$ where: $YARCV Y_1$ is 50% of the Forecast Allowable Project Spend for the First Charging Year as forecast by the Infrastructure Provider, as adjusted in accordance with the [2010/11] RPI Adjustment Factor.</p> <p>3.3 The Return on Capital Building Block in the Second Charging Year will be calculated as follows: $(YARCV Y_2 \times BWACC) \times \text{Applicable Change in Revenue RPI for the Second Charging Year}$ where: $YARCV Y_2$ is the Year Average RCV for the Second Charging Year in [2010/11] prices calculated in accordance with paragraph A 3.4.</p> <p>3.4 The Year Average RCV for the Second Charging Year is calculated as follows:</p>

			<p style="text-align: center;"><u>$(OPRCV Y_2 + CPRCV Y_2)$</u></p> <p style="text-align: center;">2</p> <p>where:</p> <p>OPRCV Y₂ is the Opening Projected RCV for the Second Charging Year which is calculated as the sum of:</p> <ul style="list-style-type: none"> (i) the Estimated Allowable Project Spend in the 8 months ending on 30 November of the First Charging Year (Y₁); plus (ii) the Forecast Allowable Project Spend for the 4 months commencing on 1 December and ending on 31 March of the First Charging Year (Y₁); and <p>CPRCV Y₂ is the sum of OPRCV Y₂ and the Forecast Allowable Project Spend for the Second Charging Year,</p> <p>each after adjustment in accordance with the [2010/11] RPI Adjustment Factor.</p> <p>3.5 The Return on Capital Building Block for the Third Charging Year and each Charging Year thereafter Y_t will be calculated as follows:</p> <p style="text-align: center;">$(YARCV Y_t \times BWACC) \times \text{Applicable Change in Revenue RPI for Charging Year } Y_t$</p> <p>where:</p> <p>YARCV Y_t is the Year Average RCV in [2010/11] prices for the relevant Charging Year Y_t calculated in accordance with paragraph A 3.6.</p> <p>3.6 The Year Average RCV for the relevant Charging Year Y_t is calculated as follows:</p> <p style="text-align: center;"><u>$(OPRCV Y_t + CPRCV Y_t)$</u></p> <p style="text-align: center;">2</p> <p>where:</p> <p>OPRCV Y_t is the Opening Projected RCV for the relevant Charging Year Y_t calculated as the sum of:</p> <ul style="list-style-type: none"> (i) the Water Services Regulation Authority Stated RCV ([2010/11] Prices) for Y_{t-2}; (ii) the Estimated Allowable Project Spend for 1 April Y_{t-1} to 30 November Y_{t-1}; and (iii) Forecast Allowable Project Spend 1 Dec Y_{t-1} to 31 Mar Y_{t-1}; and <p>CPRCV Y_t is the Closing Projected RCV for Charging Year Y_t stated in [2010/11] prices calculated as the sum of:</p> <ul style="list-style-type: none"> (i) Opening Projected RCV for Y_t; and (ii) Forecast Allowable Project Spend for Y_t, <p>each (other than the Water Services Regulation</p>
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			Authority Stated RCV ([2010/11] Prices)) after adjustment in accordance with the [2010/11] RPI Adjustment Factor.
	4	Liquidity	<p>4.1 The Liquidity Building Block shall be calculated in accordance with this paragraph A 4.</p> <p>4.2 The Liquidity Building Block in the First Charging Year will be calculated as follows: $Li = (BWACC \times (FYARCV Y_2 - YARCV Y_1)) \times$ <i>Applicable Change in Revenue RPI for the First Charging Year</i> where: $YARCV Y_1$ is the Year Average RCV in [2010/11] prices for the First Charging Year calculated in accordance with paragraph A 3.2; $FYARCV Y_2$ is the Year Average RCV in [2010/11] prices for the Second Charging Year calculated as follows: $\frac{(OPRCV Y_2 + CPRCV Y_2)}{2}$ where: $OPRCV Y_2$ is the Forecast Allowable Project Spend for the First Charging Year; and $CPRCV Y_2$ is the sum of $OPRCV Y_2$ and the Forecast Allowable Project Spend for the Second Charging Year, each after adjustment in accordance with the [2010/11] RPI Adjustment Factor.</p> <p>4.3 The Liquidity Building Block in the Second Charging Year will be calculated as follows: $Li = (BWACC \times (FYARCV Y_3 - YARCV Y_2)) \times$ <i>Applicable Change in Revenue RPI for the Second Charging Year</i> where: $FYARCV Y_3$ is the Forecast Year Average RCV in 2010/11 prices for the Third Charging Year calculated as follows: $\frac{(OPRCV Y_3 + CPRCV Y_3)}{2}$ where: $OPRCV Y_3$ is an amount equal to $CPRCV Y_2$ calculated in accordance with paragraph A 4.2; and $CPRCV Y_3$ is the sum of $OPRCV Y_3$ and the Forecast Allowable Project Spend for the Third Charging Year, each after adjustment in accordance with the</p>

			<p>[2010/11] RPI Adjustment Factor.</p> <p>YARCV Y_2 is the Year Average RCV for the Second Charging Year calculated in accordance with paragraph A 3.4.</p> <p>4.4 The Liquidity Building Block for the Third Charging Year and for each Charging Year thereafter will be calculated as follows:</p> <p>$Li = (BWACC \times (FYARCV_{t+1} - YARCV_{Y_t})) \times$ Applicable Change in Revenue RPI for Charging Year Y_t</p> <p>where:</p> <p>FYARCV t_{+1} is the Forecast Year Average RCV for Y_{t+1} (calculated in accordance with paragraph A 4.5); and</p> <p>YARCV Y_t is the Year Average RCV for the relevant Charging Year Y_t calculated in accordance with paragraph A 3.6.</p> <p>4.5 The Forecast Year Average RCV in [2010/11] prices for Charging Year Y_{t+1} will be calculated as follows:</p> <p>$\frac{(OPRCV_{Y_{t+1}} + CPRCV_{Y_{t+1}})}{2}$</p> <p>where:</p> <p>OPRCV Y_{t+1} is the Opening Project RCV for Y_{t+1} which is equal to the Closing Projected RCV for Y_t as calculated in A 3.6; and</p> <p>CPRCV Y_{t+1} is calculated as the sum of:</p> <ul style="list-style-type: none"> (i) Opening Projected RCV for Y_{t+1}; and (ii) Forecast Allowable Project Spend for Y_{t+1} each after adjustment in accordance with the [2010/11] RPI Adjustment Factor.
5	Opex		<p>5.1 The Opex Building Block shall be calculated in accordance with this paragraph A 5.</p> <p>5.2 In respect of each Charging Year (or partial Charging Year) from (and including) the Commencement Date and prior to 1 April immediately following the Post Construction Review, the Opex Building Block shall be zero, unless following the effective date of this Project Licence there is a change in generally accepted accounting principles and policies adopted in the water industry and a determination by the Authority, which results in any operating costs incurred (or to be incurred) by the Infrastructure Provider in any Charging Year no longer being accounted for as capital expenditure in that Charging Year, in which case:</p> <p>5.2.1 if the determination relates to operating costs</p>

			<p>already incurred by the Infrastructure Provider in the Charging Year when the change or determination came into effect, those costs will be included in the Opex Building Block for the Charging Year immediately following the Charging Year when those operating costs were incurred;</p> <p>5.2.2 those operating costs estimated on a forward looking basis to be incurred by the Infrastructure Provider prior to 1 April immediately following the Post Construction Review will be included in the Opex Building Block for the Charging Year when they are due to be incurred;</p> <p>5.2.3 the Annual Base Case Forecasts for the Charging Year(s) affected by the determination shall be subject to a decrease as determined by the Authority to take account of the decreased capital expenditure of the Infrastructure Provider in the Charging Year(s) in question; and</p> <p>5.2.4 the operating costs incurred by the Infrastructure Provider shall, to the extent that they are no longer capable of being accounted for as capital expenditure, be excluded from the Allowable Project Spend and/or the Additional Allowable Project Spend (as applicable).</p>
6	Financing Cost Adjustment		<p>6.1 The Financing Cost Adjustment Building Block shall be calculated in accordance with this paragraph A 6.</p> <p>6.2 An annual revenue adjustment will apply to provide protection against movements in the market cost of debt against the base reference point set out in paragraph A 6.4 (the "Financing Cost Adjustment"). The financing cost adjustment will apply until 31 March immediately following the Post Construction Review ("Adjustment Period").</p> <p>6.3 The applicable index yield will be a 50%:50% mix of iBoxx A/BBB UK non-financials with 10+ year maturity deflated by reference to the spot implied inflation rate for 10 year maturity ("Index Yield") published by the Bank of England for the same date (the "Financing Cost Adjustment Index Yield"). This deflation will be calculated as follows:</p> <p><i>(1 + (50% * iBoxx A UK non-financials with 10+ year maturity + 50% * iBoxx BBB UK non-financials with 10+ year maturity)) / (1 + spot implied inflation rates for 10 year maturity published by the Bank of England) - 1</i></p> <p>6.4 The base reference point throughout the Adjustment Period will be the historic two-year trailing average of</p>

			<p>the Financing Cost Adjustment Index Yield as at [the last quarter end date which occurred prior to the date of this Licence] ("BRP").</p> <p>6.5 The annual reference point in any Charging Year Y_t during the Adjustment Period will be the historic two-year trailing average of the Index Yield as at [30 September] of Charging Year Y_{t-1} ("ARP Calculation Date") deflated by the [implied inflation rates derived from spot inflation Zero Coupon curves for 10 year maturity published by the Bank of England] for the same period ("ARP").</p> <p>6.6 To the extent that the difference, if any, between the BRP and the ARP on any ARP Calculation Date is:</p> <ul style="list-style-type: none"> (i) +/-50bps, no market cost of debt adjustment will be made; (ii) between +/-51bps and +/-100bps, the market cost of debt adjustment factor will be equal to 50% of such difference; and (iii) greater than +/-100bps, the market cost of debt adjustment factor will be equal to 100% of such difference. <p>The sum of (i), (ii) and (iii) is the market cost of debt adjustment factor (the "Market Cost of Debt Adjustment Factor") for the relevant Charging Year Y_t.</p> <p>6.7 The Financing Cost Adjustment for each constituent Charging Year Y_t will be calculated as follows: <i>Financing Cost Adjustment for Charging Year $Y_t = ((\text{Closing Projected RCV for Charging Year } Y_t \times \text{Applicable Change in Revenue RPI for Charging Year } Y_t \times \text{the Notional Debt to RCV Ratio for Charging Year } Y_t) - (\text{Opening Projected RCV for the relevant Charging Year } Y_t \times \text{Applicable Change in Revenue RPI for Charging Year } Y_{t-1} \times \text{the Notional Debt to RCV Ratio for Charging Year } Y_{t-1})) \times \text{Market Cost of Debt Adjustment Factor for Charging Year } Y_t$</i></p> <p>6.8 In respect of each Charging Year Y_t, the Financing Cost Adjustment Building Block for each such Charging Year Y_t will be the sum of the Financing Cost Adjustment for Charging Year Y_t and the Financing Cost Adjustments for all previous Charging Years to reflect the build-up of the market cost of debt protection over time.</p>
	7	Under/Over Recovered Revenue	<p>7.1 The Allowed Revenue in the Third Charging Year and each Charging Year thereafter shall be subject to a</p>

		Adjustment²¹	<p>Revenue Adjustment (RA) to take into account any under or over recovery of Allowed Revenue during previous Charging Years in accordance with this paragraph A 7.</p> <p>7.2 The Revenue Adjustment in respect of the Third Charging Year and each Charging Year thereafter shall be calculated by reference to the actual amount in absolute terms of under/over recovered revenue (having taken into account any adjustments under the provisions of the Revenue Agreement) experienced by the Infrastructure Provider in the Charging Year falling two years prior to the relevant Charging Year as follows:</p> <p><i>RA</i> $Y_t = \text{Allowed Revenue for Charging Year}_{t-2} - \text{actual revenue recovered by the Infrastructure Provider in Charging Year}_{t-2}$</p>
8	Reconciliation Adjustment	<p>8.1 A reconciliation adjustment will be applied to each of the Return on Capital Building Block, the Liquidity Building Block, the Opex Building Block, the Financing Cost Adjustment Building Block and the Tax Building Block and shall be calculated on the first Business Day following 1 January of each Charging Year for previous Charging Years and will be applied from 1 April of the following Charging Year Y_{t+1}.</p> <p>8.2 The reconciliation adjustment will be calculated on a NPV neutral basis utilising the BWACC as the discount factor and will, to the extent possible, substitute actual values for previously estimated or forecast values and re-estimates or updated forecasts for previous estimated or forecast values for a re-run of the relevant calculations (save in respect of the under/over recovered Revenue Adjustment (RA) in respect of the Return on Capital Building Block, the Liquidity Building Block, the Opex Building Block, the Financing Cost Adjustment Building Block and the Tax Building Block). Adjustment is made for the difference between ex-ante and ex-post assessments of the Return on Capital Building Block, the Liquidity Building Block, the Opex Building Block, the Financing Cost Adjustment Building Block and the Tax Building Block.</p> <p>8.3 In making any estimates and forecasts in any Charging Year the Infrastructure Provider will state</p>	

²¹ There are on-going discussions on alliancing incentives that will apply to the Infrastructure Provider, TWUL and the Construction Contractors to promote them working effectively together to deliver the Thames Tideway Tunnel Project. If the outcome of those discussions involves the IP receiving payments from the alliance participants in relation to delay and/or cost overruns, the revenue provisions of this Project Licence may need to be amended to take into account the receipt of such monies.

			forecasts in accordance with the procedures prescribed in the Liaison Agreement and consistently with estimates and forecasts most recently verified by the Independent Technical Assessor in accordance with this Project Licence and the Liaison Agreement.
	9	Adjustments to Base Case Forecasts	<p>9.1 For the purposes of this paragraph A 9, a “Base Case Adjustment Trigger Event” means where any one or more of the following events has occurred or is to occur:</p> <p>9.1.1 a change in the Project Specification Notice;</p> <p>9.1.2 a Relevant Change in Law; or</p> <p>9.1.3 a change in the Project Fixed Requirements and any such event, individually, having taken into account any savings resulting from it, is likely to result in the Allowable Project Spend to be incurred by the Infrastructure Provider in connection with the Project prior to the Post Construction Review increasing or decreasing (as the case may be) by more than £10 million, all figures for this purpose expressed in [2010/11] prices.</p> <p>9.2 If there is a Base Case Adjustment Trigger Event, which (together with all previous Base Case Adjustment Trigger Events and having taken into account any savings resulting from that and all previous Base Case Adjustment Trigger Events) is likely to result in the capital expenditure to be incurred by the Infrastructure Provider in connection with the Project prior to the Post Construction Review increasing by more than 2% of the then current Original Base Case Forecast, the Infrastructure Provider may make an application to the Authority to approve changes to the Annual Base Case Forecast for the affected Charging Year(s) to take account of the likely increased capital expenditure (the “Base Case Review Application”). The Base Case Review Application must be supported by (i) the details of the relevant Base Case Adjustment Trigger Event and all previous Base Case Adjustment Trigger Events and (ii) the likely increased capital expenditure for each affected Charging Year compared to the Annual Base Case Forecast for the Charging Year(s) in question (having taken into account any savings resulting from the relevant change).</p> <p>9.3 Following a Base Case Review Application, the Authority will determine whether to approve changes to the Annual Base Case Forecast for the affected Charging Year(s) and what those changes should be.</p> <p>9.4 If there is a Base Case Adjustment Trigger Event,</p>

			<p>which (together with all previous Base Case Adjustment Trigger Events) is likely to result in the capital expenditure to be incurred by the Infrastructure Provider in connection with the Project prior to the Post Construction Review decreasing by more than 2% of the then current Original Base Case Forecast, then the Authority may give notice (a “Base Case Review Notice of Intention”) to the Infrastructure Provider of its intention to make a determination to approve changes to the Annual Base Case Forecast for the affected Charging Year(s) to take account of the likely material reduction in capital expenditure.</p> <p>9.5 In making the determination referred to in paragraph A 9.3 or A 9.4 (as applicable), the Authority will:</p> <p>9.5.1 determine what increased or decreased (as applicable) capital expenditure is appropriate and reasonable for the Infrastructure Provider in all the circumstances to incur taking into account the relevant Base Case Adjustment Trigger Event and all previous Base Case Adjustment Trigger Events;</p> <p>9.5.2 (if applicable) determine whether any of that increased capital expenditure could be avoided by prudent management action (and for this purpose what constitutes ‘prudent management action’ will be assessed by reference to the circumstances which are known, or ought reasonably to have been known, to the Infrastructure Provider at the time of the Base Case Review Application);</p> <p>9.5.3 determine what savings (if any) the Infrastructure Provider is reasonably likely to make in connection with the Project prior to the Post Construction Review as a result of the relevant Base Case Adjustment Trigger Event and all previous Base Case Adjustment Trigger Events; and</p> <p>9.5.4 have regard to the views of the Independent Technical Assessor.</p> <p>9.6 The Authority shall notify the Infrastructure Provider of its decision under paragraph A 9.3 or A 9.4 (as applicable) (by giving a “Base Case Review Notice”) within 3 months of the date of the Base Case Review Application (where A 9.3 applies) or within 3 months of the date of giving the Base Case Review Notice of Intention (where A 9.4 applies).</p> <p>9.7 All calculations of increased or decreased capital expenditure and savings under this paragraph A 9 shall be expressed in [2010/11] prices by way of deflation for each Charging Year based on the Applicable Change in Revenue RPI.</p>
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	<p>10</p>	<p>Allowed Revenue following Administrative Penalty End Date</p>	<p>In the event that Acceptance is not likely to occur by the Administrative Penalty End Date, the Authority will determine a real weighted average cost of capital that will be applied when calculating the Delay Adjustment under paragraph B 6.3 in respect of the period from (and including) the date immediately following the Administrative Penalty End Date until the date of Acceptance; provided that the real weighted average cost of capital so determined shall be revisited by the Authority on each anniversary of the Administrative Penalty End Date until the date of Acceptance and any such revisited real weighted average cost of capital shall apply for the 12 month period following the anniversary of the Administrative Penalty End Date or until the date of Acceptance (if earlier).</p>
	<p>11</p>	<p>Increasing the Allowable Project Spend above the Threshold Outturn</p>	<p>11.1 If:</p> <p>11.1.1 a Predicted Overrun has been identified (and, where identified by the Infrastructure Provider, that Predicted Overrun has either been verified by the Independent Technical Assessor and not disputed under the Liaison Agreement or determined through the dispute resolution procedure under the Liaison Agreement);</p> <p>11.1.2 a Mitigation Plan has been presented in accordance with clause [8] of the Liaison Agreement; and</p> <p>11.1.3 either (i) the Infrastructure Provider has been unable to implement that Mitigation Plan so as to avoid the Predicted Overrun occurring, or (ii) it becomes apparent that notwithstanding the implementation of that Mitigation Plan, there will still be a Predicted Overrun;</p> <p>then the Infrastructure Provider may make an application to the Authority to approve Additional Allowable Project Spend in order to enable the Infrastructure Provider to finance the Predicted Overrun (an “IAR Overrun Application”). The IAR Overrun Application must:</p> <p>(i) be supported by the details of the Predicted Overrun and the reasons for it occurring; and</p> <p>(ii) specify whether the Infrastructure Provider wishes the Ex-Post Approach (as described in paragraph A 11.4) to apply to the determination of the Additional Allowable Project Spend, failing which the Infrastructure Provider will be deemed to have accepted that the Ex-Ante Approach (as described in paragraph A 11.3) will apply to the determination of the Additional Allowable Project Spend.</p> <p>11.2 Following an IAR Overrun Application, the Authority must determine whether costs are likely to exceed the Threshold Outturn and, if so, make a determination in</p>

			<p>respect of the Additional Allowable Project Spend using the Ex-Ante Approach (as described in paragraph A 11.3 below) or, if the Infrastructure Provider has elected the Ex-Post Approach (as described in paragraph 11.4 below) and the Authority agrees to using such approach, the Ex-Post Approach. If the Authority is not agreeable to using the Ex-Post Approach, the Ex-Ante Approach will be applied.</p> <p>11.3 Where the Ex-Ante Approach is used:</p> <p>11.3.1 the Authority will determine (i) a cap on the Additional Allowable Project Spend (the “AAPS Cap”), (ii) the annual profile of the Additional Allowable Project Spend, (iii) the real weighted average cost of capital that will apply to the Additional Allowable Project Spend, and (iv) the incentive regime that will apply to the Additional Allowable Project Spend;</p> <p>11.3.2 the Additional Allowable Project Spend incurred by the Infrastructure Provider will be included in the Post Construction Review RCV; and</p> <p>11.3.3 the Additional Liquidity Building Block for each Charging Year in which Additional Allowable Project Spend is forecast to be incurred by the Infrastructure Provider shall be calculated pursuant to paragraph A 4.4 with necessary changes so that (i) it only takes into account the Additional Allowable Project Spend incurred, estimated to have been incurred and estimated on a forward looking basis to be incurred by the Infrastructure Provider in the same manner as the Allowable Project Spend is calculated as incurred, estimated to have been incurred and estimated on a forward looking basis to be incurred by the Infrastructure Provider, and (ii) all references to BWACC will be replaced with references to the real weighted average cost of capital that will apply to the Additional Allowable Project Spend.</p> <p>11.4 Where the Ex-Post Approach is used, the Authority will determine:</p> <p>11.4.1 the real weighted average cost of capital that will apply to the Additional Allowable Project Spend;</p> <p>11.4.2 the Additional Liquidity Building Block permitted in respect of the Additional Allowable Project Spend; and</p> <p>11.4.3 at the Post Construction Review, what amount of such Additional Allowable Project Spend incurred by the Infrastructure Provider will be allowed, adjusted or disallowed in the Post Construction Review RCV in accordance with the policies and guidelines of the Authority in place at the time.</p>
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			<p>11.5 In making the determination in paragraph A 11.3.1 or A 11.4.3, the Authority will (as applicable):</p> <p>11.5.1 determine what Additional Allowable Project Spend is appropriate and reasonable for the Infrastructure Provider in all the circumstances (taking into account the policies and guidelines of the Authority in place at the time) to incur;</p> <p>11.5.2 determine what AAPS Cap is appropriate and reasonable for the Infrastructure Provider in all the circumstances (taking into account the policies and guidelines of the Authority in place at the time);</p> <p>11.5.3 determine whether any of the Additional Allowable Project Spend which is the subject of the then current IAR Overrun Application could be or could have been avoided by prudent management action (and for this purpose what constitutes ‘prudent management action’ will be assessed by reference to the circumstances which are known, or ought reasonably to have been known, to the Infrastructure Provider at the time of any IAR Overrun Application); and</p> <p>11.5.4 have regard to the views of the Independent Technical Assessor.</p> <p>11.6 The Authority shall notify the Infrastructure Provider of its decision under paragraph A 11.2 (by giving a “IAR Overrun Notice”) within 3 months of the date of the IAR Overrun Application.</p> <p>11.7 If the Authority has approved an AAPS Cap and a Predicted Overrun has been identified which will result in the aggregate of the Threshold Outturn and the AAPS Cap (and any other AAPS Cap approved from time to time) being exceeded, the provisions of this paragraph A 11 shall apply <i>mutatis mutandis</i>.</p> <p>11.8 For the purposes of an IAR Overrun Application, all amounts will be expressed in [2010/11] prices, unless otherwise determined by the Authority.</p> <p>11.9 For the purposes of this paragraph 11, “Mitigation Plan” has the meaning given to it in the Liaison Agreement.</p>
12		[References to the Competition and Markets Authority] ²²	<p>12.1 [Where:</p> <p>12.1.1 following a Base Case Review Application or an IAR Overrun Application, the Authority has not given a Base Case Review Notice or an IAR Overrun Notice to the Infrastructure Provider within the timeframe specified in paragraph A 9.6 or A 11.6 (as applicable);</p>

²²References to referrals to the Competition and Markets Authority remain in square brackets pending the SIP Regulations being amended by the Secretary of State so as to confer powers on Ofwat to allow for such referrals.

			<p>or</p> <p>12.1.2 the Infrastructure Provider disputes any determination made by the Authority under paragraph A 10 or A 11 (as applicable),</p> <p>the Infrastructure Provider may, by notice to the Authority require the Authority to refer the matter to the Competition and Markets Authority for determination by it.]</p>
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Part B: Operation Revenue

B	1	Allowed Revenue	<p>1.1 The Allowed Revenue for any Charging Year commencing on 1 April following the Post Construction Review until the Charging Year commencing on 1 April following the First Periodic Review will be calculated in accordance with paragraph B 1.2 - B 6 of this Part B of Appendix 1.</p> <p>1.2 Allowed Revenue will be calculated no later than the first Business Day following 1 January of the previous Charging Year.</p> <p>1.3 The Allowed Revenue payable to the Infrastructure Provider for any Charging Year falling within the period stated in paragraph B 1.1 shall be calculated in accordance with the following formula: $(RoC + Op +/- RA + Tax [+ RO]) - DA$ where: RoC means the return on capital calculated in accordance with paragraph B 2; Op means the operating expenditure allowance determined by the Authority at the Post Construction Review; RA for any Charging Year means the revenue adjustment calculated by reference to the actual amount in absolute terms of under/over recovered revenue experienced by the Infrastructure Provider in the Charging Year falling two years prior to the relevant Charging Year, which shall be calculated as follows: $RA Y_t = Allowed\ Revenue\ for\ Charging\ Year_{t-2} - actual\ revenue\ recovered\ by\ the\ Infrastructure\ Provider\ in\ Charging\ Year_{t-2}$; Tax means the assumption, if any, allowed by the Authority in respect of tax paid or received in the relevant Charging Year; RO means the run off, if any, calculated in accordance with paragraph B 5 or as otherwise determined by the Authority at the Post Construction Review; and DA is the aggregate of the Delay Adjustments calculated in accordance with paragraph B 6.</p>
	2	Post Construction Review RCV	<p>2.1 As part of the Post Construction Review, the Authority will determine the regulated capital value which shall (subject to the adjustments in accordance with paragraphs B 4 and B 6) be</p>

			<p>equal to:</p> <p>2.1.1 the Actual Cumulative Project Spend; and</p> <p>2.1.2 the Additional Allowable Project Spend, as adjusted by any incentives applicable thereto, and (in the case of the Ex-Post Approach) taking into account any disallowance or adjustment pursuant to paragraph A 11.4.3 [(such resulting amount to be expressed in [2010/11] prices)] (the “Post Construction Review RCV”).</p>
	3	Return on Capital	<p>3.1 The Return on Capital in the Charging Year(s) following the Post Construction Review will be calculated as follows:</p> <p><i>Post Construction Review RCV x Post Construction Review WACC x Post Construction Review Applicable Change in Revenue RPI</i></p> <p>where:</p> <p><i>Post Construction Review WACC</i> is the real weighted average cost of capital determined by the Authority in the Post Construction Review and which will apply in each Charging Year from (and including) 1 April immediately following the Post Construction Review until (and including) 31 March immediately following the First Periodic Review.</p>
	4	Adjustments to RCV at the Post Construction Review²³	<p>4.1 The Infrastructure Provider shall be subject to an adjustment to its Allowed Revenue in respect of (i) any overspend or underspend relative to the Original Base Case Forecast applicable as at the Post Construction Review and (ii) a net present value adjustment on any over- or under-recovered return on capital caused by any overspend or underspend occurring in each and any Charging Year relative to the Annual Base Case Forecast for the Charging Year in question, calculated utilising the BWACC as the discount factor.</p> <p>4.2 The incentive penalty or reward shall be applied to the Post Construction Review RCV.</p> <p>4.3 The Post Construction Review RCV shall be adjusted by the Incentive/Penalty Factor (IPF) calculated in the following manner:</p>

²³ There are on-going discussions on alliancing incentives that will apply to the Infrastructure Provider, TWUL and the Construction Contractors to promote them working effectively together to deliver the Thames Tideway Tunnel Project. If the outcome of those discussions involves the IP receiving payments from the alliance participants in relation to delay and/or cost overruns, the provisions of this Project Licence may need to be amended to adjust the Infrastructure Provider’s RCV to take into account the receipt of such monies.

			$IPF = 0.40 \times (OBCF - ACPS) + \sum_{y \in CP} RoC IPFy$ <p>where:</p> <p>ACPS means the Actual Cumulative Project Spend at the Post Construction Review;</p> <p>OBCF means the Original Base Case Forecast;</p> <p>$\sum_{y \in CP}$ means the summation over all Charging Years y (or partial Charging Years y) falling within the Construction Period (CP) and in respect of which the Annual Actual Project Spend was above or below the Annual Base Case Forecast for the Charging Year in question;</p> <p>RoC IPFy means, with respect to a Charging Year y in respect of which the Annual Actual Project Spend was above or below the Annual Base Case Forecast for the Charging Year in question, an amount calculated as follows:</p> $RoC IPFy = \sum_{k=0}^{n-2} (0.40 \times (ABCFy - AAcPSy) \times BWACC) \times (1 + BWACC)^k$ <p>where:</p> <p>n means the number of Charging Years (or partial Charging Years) from (and including) the Charging Year y in question until (and including) the Charging Year when the Post Construction Review occurred;</p> <p>ABCFy means, with respect to a Charging Year y, the Annual Base Case Forecast for that Charging Year y;</p> <p>AAcPSy means, with respect to a Charging Year y, the Annual Actual Project Spend for that Charging Year y.</p>
	5	Run off	<p>The Regulated Capital Value may be run off on a straight line basis from the 1 April following the Post Construction Review until the end of such Charging Year following the Post Construction Review over the useful economic life of the IP Regulated Assets.</p> <p>If such run off shall apply an allowance will be included in the Allowed Revenue for such run off.</p>
	6	Delay Adjustments	<p>6.1 In the event that Acceptance is not achieved by the Planned System Acceptance Date, the Infrastructure Provider's Operation Revenue and the Post Construction Review RCV, each as</p>

			<p>determined by the Authority in the Post Construction Review, will be subject to Delay Adjustment(s) calculated pursuant to this paragraph B 6.</p> <p>6.2 In the event that Acceptance occurs after the Planned System Acceptance Date, there shall be a Delay Adjustment in respect of the period from (and including) the day immediately following the Planned System Acceptance Date until (and including) the earlier of (i) the date of Acceptance and (ii) the Administrative Penalty End Date (the “Minor Delay Period”), which Delay Adjustment shall be calculated as follows:</p> $DA = \sum_{y \in MnDP} APy$ <p>where:</p> <p>$\sum_{y \in MnDP}$ means the summation over all Charging Years y (including partial Charging Years) falling within the Minor Delay Period ($MnDP$);</p> <p>APy means, with respect to a Charging Year y (including partial Charging Year y) falling within the Minor Delay Period, an amount calculated as follows:</p> $APy = \text{Max}((BWACC - IWACC), 0.01) \times (RPy \times YARCVy) \times (1 + BWACC)^{n-1}$ <p>where:</p> <p>IWACC means the post-tax cost of equity with a pre-tax cost of debt weighted average cost of capital for the relevant service, as determined and published by the Authority following a periodic review excluding any small company adjustments and applied generally at the time of the calculation in respect of the relevant service on an industry-wide basis;</p> <p>RPy is, in respect of a Charging Year y (including partial Charging Year y) falling within the Minor Delay Period, the percentage of the relevant Charging Year y falling within the Minor Delay Period, calculated by reference to the number of calendar days in that Charging Year y falling within the Minor Delay Period;</p> <p>YARCVy means, in respect of a Charging Year y (including partial Charging Year y) falling within the Minor Delay Period, the Year Average RCV in</p>
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			<p>respect of the relevant Charging Year y calculated in accordance with paragraph A 3.6;</p> <p>n means, in respect of a Charging Year y (including partial Charging Year y) falling within the Minor Delay Period, the number of Charging Years (including partial Charging Years) from (and including) the Charging Year in question until (and including) the Charging Year when the Post Construction Review occurred.</p> <p>6.3 In the event that Acceptance occurs after the Administrative Penalty End Date there shall be a Delay Adjustment in respect of the period from (and including) the day immediately following the Administrative Penalty End Date until (and including) the date of Acceptance (the “Major Delay Period”), which Delay Adjustment shall be calculated as follows:</p> $DA = \sum_{y \in MjDP} APy$ <p>where:</p> <p>$\sum_{y \in MjDP}$ means the summation over all Split Charging Years y falling within the Major Delay Period ($MjDP$);</p> <p>APy means, with respect to a Split Charging Year y falling within the Major Delay Period, an amount calculated as follows:</p> $APy = (BWACC - Major\ Delay\ WACC) \times (RPy \times YARCVy) \times (1 + BWACC)^{n-1}$ <p>where:</p> <p>Major Delay WACC means, in respect of a Split Charging Year y falling within the Major Delay Period, the real weighted average cost of capital applicable to that Split Charging Year y, as determined by the Authority in accordance with paragraph A 10;</p> <p>RPy is, in respect of a Split Charging Year y falling within the Major Delay Period, the percentage of the Charging Year within which the relevant Split Charging Year y falls, calculated by reference to the number of calendar days in that Charging Year within which the Split Charging Year y falls;</p> <p>YARCVy means, in respect of a Split Charging Year y falling within the Major Delay Period, the Year Average RCV in respect of the Charging</p>
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			<p>Year within which the Split Charging Year y falls calculated in accordance with paragraph A 3.6;</p> <p>n means, in respect of a Split Charging Year y falling within the Major Delay Period, the number of Charging Years (including partial Charging Years) from (and including) the Charging Year within which the Split Charging Year in question falls until (and including) the Charging Year when the Post Construction Review occurred.</p> <p>For the purposes of this paragraph B 6.3 only, “Split Charging Year” means:</p> <p>(i) subject to (ii) below, that part of a Charging Year falling within the Major Delay Period; or</p> <p>(ii) where a Charging Year (including a partial Charging Year) straddles over two periods with different Major Delay WACCs, each such period of that Charging Year.</p> <p>6.4 In the event that Acceptance occurs on or after 1 May in any Charging Year such that the Post Construction Review cannot take place on the 1 November immediately following Acceptance, there shall be a Delay Adjustment in respect of the period from (and including) the later of (i) 1 April 2028 and (ii) the day immediately following the date of Acceptance until (and including) 31 March immediately following the Post Construction Review (the “Extra Period”), which Delay Adjustment shall be calculated as follows:</p> $DA = \sum_{y \in EP} AP_y$ <p>where:</p> <p>$\sum_{y \in EP}$ means the summation over all Charging Years y (including partial Charging Years) falling within the Extra Period (EP);</p> <p>AP_y means, with respect to a Charging Year y (including partial Charging Year y) falling within the Extra Period, an amount calculated as follows:</p> $AP_y = (BWACC - \text{Post Construction Review WACC}) \times (RP_y \times YARCV_y) \times (1 + BWACC)^{n-1}$ <p>where:</p> <p>Post Construction Review WACC has the meaning given in paragraph B 3.1;</p> <p>RP_y is, in respect of a Charging Year y (including</p>
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			<p>partial Charging Year <i>y</i>) falling within the Extra Period, the percentage of the relevant Charging Year <i>y</i> falling within the Extra Period, calculated by reference to the number of calendar days in that Charging Year <i>y</i> falling within the Extra Period;</p> <p>YARCV_y means, in respect of a Charging Year <i>y</i> (including partial Charging Year <i>y</i>) falling within the Extra Period, the Year Average RCV in respect of the relevant Charging Year <i>y</i> calculated in accordance with paragraph A 3.6;</p> <p><i>n</i> means, in respect of a Charging Year <i>y</i> (including partial Charging Year <i>y</i>) falling within the Extra Period, the number of Charging Years (including partial Charging Years) from (and including) the Charging Year in question until (and including) the Charging Year when the Post Construction Review occurred.</p> <p>6.5 The Delay Adjustment(s) shall be applied as follows:</p> <p>6.5.1 50% of the aggregate of the Delay Adjustments shall be deducted from the Post Construction Review RCV; and</p> <p>6.5.2 50% of the aggregate of the Delay Adjustments shall be deducted from the Allowed Revenue in the first Charging Year following the Post Construction Review, provided that, where such amounts exceeds the Annual DA Cap, the sum deducted from the Allowed Revenue in that first Charging Year shall be limited to the Annual DA Cap and the remaining amount (as indexed each Charging Year based on the Applicable Change in Revenue RPI and subject to an NPV adjustment calculated by utilising the water industry weighted average cost of capital applicable during the immediately preceding Charging Year) shall be deducted from subsequent Charging Years on the same basis until 50% of the aggregate of the Delay Adjustments has been fully deducted from Allowed Revenues.</p> <p>6.6 For the purposes of this paragraph B 6, the “Annual DA Cap” means £15,000,000 (as indexed each Charging Year from the First Charging Year based on the Applicable Change in Revenue RPI) or such higher amount as elected by the Infrastructure Provider by notice to the Authority or such lower amount as agreed between the Infrastructure Provider and the</p>
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			<p>Authority.</p> <p>6.7 If paragraph B 6.5.2 applies, the Authority may determine under paragraph 1.4 of Condition B (<i>Allowed Revenue</i>) that paragraph B 6.5 will continue to have effect after 1 April following the First Periodic Review until 50% of the aggregate of the Delay Adjustments has been fully deducted from Allowed Revenues.</p>
	7	[References to the Competition and Markets Authority]²⁴	[Where the Infrastructure Provider disputes a determination made by the Authority at the Post Construction Review, the Infrastructure Provider may, by notice to the Authority, require the Authority to refer the matter to the Competition and Markets Authority for determination by it.]
	8	Periodic Review	<p>8.1 The Allowed Revenue for any Charging Year following the First Periodic Review will be determined at the First Periodic Review and at any subsequent Periodic Reviews and will be calculated by the Authority in accordance with Condition B (<i>Allowed Revenue</i>).</p> <p>8.2 If the Post Construction Review occurs concurrently with the First Periodic Review, the Authority shall simultaneously carry out both the Post Construction Review and the First Periodic Review. In this case, the regulated capital value for any Charging Year following the First Periodic Review will be equal to the Post Construction Review RCV, as determined at the Post Construction Review.</p>

²⁴ References to referrals to the Competition and Markets Authority remain in square brackets pending the SIP Regulations being amended by the Secretary of State so as to confer powers on Ofwat to allow for such referrals.

Annex A

Annual Base Case Forecast²⁵

Period	Annual Base Case Forecast
1 April 2015 – 31 March 2016	£ []
1 April 2016 – 31 March 2017	£ []
1 April 2017 – 31 March 2018	£ []
1 April 2018 – 31 March 2019	£ []
[subsequent periods until the Planned System Acceptance Date]	£ []
Any period thereafter	£0

²⁵ To be calculated as the sum of:

- (a) the allowable IP capex costs;
- (b) the contractors' target costs as awarded; and
- (c) the P50 of those risks on the risk register at contract/licence award.

		<p>beyond the Longstop Date</p>	<p>incident, circumstance or event of any nature likely to result in Acceptance not occurring by the Longstop Date (or any subsequently determined Longstop Date, as applicable) (the “Delay Event”), notify the Authority of the same. Any such notice must set out details of the Delay Event (including its nature, extent and reasons for it occurring), the corrective actions already undertaken or to be undertaken to mitigate the consequences of the Delay Event, and the effect on the timing of Acceptance.</p> <p>4.2 If:</p> <p>4.2.1 a Delay Event has been identified;</p> <p>4.2.2 a Mitigation Plan has been presented in accordance with clause [8] of the Liaison Agreement; and</p> <p>4.2.3 notwithstanding the implementation of any Mitigation Plan that has been submitted to the Liaison Committee, Acceptance is not likely to occur by the then current Longstop Date;</p> <p>then the Infrastructure Provider must make an application to the Authority to approve an extension of the then current Longstop Date (a “Longstop Date Extension IAR Application”). The Longstop Date Extension IAR Application must be supported by:</p> <p>(i) the Infrastructure Provider’s Business Plan to achieve Acceptance; and</p> <p>(ii) the Infrastructure Provider’s opinion as to the period by which the Longstop Date should be extended.</p> <p>4.3 Following a Longstop Date Extension IAR Application, the Authority will determine whether to approve an extension of the then current Longstop Date.</p> <p>4.4 In making the determination in paragraph 4.3, the Authority will take into consideration whether the Delay Event was caused by or contributed to by one or more of the following:</p> <p>4.4.1 a breach, default, act of prevention or omission of the Incumbent Undertaker;</p> <p>4.4.2 an act of a third party (not including the Authority or any other competent authority);</p> <p>4.4.3 an act or omission of Authority or any other competent authority;</p> <p>4.4.4 an event for which the Construction Contractors are entitled to an extension of time to their</p>
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			<p>completion date pursuant to the Construction Contracts;</p> <p>4.4.5 any changes to the Project Specification Notice (but only to the extent that such extension of time to the Longstop Date has been agreed as part of those changes);</p> <p>4.4.6 the exercise by the Incumbent Undertaker of its suspension rights under the Interface Agreement for reasons of health and safety, emergency or operational necessity (other than as a result of the act or negligence of the Infrastructure Provider or its subcontractors); or</p> <p>4.4.7 an act of prevention or default of the Infrastructure Provider.</p> <p>4.5 The Authority shall notify the Infrastructure Provider of its decision under paragraph 4.3 (by giving a “Longstop Date Extension IAR Notice”) within 3 months of the date of the Longstop Date Extension IAR Application.</p> <p>4.6 If the Authority has determined to extend the Longstop Date, but Acceptance has not occurred by such extended Longstop Date, then the provisions of this paragraph 4 shall apply <i>mutatis mutandis</i>.</p>
	5	Joinder of IAR applications	If applicable at the relevant time, an IAR Overrun Application and a Longstop Date Extension IAR Application may be made as a single application to the Authority, in which case both applications will be considered simultaneously by the Authority.
	6	[References to the Competition and Markets Authority]²⁶	[Where, following a Longstop Date Extension IAR Application, the Authority has not given a Longstop Date Extension IAR Notice to the Infrastructure Provider within the timeframe specified in paragraph 4.5, the Infrastructure Provider may, by notice to the Authority, require the Authority to refer the matter to the Competition and Markets Authority for determination by it.]
	7	Fees due prior to the First Periodic Review	<p>7.1 For the purposes of this paragraph 7:</p> <p>“Construction Period” means the period from the Commencement Date until the 1 April immediately following the Post Construction Review;</p> <p>“Operational Period” means the period from the 1 April following the Post Construction Review until 1 April following the First Periodic Review; and</p>

²⁶ References to referrals to the Competition and Markets Authority remain in square brackets pending the SIP Regulations being amended by the Secretary of State so as to confer powers on Ofwat to allow for such referrals.

			<p>"Regulation Fee Cap" means: (i) in the Construction Period, [£xxx] or such higher figure as the Infrastructure Provider may from time to time agree (such agreement not to be unreasonably withheld or delayed); or (ii) in the Operational Period, an amount determined by the Authority at the Post Construction Review.</p> <p>"Mandatory Variation Determination" means a determination by the Authority under paragraph 9 of this Appendix 2.</p> <p>"IAR Application" means an IAR Overrun Application given pursuant to paragraph 11.1.3 of Part A of Appendix 1 (<i>Calculation of Allowed Revenue</i>) or a Longstop Date Extension IAR Application given pursuant to paragraph 4.2.3 (as the case may be).</p> <p>7.2 On 1 April in any year in the Construction Period and in the Operational Period and also, if the Authority so determines, on 1 January in any year in the Construction Period or in the Operational Period, the Infrastructure Provider will pay to the Authority an amount or amounts, to be determined in respect of each date by the Authority, after consultation with the Infrastructure Provider, in respect of the costs estimated by the Authority as likely to be reasonably incurred by it in that Charging Year, or as already having been reasonably incurred by it in the preceding Charging Year (to the extent that such costs have not already been recovered under this paragraph 7.2) in the regulation, monitoring and enforcement of the Infrastructure Provider;</p> <p>EXCEPT THAT the total of all payments made under this paragraph 7.2 may not exceed the Regulation Fee Cap.</p> <p>7.3 Where an IAR Application is received from the Infrastructure Provider or a Mandatory Variation Determination has been made, the Regulation Fee Cap may be modified by the Authority as required by the amount of costs estimated by the Authority as likely to be reasonably incurred by it, or as already having been reasonably incurred by it as a result of that application and/or determination.</p> <p>7.4 [Where a reference is made to the Competition and Markets Authority, under paragraph 12 of Part A of Appendix 1 (<i>Calculation of Allowed Revenue</i>) or paragraph 6 hereof, the Infrastructure Provider must pay an amount calculated in terms of</p>
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			<p>paragraph 7.5 to the Authority within 30 days of receipt of an invoice for the same.</p> <p>7.5 The amount due under paragraph 7.4 will be the sum of the Authority's estimation, after consulting the Competition and Markets Authority, of the costs incurred by the Competition and Markets Authority in the previous Charging Year in relation to the reference made to it.]²⁷</p>
	8	Revocation	<p>8.1 The Authority may, after consultation with the Incumbent Undertaker, revoke this Project Licence by giving the Infrastructure Provider at least 30 days' written notice if the Project is Discontinued in accordance with the terms of the Discontinuation Agreement.</p> <p>8.2 If the Authority gives the Infrastructure Provider the written notice described in paragraph 8.1, then the Infrastructure Provider shall do all things necessary to comply with any direction issued by the Authority to the Infrastructure Provider:</p> <p>8.2.1 requiring the Infrastructure Provider to take specified steps to effect the transfer to another company or companies, at nil value, of so much of the undertaking of the Infrastructure Provider, including so much of the Project Documents, as may be directed by the Authority; and</p> <p>8.2.2 requiring the Infrastructure Provider to secure and make safe the IP Regulated Assets pending a transfer to another company or companies in accordance with sub paragraph 8.2.1 (the cost of which shall be treated as capital expenditure incurred or to be incurred by the Infrastructure Provider in connection with the Project).</p> <p>8.3 If the Project is Discontinued in accordance with the terms of the Discontinuation Agreement, the Authority will direct the Incumbent Undertaker as to the treatment of any revenue collected by the Incumbent Undertaker with respect to the Allowed Revenue that it has not already passed on to the Infrastructure Provider in accordance with the Revenue Agreement. This provision will apply whether or not the Authority has given the Infrastructure Provider notice of the termination of this Project Licence as described in paragraph 8.1.</p> <p>8.4 Before issuing a direction under paragraph 8.3,</p>

²⁷ References to referrals to the Competition and Markets Authority remain in square brackets pending the SIP Regulations being amended by the Secretary of State so as to confer powers on Ofwat to allow for such referrals.

			<p>the Authority will consult the Infrastructure Provider and the Incumbent Undertaker.</p> <p>8.5 The direction given by the Authority under paragraph 8.3 may relate to all revenue collected by the Incumbent Undertaker with respect to the Allowed Revenue of the Infrastructure Provider but not yet passed on to the Infrastructure Provider in accordance with the Revenue Agreement at the date that the Project is Discontinued, and any revenues subsequently collected by the Incumbent Undertaker in respect of the Allowed Revenue.</p>
	9	Determination of Mandatory Variation Disputes	<p>9.1 For the purposes of this paragraph 9 only: “Mandatory Variation Dispute” means a dispute that is referred to the Authority under paragraph [3.7.2] of Schedule [4] to the Liaison Agreement; “Proposed Variation” means a variation that is the subject of a Mandatory Variation Dispute;</p> <p>9.2 The Infrastructure Provider must refer all Mandatory Variation Disputes to the Authority if required to do so pursuant to the Liaison Agreement setting out:</p> <p>9.2.1 details of the Proposed Variation; and</p> <p>9.2.2 objections to the Proposed Variation.</p> <p>9.3 The Authority shall determine a Mandatory Variation Dispute on such terms as it considers to be appropriate including determining that:</p> <p>9.3.1 the Proposed Variation should be implemented by the Infrastructure Provider or the Incumbent Undertaker (as applicable) with or without modification; or</p> <p>9.3.2 the Proposed Variation should not be implemented, and any such determination shall be binding on the Infrastructure Provider.</p> <p>9.4 In determining a Mandatory Variation Dispute, the Authority must have regard to:</p> <p>9.4.1 its duties and obligations under the Water Industry Act;</p> <p>9.4.2 the duties and obligations of the Infrastructure Provider;</p> <p>9.4.3 the duties and obligations of the Incumbent Undertaker;</p> <p>9.4.4 the interests of customers; and</p> <p>9.4.5 any representations received from the Infrastructure Provider, the Incumbent</p>

			Undertaker, the Secretary of State or any other interested party.
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Appendix 3

Direct Charging Conditions

1 Interpretation

For the purposes of this Project Licence:

“**End Users**” means the occupiers for the time being of any premises which –

- (1) are drained by a sewer or drain connecting, either directly or indirectly, with infrastructure which is owned or operated by the Infrastructure Provider; or
- (2) are premises the occupiers of which have, in respect of the premises, the benefit of facilities which drain to a sewer or drain so connecting.

2 Application of this Appendix 3

- 2.1 The conditions and parts of conditions set out in paragraph 3 of this Appendix 3 do not apply until the Authority has given notice of at least 30 days to the Infrastructure Provider under this paragraph 2.1. The Authority may only give notice under this paragraph 2.1 if the Infrastructure Provider has notified it that the Infrastructure Provider has given an irrevocable notice to terminate the Revenue Agreement in accordance with its terms and the Infrastructure Provider intends charging End Users directly.²⁸
- 2.2 Notice under paragraph 2.1 shall be deemed to be a Notified Item.

3 Conditions that will apply if the Infrastructure Provider intends providing services to End Users

- 3.1 Part IX will be inserted into Condition B (*Allowed Revenue*):

“Part IX (Direct charging of End Users (Retail Activities))

20 For the purposes of this part:

“Retail Activities” means all activities necessary for charging End Users and all ancillary activities including –

- (a) data collection;
- (b) customer services (including billing; payment handling; remittance and cash handling; vulnerable customer schemes and customer enquiries and complaints); and
- (c) debt management and debt collection.

- 21 [At least two months prior to the Infrastructure Provider charging End Users, the Infrastructure Provider and the Incumbent Undertaker must seek to agree a data sharing protocol which allows the Incumbent Undertaker to share necessary customer information with the Infrastructure Provider. If the Infrastructure Provider

²⁸ The SIP Regulations apply a modified section 144 of the Water Industry Act 1991 which allow the Infrastructure Provider to charge the incumbent undertaker or end users. However, this only applies once the tunnel is constructed and end user customers are receiving a service from the Infrastructure Provider.

and the Incumbent Undertaker cannot agree a data sharing protocol, the dispute may be referred to the arbitration of a single arbitrator appointed by agreement between the parties, or in default of agreement by the Authority.]²⁹

- 22 The Infrastructure Provider and the Incumbent Undertaker must work together cooperatively to ensure that the Infrastructure Provider holds all customer information necessary to enable the Infrastructure Provider to implement direct charging.
- 23 In respect of the Infrastructure Provider's Retail Activities, the Authority must determine (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 as has effect with modifications by the SIP Regulations in relation to the Authority's determinations, including, without limitation, any change in circumstance which has occurred since the last Periodic Review or which is to occur):
- (1) what is the appropriate nature, form and level of one or more Price Controls for the Infrastructure Provider's Retail Activities;
 - (2) how the Infrastructure Provider shall, in respect of each such Price Control applicable to it, demonstrate compliance with paragraph 4;³⁰ and
 - (3) for how long each such Price Control in respect of the Infrastructure Provider shall last (being a period of consecutive Charging Years).
- 24 Each Price Control determined under paragraph 6.5 pursuant to a Periodic Review shall be set for a period which shall be a number of Charging Years to be determined by the Authority, in conjunction with its determination pursuant to paragraph 6.5, in each case starting on 1 April, provided that no such period shall exceed five consecutive Charging Years.
- 25 If at any time, the Authority is unable to conduct a Periodic Review by 31 December in the Charging Year before the Review Charging Year, then:
- (1) in respect of Retail Activities, the previous determination pursuant to paragraph 6.5 shall continue to apply for consecutive Charging Years until the next relevant determination under paragraph 6.5 [(or equivalent determination by the Competition Markets Authority pursuant to paragraph 13)] or the next relevant Interim Determination becomes effective.
 - (2) the Authority shall conduct a Periodic Review as soon as reasonably practicable thereafter[, provided that the Infrastructure Provider has not given a relevant notice under paragraph 13]."

²⁹ Note: This provision may be deleted or amended if the IP and Thames Water agree the information that will be required to implement direct charging.

³⁰ Paragraph 4 of Condition B reads: "The Infrastructure Provider must ensure that in any Charging Year (or part thereof) from the Commencement Date, the IP Charge will not exceed the Allowed Revenue as calculated in accordance with Appendix 1 (Calculation of Allowed Revenue) to these Conditions and/or with this Condition."

3.2 The following Conditions will be inserted into Schedule 1 after Condition C:

**“Condition D
Charges Schemes**

1. From 1 April in the Charging Year immediately following this Condition D coming into effect, the Infrastructure Provider must ensure that at all times there is in effect a charges scheme in accordance with section 143 of the Water Industry Act (as applied with modifications by regulation 3 of the SIP Regulations) which fixes the charges to be paid for the services provided by the Infrastructure Provider in the course of carrying out its functions, 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 (as has effect with modifications by Regulation 3 of the SIP Regulations); provided that any such charges scheme cannot take effect, and the Infrastructure Provider may not start charging End Users, prior to 1 April in the Charging Year immediately following this Condition D coming into effect.
2. The Infrastructure Provider must:
 - (a) before publishing its first charges scheme, consult the Authority and the Consumer Council for Water on the content of that charges scheme;
 - (b) at least one month before it starts charging End Users, and at all times thereafter, publish its charges scheme in its latest form available in a way that ensures the charges scheme is reasonably accessible and made available free of charge to customers of the Infrastructure Provider;
 - (c) inform persons who enquire about its charges that it is required to have in effect a charges scheme in respect of those charges;
 - (d) send a copy of any such scheme in its latest form free of charge to any person requesting it.
3. Nothing in this Condition prevents the Infrastructure Provider from entering into such an agreement as is referred to in section 142 of the Water Industry Act (as has effect with modifications by regulation 3 of the SIP Regulations).

**Condition E
Prohibition on Undue Discrimination and Undue Preference and Information on
Charges**

1. It shall be the duty of the Infrastructure Provider in fixing or agreeing charges to be paid for the services provided by the Infrastructure Provider in the course of carrying out its functions, to ensure that no undue preference is shown to, and that there is no undue discrimination against, any class of customers or potential customers.
2. The Infrastructure Provider must provide to the Authority such Information as the Authority may reasonably request in order to satisfy itself that the Infrastructure Provider is complying with this Condition, it being acknowledged that Information with

which the Authority is furnished from time to time under paragraph 3 of Condition M (*Provision of Information to the Authority*) may not be sufficient or relevant of itself for this purpose.

3. The Infrastructure Provider must provide to the Authority such Information as the Authority may from time to time reasonably request about the nature of any service provided under any agreement as is referred to in section 142 of the Water Industry Act and the terms and conditions on which that service is provided.”

3.3 The following Condition G will be inserted into Schedule 1 after Condition F:

**“Condition G
Customer Information**

1 Customer Information

1.1 The Infrastructure Provider must, at all times, have a code of practice (“Code”) in place that complies with this Condition.

1.2 The Code must identify for customers:

- (1) the nature of the Information which the Infrastructure Provider makes available to its customers;
- (2) how the Infrastructure Provider makes Information available to its customers; and
- (3) how the Infrastructure Provider keeps the adequacy of the Information it provides to customers under review.

1.3 Information that must be made available to customers includes:

- (1) a description of the services provided by the Infrastructure Provider to domestic customers;
- (2) the tariffs that apply for domestic customers and such other terms on which services to domestic customers are provided as the Infrastructure Provider considers appropriate;
- (3) arrangements for the payment of bills by domestic customers including information about payment by instalments and budget plans;
- (4) details of the Infrastructure Provider’s complaint handling procedure for domestic customers established by the Infrastructure Provider under paragraph 1.7;
- (5) guidance for customers who have difficulty paying their bills;
- (6) a description of the Infrastructure Provider’s range of procedures that it may adopt to collect outstanding debt from domestic customers;

- (7) information on what customers should do in cases of emergency and when making enquiries of the Infrastructure Provider; and
 - (8) a description of the functions of the Consumer Council for Water under the Water Industry Act and informing customers where they can contact the Consumer Council for Water.
- 1.4 The Infrastructure Provider must, not less frequently than once every three years and if and whenever requested to do so by the 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.
- 1.5 In carrying out any review of, or making any substantive revision of, the Code or its operation (whether under paragraph 1.4 or otherwise) the Infrastructure Provider must consult the Consumer Council for Water and must 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.
- 1.6 The Infrastructure Provider must:
- 2.1. send a copy of the Code and each revision of it to the Consumer Council for Water;
 - 2.2. 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;
 - 2.3. make a copy of the Code in its latest form available for inspection at each Relevant Premises; and
 - 2.4. send a copy of the Code in its latest form free of charge to any person requesting it.
- 1.7 Within two months of this Condition applying, the Infrastructure Provider must establish a procedure for handling complaints from customers about the manner in which the Infrastructure Provider carries out the Licensed Business, which shall include particulars of the training to be given to staff in the handling of complaints.

2 Dealings with customers

The Infrastructure Provider must provide special means of identifying any person authorised to visit a customer's premises on the Infrastructure Provider's behalf.

3 Meetings with the Regional Committee

3.1 The Infrastructure Provider must:

- (1) meet the Regional Committee, at the request of the Regional Committee, at least once in each Charging Year; and

- (2) meet the Regional Committee on such further occasions as may be reasonably requested by the Regional Committee.
- 3.2 The Infrastructure Provider must ensure that, at least once in each Charging Year, it is represented by at least one Director of the Infrastructure Provider at a meeting with the Regional Committee.”
- 3.4 The following paragraph 8 will be inserted into Condition N (*Fees*) in Schedule 2 after paragraph 7 of Condition N:

“8. Consumer Council for Water Fee

8.1 The Infrastructure Provider must pay the Consumer Council for Water Fee to the Secretary of State 30 days after receipt of an invoice for the same, or on the first day of each Charging Year, whichever is the earlier.

8.2 The Consumer Council for Water Fee is, in relation to a Charging Year, an amount equal to $G \times (t / T)$.

8.3 For the purposes of paragraph 8.2:

“G” means:

- (i) in respect of the Charging Year beginning on 1 April following Appendix 3 coming into effect, an amount determined by the [Authority /Secretary of State] as representing a fair proportion of the annual costs of the Consumer Council for Water; and
- (ii) in respect of any subsequent Charging Year, that amount as increased by the proportion by which the Retail Prices Index for November immediately preceding the Charging Year differs from the Retail Prices Index for the November preceding the Appendix 3 coming into effect;

“t” means, in relation to a payment to be made in a Charging Year, an amount equal to the turnover of the Licensed Business as shown in the accounting statements prepared by the Infrastructure Provider pursuant to Condition F (*Regulatory Accounts*) for the twelve month period ending twelve months before the start of the Charging Year; and

“T” means, in relation to a payment to be made in a Charging Year, an amount equal to the sum of:

- (i) the turnover of the Licensed Business as shown in the accounting statements prepared by the Infrastructure Provider pursuant to Condition F (*Regulatory Accounts*); and
- (ii) the turnover of the licensed businesses of all other companies holding a project licence under section 17FA of the Water Industry Act as shown in their accounting statements prepared pursuant to the equivalent provisions of their project licence,

for the twelve month period ending twelve months before the start of the Charging Year.”

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Appendix 4 Defined Terms³¹

“**2006 Act**” means the Companies Act 2006;

“**Acceptance**” means the acceptance of all of the IP Regulated Assets and the sewerage assets constructed by TWUL pursuant to the TWUL Works in accordance with the requirements to be set out in clause [●] (*Acceptance*) of the Interface Agreement and which shall occur on the date specified in the Acceptance Certificate;

“**Acceptance Certificate**” means the certificate to be issued to the Infrastructure Provider by TWUL upon the successful completion of the Acceptance Tests in accordance with the Interface Agreement;

“**Acceptance Plan**” means the acceptance plan to be developed in accordance with paragraph 20 (*Testing Plan*) under the Interface Agreement;

“**Acceptance Tests**” means the tests to be carried out by TWUL in accordance with the Acceptance Plan and the terms of the Interface Agreement;

“**Adjusted Charges**” has the meaning given in paragraph 11.2(8) of Condition B (*Allowed Revenue*);

“**Alliance Agreement**” means the agreement of that name between, *inter alia*, the Infrastructure Provider and TWUL, dated on or about the Commencement Date;

“**Allowable Capital Expenditure**” means the amount described at paragraph 11.2(7)(a)(i) of Condition B (*Allowed Revenue*);

“**Allowable Depreciation**” means the amount described at paragraph 11.2(7)(a)(iv) of Condition B (*Allowed Revenue*);

“**Allowable Infrastructure Asset Expenditure**” means the amount described at paragraph 11.2(7)(a)(ii) of Condition B (*Allowed Revenue*);

“**Allowable Infrastructure Asset Value**” means the amount described at paragraph 11.2(7)(a)(vi) of Condition B (*Allowed Revenue*);

“**Allowable Net Asset Value**” means the amount described at paragraph 11.2(7)(a)(v) of Condition B (*Allowed Revenue*);

“**Allowable Return**” means the amount described at paragraph 11.2(7)(a)(vii) of Condition B (*Allowed Revenue*);

“**Allowed Revenue**” means the revenue calculated, from time to time, in accordance with this Project Licence;

“**Annual Allowable Amount**” means the amount described at paragraph 11.2(7)(b) of Condition B (*Allowed Revenue*);

“**Appropriate Discount Rate**” means such rate of return as, at the time at which the appropriate discount rate falls to be applied from time to time, investors and creditors would reasonably expect of a properly managed company holding this Project Licence whose sole business consists of performing the Project and, without excluding other considerations which may also be relevant, having its equity share capital listed on The International Stock Exchange of the United Kingdom and the Republic of Ireland [London Stock Exchange plc], and the same appropriate discount rate shall be applied for all purposes in determining questions subject of the same reference (including questions determined by the Authority under paragraph 12 of Condition B (*Allowed Revenue*) when it

³¹ Some definitions may change once the project documents have been finalised.

determines questions referred to it by the Infrastructure Provider under paragraph 11 of Condition B (*Allowed Revenue*);

“Associated Company” means any Group Company or Related Company;

“Auditors” means [●] or such other firm which is appointed as auditor of the Infrastructure Provider from time to time;

“Base Cash Flows” means the annual cash flows described in paragraph 11.2(3) of Condition B (*Allowed Revenue*);

“Base Cash Flows at Outturn Prices” means the amount of any Base Cash Flow which has been adjusted to a price level at which the Base Cash Flow has occurred, or is expected to occur;

“Board” means the Directors of the Infrastructure Provider;

“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;

“Business Day” means any day (other than a Saturday or Sunday) on which banks in London, England, are open for business;

“Business Plan” means the business plan submitted by the Infrastructure Provider to the Authority setting out the works and services it is required to perform during the Post Construction Review or the relevant Periodic Review period (as applicable);

“Change in Tax Law” means (i) the coming into effect, amendment, supplement, termination, repeal, replacement or withdrawal of or to, or a change in the interpretation or application by HM Revenue & Customs or any other competent authority of, any law, subordinate legislation or guidance of any competent authority, or (ii) the amendment of any generally accepted accounting principles and policies adopted in the water industry, in each case, directly affecting the tax treatment of the Infrastructure Provider and occurring after [the effective date of this Project Licence] and, in each case, save to the extent arising out of, or in connection with, a breach or default under or with respect to that law, subordinate legislation, guidance or accounting principles and policies by the Infrastructure Provider or any of its representatives;

“Charging Year” means a calendar year commencing on 1 April of one calendar year and ending on 31 March of the immediately following calendar year, save that the first Charging Year will commence on the Commencement Date and end on the immediately following 31 March;

“Commencement Date” means the date on which all the Project Documents have become effective, being the date on which all conditions precedent have been satisfied or waived in accordance with clause [●] of the Liaison Agreement;

“Competition and Markets Authority” means the Competition and Markets Authority of the United Kingdom;]³²

“Condition” means a condition of this Project Licence;

“Condition K Certificate” means a certificate, submitted to the Authority by the Infrastructure Provider, which states that, in the opinion of the Board of the Infrastructure Provider:

³² References to referrals to the Competition and Markets Authority remain in square brackets pending the SIP Regulations being amended by the Secretary of State so as to confer powers on Ofwat to allow for such referrals.

- (a) the Infrastructure Provider will have available to it sufficient financial resources and facilities to enable it to carry on the Licensed Activities, for at least the twelve month period following the date on which the certificate is submitted;
- (b) the Infrastructure Provider will have available to it sufficient management resources and systems of planning and internal control to enable it to carry on the Licensed Activities, for at least the twelve month period following the date on which the certificate is submitted; and
- (c) all contracts entered into between the Infrastructure Provider and any Associated Company include the necessary provisions and requirements in respect of the standard of service to be supplied to the Infrastructure Provider, to ensure that it is able to carry on the Licensed Activities;

“Construction Contract” means the agreements of that name between, *inter alia*, the Infrastructure Provider and any Construction Contractor;

“Construction Contractors” means [●] and any replacement contractors approved by TWUL in accordance with the terms of the Interface Agreement (such approval not to be unreasonably withheld or delayed);

“Contingent Equity Support Agreement” means the contingent equity support agreement to be entered into between the Infrastructure Provider and the Secretary of State on or around the date of this Agreement;

“Credit Rating Agency” means:

- (a) Standard and Poor’s Rating Group (or any of its Subsidiaries);
- (b) Moody’s Investors Service, Inc. (or any of its Subsidiaries);
- (c) Fitch Ratings Ltd.; or
- (d) any reputable credit rating agency which has been notified to the Infrastructure Provider by the Authority as having comparable standing to Standard & Poor’s Rating Group, Moody’s Investors Service, Inc. and Fitch Ratings Ltd. in both the United Kingdom and the United States of America;

“Cross-Default Obligation” means a legal obligation contained in an agreement or arrangement where the Infrastructure Provider’s liability to pay or repay any debt or other sum arises or is increased or accelerated due to the default of any person other than the Infrastructure Provider;

“CSO” means a combined sewer overflow, being a point at which the London sewerage network overflows into the tidal River Thames;

“Current Value” means the amount of any Base Cash Flow which has been adjusted to take account of the cumulative percentage change in the Retail Prices Index since the year in which the Base Cash Flow occurred;

“DCO” means the development consent order granted under the Planning Act 2008;

“Depreciation Notice” means the notice given by the Authority in accordance with paragraph 1.2 of Condition O (*Revocation and Variation*);

“Directors” means the directors of the Infrastructure Provider, and **“Director”** means any of them;

“Discontinuation Agreement” means the agreement between the Secretary of State and the Infrastructure Provider dated on or around the Commencement Date;

“Discontinuation Notice” means a notice issued or deemed to be issued by the Secretary of State under clause [●] of the Discontinuation Agreement;

“Discontinued” means the Secretary of State has issued or is deemed to have issued a Discontinuation Notice in accordance with clause [●] of the Discontinuation Agreement;

“disposal” has the meanings respectively given to it in section 219 of the Water Industry Act and cognate expressions shall be construed accordingly;

“Disposal Certificate” means a certificate signed by all the Directors of the Infrastructure Provider for the time being or approved by a duly convened meeting of the Board of the Infrastructure Provider for the time being and signed by a Director or the company secretary of the Infrastructure Provider 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;

“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;

“EA” means the Environment Agency;

“enforcement authority” means, for the purposes of the definition of Relevant Change of Circumstance, any person or body having jurisdiction to enforce or to take action under or in respect of the relevant legal requirement;

“Environmental Permit” means each environmental permit issued by the EA in favour of the Incumbent Undertaker authorising discharge of specified volumes and/or concentrations of treated and untreated sewage effluent through a CSO and its treatment works;

“financial year” means a financial year of the Infrastructure Provider beginning and ending on the respective dates referred to in [section 227(2)] of the 2006 Act;

“Financing Subsidiary” means a Subsidiary of the Infrastructure Provider:

- (a) which is wholly owned by the Infrastructure Provider; and
- (b) the sole purpose of which, as reflected in the company’s articles of association, is to raise finance on behalf of the Infrastructure Provider for the purposes of the Licensed Activities;

“First Periodic Review” means (subject to paragraph 6.3 of Condition B (*Allowed Revenue*)) the first Periodic Review period following Acceptance, which Periodic Review period shall be timed to coincide with the first periodic review of the Incumbent Undertaker’s wholesale activities that takes place following Acceptance and may coincide with the Post Construction Review;

“formal tender”, for the purposes of Condition L (*Disposal of Protected Land*), means a tender, acceptance of which creates a binding obligation to purchase;

“Group Company” means any Subsidiary or Holding Company of the Infrastructure Provider and any Subsidiary of any Holding Company of the Infrastructure Provider (other than the Infrastructure Provider);

“Handover” means the completion of construction of all of the IP Regulated Assets and the sewerage assets constructed by TWUL pursuant to TWUL Works as evidenced by the issuance of a Handover Certificate in accordance with the requirements set out in clause [●] (*Handover*) of the Interface Agreement;

“Handover Certificate” means the certificate issued by the Incumbent Undertaker upon the satisfaction of the commissioning tests in accordance with clause [●] (*Handover*) of the Interface Agreement;

“Holding Company” has the meaning set out in section 1159 of the 2006 Act;

“Incumbent Undertaker” means TWUL or any other water and sewerage undertaker operating from time to time in the Thames Sewerage Services Area [(as it is delineated in the map accompanying this Project Licence)];

“Independent Technical Assessor” means the company appointed under the Independent Technical Assessor Agreement as independent technical assessor in accordance with the Liaison Agreement;

“Independent Technical Assessor Agreement” means the agreement between the Independent Technical Assessor and the Infrastructure Provider entered into on the Commencement Date;

“Information” means information which is in the possession of the person required to provide it, which it can reasonably obtain or prepare from information which is in its possession, or which it can otherwise reasonably obtain;

“infrastructure renewals expenditure” means expenditure on maintaining or restoring the original operating capability, qualitative performance and condition of the IP Regulated 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;

“Interface Agreement” means the agreement of that name between, *inter alia*, the Infrastructure Provider and TWUL, dated on or about the Commencement Date;

“Interim Determination”, for the purposes of Condition B (*Allowed Revenue*), means a determination by the Authority of the relevant questions pursuant to a reference by the Infrastructure Provider under paragraph 11 or pursuant to paragraph 12 [or, as the case may be, a determination by the Competition and Markets Authority of the relevant questions or of a disputed determination subject to a reference to it pursuant to paragraph 13 that relates to a reference by the Infrastructure Provider under paragraph 11 or a determination pursuant to paragraph 12]³³;

“Investment Grade Rating” means an Issuer Credit Rating recognised as investment grade by a Credit Rating Agency;

“Infrastructure Provider Regime” has the meaning given to it in paragraph 4 of Condition N (*Fees*);

“IP Charge” has the meaning given in paragraph 5.1 of Condition B;

“IP Owned Structures” means the Tunnels, de-aeration chambers, de-aeration vents, vortex tubes, vortex generators, vortex liner, the Shafts, Shaft cover slabs and everything constructed inside the Shafts except for the MEICA equipment, Metalwork and access covers;

“IP Regulated Assets” means (i) prior to Acceptance the sewerage assets to be constructed and maintained by the Infrastructure Provider in accordance with the Project Specification Notice, excluding (from Handover) the Storm Pump Exercising System and (ii) from Acceptance the IP Owned Structures;

“Issuer Credit Rating” means a credit rating assigned to an issuer of corporate debt by a Credit Rating Agency;

“land” includes any interest or right in or over any land;

³³ References to referrals to the Competition and Markets Authority remain in square brackets pending the SIP Regulations being amended by the Secretary of State so as to confer powers on Ofwat to allow for such referrals.

“Lee Tunnel” means the storage and transfer tunnel from Abbey Mills Pumping Station to Beckton sewage treatment works and the interception of the Abbey Mills Pumping Station CSO;

“legal requirement”, for the purposes of the definition of Relevant Change of Circumstance and Relevant Change in Law, is any of the following:

- (a) any enactment or subordinate legislation to the extent that it applies to the Infrastructure Provider in its capacity as an infrastructure provider (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 (as has effect with modifications by the SIP Regulations));
 - (b) any regulation made by the Council or the Commission of the European Communities to the extent that it applies to the Infrastructure Provider in its capacity as an infrastructure provider, or decision taken by the Council or the Commission of the European Communities which is binding on the Infrastructure Provider in its capacity as an infrastructure provider 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 EA or other body of competent jurisdiction to the Infrastructure Provider for the purpose of carrying on any of the functions of an infrastructure provider;
 - (d) any undertaking given by the Infrastructure Provider to, and accepted by, the Secretary of State or, as the case may be, the Authority for the purposes of section 19(1)(b) of the Water Industry Act (as has effect with modifications by the SIP Regulations);
 - (e) other than any such undertaking as is referred to in (d) above, any undertaking given by the Infrastructure Provider 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 Infrastructure Provider 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 paragraph (c) above or agreeing not to withdraw the same;
 - (f) the Conditions of this Project Licence; 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 paragraphs (a) to (f) above to have effect in a way:
 - (i) different from that in which it previously had effect; or
 - (ii) different from that in which it was taken to have effect:
 - (A) for the purpose of making a Relevant Determination; or, as the case may be,
 - (B) in determining whether a Relevant Determination should be changed,
- but so that nothing in paragraphs (a) to (g) above shall apply so as to include:

(i) any such legal requirement as is referred to in the Environmental Permitting (England and Wales) Regulations 2010 made under section 2 of the Pollution Prevention and Control Act 1999 or section 41 of the Environment Act 1995; or

(ii) those sections,

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

“Liaison Agreement” means the agreement so named between the Infrastructure Provider, Secretary of State and TWUL dated on or about the date of this Project Licence;

“Licensed Activities” means the functions of the Infrastructure Provider, including the duties of the Infrastructure Provider;

“Licensed Business” means the business consisting of the carrying out by the Infrastructure Provider of the Licensed Activities and the management and holding of any Protected Land;

“London Tideway Tunnels” means the Lee Tunnel and [the Thames Tideway Tunnel] together with the control systems;

“Longstop Date” means 18 months after the Planned System Acceptance Date, as may be extended pursuant to this Project Licence;

“Lowest Investment Grade Rating” means:

(a) an Issuer Credit Rating of BBB- by Standard & Poor’s Rating Group or Fitch Ratings Ltd. or an Issuer Credit Rating of Baa3 by Moody’s Investors Service, Inc. or such Issuer Credit Rating as may be specified from time to time by any of these Credit Rating Agencies as the lowest Investment Grade Rating; or

(b) an equivalent rating from any other Credit Rating Agency;

“Main Tunnel” means the tunnel between Acton Storm tanks and the connection to the Lee Tunnel at Abbey Mills pumping station;

“making a Relevant Determination” means, as regards each Price Control to which an Interim Determination relates or is to relate, making one or more determinations pursuant to paragraph 6.5 of Condition B or (where Appendix 3 applies) paragraph 20 of Condition B (*Allowed Revenue*), pursuant to a Periodic Review, as to that Price Control, or making any subsequent Interim Determination as to whether the level of that Price Control should be changed (and if so, what change should be made to the level of the Price Control or Price Controls), and **“Relevant Determination”** shall be construed accordingly;

“Mandatory Variation Dispute” means a dispute that is referred to the Authority under paragraph [3.7.2] of Schedule [12] to the Operation and Maintenance Agreement;

“Market Disruption Facility” means the market disruption liquidity facility provided by the Secretary of State to the Infrastructure Provider on or around the Commencement Date;

“Materiality Amount”, for the purpose of any disposal of land, has the meaning given in paragraph 2.2 of Condition L (*Disposal of Protected Land*), and, for all other purposes, has the meaning given in paragraph 11.2(5)(c) of Condition B (*Allowed Revenue*);

“MEICA” means the mechanical, electrical, instrumentation, controls and automation works;

“Metalwork” means ladders, handrails, platforms, covers and grates, embedded anchor points and other similar appurtenances, excluding any liner provided to the vortex tube;

“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 11 of Condition B (*Allowed Revenue*) but the Authority gives a notice to the Infrastructure Provider under paragraph 12 of Condition B (*Allowed Revenue*), as at [30 September] in the year in which the 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;

“Nominee” of any person includes, for the purposes of Condition L (*Disposal of Protected Land*), 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;

“Notified Item” means any item notified by the Authority to the Infrastructure Provider 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 Relevant Determination should be changed (and, if so, what change should be made to it), the Authority, or, as the case may be, the Competition and Markets Authority, allows for any such item as was previously so notified by the Authority then references 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 Authority, or, as the case may be, the Competition and Markets Authority, allowed for it as aforesaid;

“Operating Expenditure” means [●];

“Operating Techniques” means the agreement relating to operating techniques made between TWUL and the EA, dated 8 November 2012, as amended from time to time;

“Operation and Maintenance Agreement” means the agreement of that name between, *inter alia*, the Infrastructure Provider and TWUL, dated on or about the Commencement Date;

“Operation Revenue” means the Allowed Revenue described in Part B (*Operation Revenue*) of Appendix 1 (*Calculation of Allowed Revenue*);

“Other Allowable Expenditure” means the amount described at paragraph 11.2(7)(a)(iii) of Condition B (*Allowed Revenue*);

“Periodic Review” means a review of the Licensed Business carried out at regular intervals following the Post Construction Review in accordance with paragraph 6 of Condition B (*Allowed Revenue*);

“Post Construction Review” means the review of the Licensed Business to be carried out in accordance with paragraph 2 of Appendix 2 (*Non-Revenue Conditions*);

“Preparatory Works Notice” means the Thames Tideway Tunnel Preparatory Works Notice made by the Secretary of State on 4th June 2014 pursuant to regulation 5(3) of the SIP Regulations (as varied from time to time in accordance with regulation 5(7) of the SIP Regulations);

“Price Control” means, for the purposes of Condition B (*Allowed Revenue*), a control set by the Authority, pursuant to a Periodic Review or an Interim Determination in respect of the charges to be levied by and/or revenue allowed to a Licensed Business or any part thereof (having regard to its costs) and such matters ancillary to the said control, by way of a determination pursuant to Condition B;

“Principles of Good Governance and Code of Best Practice” means the document of that title incorporated into the Listing Rules of the Financial Services Authority, or any document published to be the successor of the document, which has similar purpose and content;

“Prior Charging Year” means the year commencing 1 April immediately prior to the relevant Charging Year;

“Project” means the financing, design, construction, commissioning, Acceptance, maintenance, operation and ownership of the sewerage assets known as the Thames Tideway Tunnel and its integration into the asset to be known as the London Tideway Tunnels as specified in the Project Specification Notice;

“Project Documents” means the:

- (a) Liaison Agreement;
- (b) Interface Agreement;
- (c) Alliance Agreement;
- (d) Operation and Maintenance Agreement;
- (e) this Project Licence;
- (f) Shareholders' Agreement;
- (g) Supplemental Compensation Agreement;
- (h) Market Disruption Facility;
- (i) Contingent Equity Support Agreement;
- (j) Discontinuation Agreement;
- (k) Project Management Contract;
- (l) MEICA;
- (m) SCADA Contract;
- (n) Construction Contracts; and
- (o) Revenue Agreement;

“Project Licence” means this project licence granted by the Authority to the Infrastructure Provider on or around the Commencement Date;

“Project Management Contract” means the agreement of that name between the Project Manager and the Infrastructure Provider and dated on or about the Commencement Date;

“Project Manager” means the project manager appointed by the Infrastructure Provider pursuant to the Project Management Contract;

“Project Specification Notice” means the Thames Tideway Tunnel Project Specification Notice made by the Secretary of State on 4th June 2014 pursuant to regulation 4(1) of the SIP Regulations (as varied from time to time in accordance with regulation 4(7) of the SIP Regulations);

“proposed disposal” is any such disposal to which paragraphs 3, 4 or 5 of Condition L (*Disposal of Protected Land*) applies;

“Proposed Variation” means a variation that is the subject of a Mandatory Variation Dispute;

“Protected Land” means any land which, or any interest or right in or over which, is or has at any time been held by the Infrastructure Provider for the purpose connected with the carrying out of its functions under this Project Licence and the SIP Regulations;

“Reference Notice” means a notice given to the Authority under paragraph 11.1 of Condition B (*Allowed Revenue*);

“Regional Committee” means [●];

“Regulatory Accounting Guidelines” means the current version of the guidelines published by the Authority pursuant to paragraph 2.1 of Condition F (*Regulatory Accounts*);

“Related Company” means a body corporate in which the Infrastructure Provider 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 (SI 2008/410) or which has such a participating interest in the Infrastructure Provider or any Group Company;

“Relevant Business Unit” means one of the business units which together constitute the Licensed Business and which are defined in the Regulatory Accounting Guidelines;

“Relevant Change of Circumstance” is any of the following:

- (a)
 - (i) the application to the Infrastructure Provider of any legal requirement; and
 - (ii) any change to any legal requirement which applies to the Infrastructure Provider (including any legal requirement ceasing to apply, being withdrawn or not being renewed);
- (b) either of the following circumstances for any Charging Year in respect of which the Secretary of State, or, as the case may be, the Authority, notified the Infrastructure Provider that variations in value received or expected to be received from Relevant Disposals of Identified Land shall constitute a Relevant Change of Circumstance:
 - (i) 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 Authority, notified the Infrastructure Provider was the value attributable to a Relevant Disposal of that Identified Land for that Charging Year which had been allowed for in making a Relevant Determination; or
 - (ii) where for any Charging Year, and to the extent not taken into account under (i) 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 Authority notified the Infrastructure Provider was the value attributable to Relevant Disposals of Non-identified Land for that Charging Year which had been allowed for in making a Relevant Determination

and so that any notification by the Authority for purposes of this sub-paragraph (b) shall be relevant for the purposes of this sub-paragraph (b) to the exclusion of any earlier notification by the Secretary of State or the Authority for the purposes of this sub-paragraph (b) 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 (b):

- (i) "Identified Land" means any piece or parcel of protected land identified in any such notification referred to in (i) above as is relevant for the time being for the purposes of this sub-paragraph (b) 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 Condition L (*Disposal of Protected Land*);
 - (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 (i) above as is relevant for the time being for the purposes of (B) below; or
 - (B) a piece or parcel of protected land which has previously been the subject of a transfer under Condition L (*Disposal of Protected Land*);
 - (iv) "protected land" and "disposal" have the meanings respectively given to them in section 219 of the Water Industry Act;
 - (v) a "Relevant Disposal" means and includes any disposal by the Infrastructure Provider;
 - (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 Infrastructure Provider, any Associated Company or any other business in which either the Infrastructure Provider or any Associated Company has a material direct or indirect interest;
 - (ix) for the purpose of computing "value received or expected to be received" in respect of a Relevant Disposal of Land which consists of a transfer made under Condition L (*Disposal of Protected Land*), the "value received or expected to be received" shall be the value for which that transfer is made under that Condition, but so that where that value includes a right to receive cash or any other asset then, for the purpose of this sub-paragraph, no value shall be attributed to that right 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; and
 - (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;
- (c) where, 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, and, in any such case:
- (i) the Infrastructure Provider 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

- (ii) as a result, the amount allowed for as aforesaid is substantially greater than the sum of the costs (if any) actually incurred by the Infrastructure Provider for the relevant purpose; and
- (iii) that purpose has not been otherwise achieved;

“Relevant Change in Law” means the application to the Infrastructure Provider of any legal requirement and any change to any legal requirement which applies to the Infrastructure Provider (including any legal requirement ceasing to apply, being withdrawn or not being renewed);

“Relevant Item” is any of the following:

- (a) a Relevant Change of Circumstance; and
- (b) a Notified Item,

and references to a Relevant Item are to a Relevant Change of Circumstance or a Notified Item as the context may require;

“Relevant Period” has the meaning given in paragraph 11.2(8) of Condition B (*Allowed Revenue*);

“Relevant Premises” means any office premises occupied by the Infrastructure Provider in relation to the Licensed Business and to which members of the public have access;

“Reporter” has the meaning given in paragraph 15.1 of Condition B (*Allowed Revenue*);

“Retail Prices Index” or **“RPI”** means the General Index of Retail Prices published by the Office for National Statistics each month in respect of all items or, if the said index for the month of November is not published by 31 December next following, such index for such month as the Authority may not later than 7 January next following determine to be appropriate in the circumstances, after such consultation with the Infrastructure Provider 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;

“Revenue Agreement” means the revenue agreement to be entered into between TWUL and the Infrastructure Provider on or about the Commencement Date;

“Revenue Statement” means the statement submitted by the Infrastructure Provider under paragraph 5.1 of Condition B (*Allowed Revenue*);

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

“Review Notice” means [●];

“Review Notice Date” means the first day of January which is 15 months before the first day of the Review Charging Year;

“Revocation Notice” means a revocation notice given pursuant to paragraph 1.1 of Condition O (*Variation and Revocation*);

“SCADA Contract” means the contract to be entered into by the Infrastructure Provider in respect of the supervisory control and data acquisition;

“Secretary of State” means the Secretary of State for Environment, Food and Rural Affairs;

“Sewer Network” means the Incumbent Undertaker’s network of sewers, including all necessary component parts, control systems and lateral drains, draining the London area of effluent, trade effluent and stormwater, including the Lee Tunnel and any pumping stations and treatment works operated by the Incumbent Undertaker;

“Shaft” means any shaft connecting to a Tunnel and includes a drop shaft;

“Shareholders’ Agreement” means [•];

“Short Term Disposal” means a disposal which consists of the creation of any interest or right in or over Protected Land which the Infrastructure Provider has an unconditional right to terminate without penalty at any time and from time to time by not more than 30 months’ notice or which expires or otherwise ceases in accordance with its terms within 30 months of the date of its creation without any other interest or right arising on such expiry or cessation;

“SIP Regulations” means the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (as may be in force from time to time);

“Storm Pump Exercising System” means the pump exercising system fitted to the storm pumping stations at each of Hammersmith, Falconbrook and Earl;

“Subsidiary” has the meaning set out in section 1159 of the 2006 Act;

“Supplemental Compensation Agreement” means the agreement entered into between the Secretary of State and the Infrastructure Provider on or around the Commencement Date;

“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 Authority so as to allow for movements in the Retail Prices Index or as may from time to time otherwise be determined by the Authority and approved by the Secretary of State;

“Tunnels” means the Main Tunnel, the Greenwich and Frogmore connection tunnels and all Connection Tunnels but excluding the Beckton bypass siphon tunnel and the Lee Tunnel;

“TWUL” means Thames Water Utilities Limited (company number 02366661);

“TWUL Wastewater Charges” means, in respect of a Charging Year, the charges for [Wastewater Services] billed by or on behalf of TWUL to Wastewater Customers in accordance with the charges scheme made by TWUL pursuant to section 143 of the Water Industry Act for that Charging Year;

“TWUL Works” means those works set out in a schedule to the Interface Agreement and which are to be procured and financed by TWUL;

“Ultimate Controller” means any person which, whether alone or jointly and whether directly or indirectly is, in the reasonable determination of the Authority, in a position to control or in a position to materially influence the policy or affairs of the Infrastructure Provider or any Holding Company of the Infrastructure Provider;

“United Kingdom Holding Company” means any Holding Company which is registered in the United Kingdom;

“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;

“Valuer” means a valuer appointed by the Infrastructure Provider for the purpose of any provision of Condition L (*Disposal of Protected Land*);

“Water Industry Act” means the Water Industry Act 1991; and

“Wilful Misconduct or Gross Negligence” means any act or failure to act by a party or their respective personnel that was an intentional breach of the Project Documents or was intended to cause, or was in reckless disregard or wanton indifference to, the harmful consequences that a party or their respective personnel knew, or ought to have known, such act or failure to act was likely to have for the other party or any third party, but shall not include an error of judgement or mistake made by personnel of a party in the exercise in good faith of any function, authority or discretion conferred on such senior personnel.

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