

**WATER SERVICES REGULATION AUTHORITY**

**WATER INDUSTRY ACT 1991, SECTION 13(1)**

**Modification of the Conditions of Appointment of Thames Water Utilities  
Limited**

**Made on 30 March 2015**

**Coming into effect on 1 April 2015**

The Water Services Regulation Authority, in exercise of the power conferred on it by section 13(1) of the Water Industry Act 1991 (“the Act”), after giving notice as required by section 13(2) of the Act, hereby makes the modifications described in the Schedule attached hereto to the Conditions of the Appointment of Thames Water Utilities Limited (“the Appointee”) as a water and sewerage undertaker under Chapter 1 of Part II of the Act, the Appointee having consented to these modifications.

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

**Keith Mason  
Senior Director of Finance and Networks**

## Schedule

1. Condition A is deleted and replaced with the following text:

### **“Condition A: Interpretation and Construction**

1 Unless the contrary intention appears:

(1) words and expressions used in these Conditions and references in these Conditions to enactments shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them;

(2) references in these Conditions to enactments shall include any statutory modification thereof after the transfer date;

(3) words and expressions used in these Conditions shall have the same meaning as in any provision of the Water Industry Act 1991;

(4) references in these Conditions to sections and Schedules are references to sections of, and Schedules to, the Water Act 1989; and

(5) references in these Conditions to paragraphs are references to paragraphs of the Condition in which the reference appears and references to sub-paragraphs are references to sub-paragraphs of the paragraph in which the reference appears.

2 In construing these Conditions:

(1) the heading or title of any Condition or of any paragraph of any Condition shall be disregarded; and

(2) any description of the purposes of a Condition shall be construed subject to the provisions of the rest of the Condition in which that description appears.

3 Unless the context otherwise requires, in these Conditions:

"**the 1937 Act**" means the Public Health (Drainage of Trade Premises) Act 1937;

"**the 1945 Act**" means the Water Act 1945;

"**the 1973 Act**" means the Water Act 1973;

"**the 1985 Act**" means the Companies Act 1985;

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

"**the Area**" means the area for which for the time being the Appointee holds the appointment as water undertaker or, as the case may be, sewerage undertaker;

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

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

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

"**Charging Year**" means a year commencing on 1 April;

"**the Customer Service Committee**" shall be read as a reference to the Consumer Council for Water;

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

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

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

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

**"Information"** means information which is in the possession of the person required to furnish it or which it can reasonably obtain or which it can reasonably prepare from information which is in its possession or which it can reasonably obtain, and information which is required to be furnished under any of these Conditions shall be furnished, subject to the provisions of the Condition under which that information is required to be furnished, in such form and manner as the Water Services Regulation Authority may reasonably require;

**"Infrastructure Provider"** or **"IP"** means the company designated by the Secretary of State or the Water Services Regulation Authority to be the infrastructure provider responsible for the Thames Tideway Tunnel Project in accordance with Regulation 8(1) of the SIP Regulations;

**"IP Allowed Revenue"** means the revenue calculated, from time to time, in accordance with the IP Licence;

**"IP Charge"** means the figure resulting from the Infrastructure Provider's calculation of the IP Allowed Revenue pursuant to the Project Licence, as notified to the Appointee pursuant to the Project Licence and Revenue Agreement;

**"IP Licensed Activities"** means the functions of the Infrastructure Provider, including the duties of the Infrastructure Provider";

**"Licence Award"** means the date the Project Licence comes into effect;

**"Periodic Review"** means a review conducted by the Water Services Regulation Authority for the purpose of determining one or more Price Controls in accordance with Part III of Condition B, but so that references in Part IV of Condition B to a Periodic Review shall exclude any review carried out under paragraph 11 of that Condition and shall include the determination by the Competition and Markets Authority of the relevant questions or, as the case may be, the disputed determination referred to it under paragraph 16 of Condition B;

**"Prior Year"** means the year commencing 1 April immediately prior to the relevant Charging Year;

**"Project Licence"** means the project licence granted at Licence Award to the Infrastructure Provider by the Water Services Regulation Authority pursuant to section 17FA of the Water Industry Act 1991 (as inserted and applied by paragraph 3(2) of Schedule 1 of the SIP Regulations);

**"Reference Notice"** means a notice given to the Water Services Regulation Authority under paragraph 11 or 14 of Condition B;

**"the Regulated Activities"** means the functions of a water undertaker or, as the case may be, a sewerage undertaker, which are not IP Licensed Activities and, for the avoidance of doubt, references to the functions of a water undertaker or, as the case may be, a sewerage undertaker shall include references to the duties imposed on a water undertaker or, as the case may be, a sewerage undertaker;"

**"Related Company"** means any company in relation to which the Appointee or any Group Company has a participating interest within the meaning of paragraph 11 of Schedule 10 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 or which has such a participating interest in relation to the Appointee or any Group Company;

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

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

**"Revenue Agreement"** means the agreement of that name entered into between the Appointee and the Infrastructure Provider on or about the date of Licence Award.

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

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

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

**"trade effluent"** has the same meaning as in section 141 of the Water Industry Act 1991;

**"the transfer date"** means 1 September 1989;

**"the Water Authority"** means the Water Authority of which the Appointee is the successor company;

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

- 4 In the definition of "Excluded Charges" and "Standard Charges" in Condition B and in Condition E, references to the Water Authority shall include references to the Water Authority's predecessors in title.
- 5 Any notification required or permitted to be given under any Condition shall be given in writing and cognate expressions shall be construed accordingly.
- 6 Where one only of the Appointments is terminated, so much of the provisions of these Conditions as applies or is relevant exclusively to the Appointment which has been so terminated or to the activities of an undertaker holding an appointment of the kind which has been so terminated shall cease to have effect as from the date on which the termination of that Appointment takes effect.

- 7 The Appointee may refer to the Water Services Regulation Authority for determination by it (having considered any representations by the Appointee and any other water undertaker or, as the case may be, sewerage undertaker) any question arising as to whether any area, island, premises or installation is, or, as the case may be, are, comprised within the Water Supply Area or, as the case may be, the Sewerage Services Area, as those expressions are defined in Schedule 1 to this instrument.
  
- 8 The provisions listed in the appendix to this condition A are suspended until Licence Award, in accordance with the terms of the appendix. This paragraph 8 and the appendix to this condition A will cease to have effect on Licence Award.

#### **Appendix to condition A**

##### **Condition A**

The definition of “Regulated Activities” inserted in accordance with a modification made on 30 March 2015 will only come into effect on Licence Award and the definition of “Regulated Activities” in place immediately prior to 30 March 2015 will continue to have effect until Licence Award.

##### **Condition L**

The definition of “Network Assets” inserted in accordance with a modification made on 30 March 2015 will only come into effect on Licence Award and the definition of “Network Assets” in place immediately prior to 30 March 2015 will continue to have effect until Licence Award.”

2. Condition B is deleted and replaced with the following text:

**“Condition B: Charges**

Part I. Explanatory Provisions

1 Introduction

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

- 1.1 To empower the Water Services Regulation Authority to make determinations setting controls in respect of the charges to be levied by and/or revenue allowed to the Appointee or to any part of the Appointee’s business (having regard to its costs) for the supply of water and sewerage services.
- 1.2 To provide for reviews of the Appointed Business to be carried out by the Water Services Regulation Authority, so that the Water Services Regulation Authority can determine whether one or more Price Controls should be changed. This is dealt with in Part III under the heading "Periodic Reviews".
- 1.3 To enable the Appointee:
  - (1) ...
  - (2) to refer to the Water Services Regulation Authority for determination from time to time the question of changing the Price Control or Price Controls to allow for Notified Items and Relevant Changes of Circumstance;
  - (3) to refer to the Water Services Regulation Authority for determination at any time the question of changing the Price Control or Price Controls where circumstances have a substantial adverse effect on the Appointed Business; and
  - (4) where notice to terminate either or both of the Appointments has been given, to refer to the Water Services Regulation Authority for determination the question what the Price Control or Price Controls should be in the future, on the assumption that the relevant Appointment or, as the case may be, the Appointments were to continue in force, for the purpose of facilitating consideration of the terms on which a new appointee could accept transfers of



property, rights and liabilities from the Appointee, as provided in section 9(4) of the Water Industry Act 1991.

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

- 1.4 To provide for the Water Services Regulation Authority to initiate changes to the Price Control or Price Controls to allow for Notified Items and Relevant Changes of Circumstance. This is also dealt with in Part IV.
  - 1.5 To enable the Appointee to require the Water Services Regulation Authority to refer to the Competition and Markets Authority matters arising out of determinations by the Water Services Regulation Authority referred to in sub-paragraphs 1.2 and 1.4 and references referred to in sub-paragraph 1.3. These matters are dealt with in Part V under the heading "References to the Competition and Markets Authority".
  - 1.6 To require the Appointee to give Information to the Water Services Regulation Authority to enable it to make determinations under this Condition. This is dealt with in Part VI under the heading "Provision of Information to the Water Services Regulation Authority".
  - 1.7 To permit the Appointee to levy charges for the purpose of collecting the IP Charge for the relevant Charging Year.
  - 1.8 To reflect that the IP Charge is subject to regulatory oversight in the Project Licence rather than in this Appointment.
- 2 Defined terms which apply for the purposes of all Parts of this Condition

In this Condition:

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

"**End-User**" means a person who, otherwise than as a person holding an appointment or a licence under the Water Industry Act 1991 or under other legislation in respect of water or sewerage services enacted from time to time, is a customer of the Appointee or a user of the goods or services concerned;

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

- (1) amounts payable in respect of an unmeasured supply of water by means of stand-pipes or water tanks and in respect of the erection or maintenance of stand-pipes or water tanks;
- (2) charges for a supply of water provided by the Appointee under section 59 of the Water Industry Act 1991;
- (3) charges for the reception and disposal by the Appointee, or other person specified by the Appointee or, as the case may be, the Water Authority, of matter delivered to the Appointee or such other person by a collection authority in pursuance of section 14(9) of the Control of Pollution Act 1974;
- (4) charges for unmeasured supplies of water to cattle troughs;
- (5) charges for unmeasured building water supplies;
- (6) amounts payable in respect of an unmeasured supply of water by means of bowsers or water tankers;
- (7) charges for unmeasured supplies of water to farm taps and other agricultural water points; and
- (7A) at any time before (but not including) 1 April 2015, charges in any Charging Year for supplies of water (or for the provision of sewerage services or for the reception, treatment and disposal of trade effluent) to premises where the premises were supplied in the relevant Prior Year with not less than such quantity of water as is specified from time to time under section 7(5)(a) of the Water Industry Act 1991

AND, for the avoidance of doubt, but without prejudice to the meaning of Standard Charges in respect of water supply, sewerage services and the reception, treatment and disposal of trade effluent, shall also include

- (8) at any time before (but not including) 1 April 2015, charges payable for any such connection as is described in section 146(2) of the Water Industry Act 1991;
- (9) charges for a supply of water in bulk to another water undertaker;
- (10) amounts payable under any such agreement as is described in section 20(1)(b) of the Water Resources Act 1991 (including any such agreement entered into by the Water Authority under section 81 of the Water Resources Act 1963 with respect to any of the matters referred to in sections 81(1)(b) and 81(1)(d) of that Act as, by virtue of paragraph 29(1) of Schedule 26, has effect on and after the transfer date as a thing done by the Appointee); and
- (11) charges payable under any agreement for any unmeasured supply of water or unmeasured sewerage services which are calculated by reference to the rateable value of hereditaments, occupied by the person to whom the supply or services are provided, fixed in accordance with section 32, 33 or, as the case may be, 34 of the General Rate Act 1967 or, as the case may be, fixed in accordance with section 54 of the Local Government Finance Act 1988

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

- (a) there were added to sub-paragraph (2) of this definition the words "and charges for a supply of water provided by the Water Authority under section 37 of Schedule 3 to the 1945 Act";
- (b) there were added to sub-paragraph (3) of this definition the words "and charges for the reception and disposal by the Water Authority, or other person specified by the Water Authority, of matter delivered to the Water Authority or such other person by a collection authority in pursuance of section 14(9) of the Control of Pollution Act 1974"; and

- (c) there were added to sub-paragraph (10) of this definition the words "and any agreement entered into by the Water Authority under section 81 of the Water Resources Act 1963 with respect to any of the matters referred to in sections 81(1)(b) and 81(1)(d) of that Act";

**"Interim Determination"** means a determination by the Water Services Regulation Authority of the relevant questions pursuant to a reference by the Appointee under paragraph 14 or pursuant to paragraph 15 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 16 that relates to a reference by the Appointee under paragraph 14 or a determination pursuant to paragraph 15;

**"Preparatory Work Notice"** means the Thames Tideway Tunnel Preparatory Work 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 a control set by the Water Services Regulation Authority, pursuant to a Periodic Review or an Interim Determination, or deemed to be so set by virtue of sub-paragraph 16.2, in respect of the charges to be levied by and/or revenue allowed to an Appointed 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 this Condition. The appropriate nature and form of each control for Retail Activities will depend on the circumstances of each case;

**"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);

**"Retail Activities"** means such activities that constitute the provision of goods or services by the Appointee directly to one or more End-Users, and such activities ancillary to such provision including ownership of meters, and that are so designated from time to time (which designation, for the avoidance of doubt, shall be reversible) by the Water Services Regulation Authority or by such person or persons as may be

nominated by the Water Services Regulation Authority to do so, but for the avoidance of doubt shall not include the following:

- (a) water resources, raw water distribution, water treatment, treated water distribution, sewage collection, sewage treatment, sludge treatment or sludge disposal (as each of those is defined in the Water Services Regulation Authority's Regulatory Accounting Guideline 4.04); or
- (b) in so far as the ownership of meters is so designated, the ownership of meters that were installed at, or in order to measure supplies to, End-Users' premises on or before the date of such designation;

**"Sewerage Services for the Thames Tideway Tunnel Project"** means sewerage services set out in the Preparatory Work Notice that the Appointee is required to provide for the delivery of the Thames Tideway Tunnel Project and any additional services set out in the Preparatory Work Notice that the Appointee is permitted to provide and has agreed to provide;

**"SIP Regulations"** means the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 made under Part 2A of the Water Industry Act 1991 as inserted by the Flood and Water Management Act 2010;

**"Standard Charges"** means

- (1) charges fixed under any such charges scheme as is referred to in section 143 of the Water Industry Act 1991;
- (2) charges fixed by the Appointee in respect of its Wholesale Activities;
- (3) charges payable under any such agreement as is referred to in section 142 of the Water Industry Act 1991 (including any such agreement made or entered into by the Water Authority under section 30 of the 1973 Act as, in accordance with a scheme under Schedule 2, is transferred to the Appointee) under or for which all the charges payable are in accordance with standard charges published or fixed by the Appointee or, as the case may be, the Water Authority;

- (4) charges payable where a discharge is made in pursuance of a consent given by the Appointee for the purposes of Chapter III of Part IV of the Water Industry Act 1991 under or for which all the charges payable are in accordance with standard charges published or fixed by the Appointee;
- (5) charges determined by agreement in respect of a supply of water provided by the Appointee for non-domestic purposes where all the charges so determined in respect of that supply are in accordance with standard charges published or fixed by the Appointee;
- (6) charges fixed under any such charges scheme made by the Water Authority under section 31 of the 1973 Act as, by virtue of paragraph 16(1) of Schedule 26 of the Water Act 1989, had effect on and after the transfer date as if it were a charges scheme made under section 76 of the Water Act 1989 by the Appointee;
- (7) charges payable under any such consent or agreement under the 1937 Act as, by virtue of paragraph 13 of Schedule 26 of the Water Act 1989, has effect on and after the transfer date as if it were given or entered into by the Appointee under which all the charges payable are in accordance with standard charges published or fixed by the Water Authority or, as the case may be, the Appointee;
- (8) charges in respect of any such supply which the Water Authority was under a duty to make under section 27 of the 1945 Act as, by virtue of paragraph 8 of Schedule 26 of the Water Act 1989, is a supply which the Appointee is under a duty to make on and after the transfer date where all charges in respect of such supply are in accordance with standard charges published or fixed by the Water Authority or, as the case may be, the Appointee; and

provided that no part of this definition shall apply to any charge which is for the time being an Excluded Charge by virtue of (7A) of the definition of Excluded Charges;

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

- (a) there were added to sub-paragraph (6) of this definition the words "and any charges scheme made by the Water Authority under section 31 of the 1973 Act";
- (b) there were added to sub-paragraph (7) of this definition the words "and any consent or agreement given or entered into by the Water Authority under the 1937 Act under which all the charges payable were in accordance with standard charges published or fixed by the Water Authority" ;
- (c) there were added to sub-paragraph (8) of this definition the words "and any such supply which the Water Authority was under a duty to make under section 27 of the 1945 Act, where all the charges in respect of such supply were in accordance with standard charges published or fixed by the Water Authority"; and
- (d) there were added a further sub-paragraph, (9), as follows: "charges payable under any consent, agreement, scheme or other instrument given, made or entered into by the Water Authority under any enactment or subordinate legislation under which it is empowered to make charges under which all the charges payable were in accordance with standard charges published or fixed by the Water Authority".

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

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

**"Thames Tideway Tunnel Price Control"** has the meaning given in paragraph 9.4(1A) of this Condition B; and

**"Thames Tideway Tunnel Project"** means the project specified in the Project Specification Notice."

an **"unmeasured supply"** is one where none of the charges for that supply is based on measured quantities of volume;

"**Wholesale Activities**" means all activities undertaken as part of the Appointed Business apart from Retail Activities;

3 [Not used]

4 [Not used]

5 [Not used]

6 [Not used]

7 [Not used]

Part III. Periodic Reviews

8 [Not used]

9 Periodic Reviews of the Appointed Business

9.1 The Appointee shall levy charges in a way best calculated to:

- (1) comply with the Price Control or Price Controls determined by the Water Services Regulation Authority pursuant to sub-paragraph 9.3 or sub-paragraph 9.4; and
- (2) collect the IP Charge (which shall not be included in such Price Control or Price Controls).

9.2 The Appointee shall furnish to the Water Services Regulation Authority such Information as the Water Services Regulation Authority may reasonably require to enable it to carry out a Periodic Review pursuant to sub-paragraph 9.3 or sub-paragraph 9.4.

9.3 In respect of the Appointed Business's Retail Activities, the Water Services Regulation Authority shall 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 1991 in relation to the Water Services Regulation 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 in respect of the relevant part or parts of the Appointed Business;
- (2) how the Appointee shall, in respect of each such Price Control applicable to it, demonstrate the compliance referred to in sub-paragraph 9.1; and
- (3) for how long each such Price Control in respect of the Appointee shall last (being a period of consecutive Charging Years).

9.4 In respect of the Appointed Business's Wholesale Activities except those activities for which there are Excluded Charges, the Water Services Regulation Authority shall 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 1991 in relation to the Water Services Regulation Authority's determinations including, without limitation, any change in circumstance which has occurred since the last Periodic Review or which is to occur):

- (1) one single Price Control in respect of the Appointed Business's water services and one single Price Control in respect of the Appointed Business's sewerage services other than Sewerage Services for the Thames Tideway Tunnel Project in relation to the period from 1 April 2015 to 31 March 2020 or alternatively (at the discretion of the Water Services Regulation Authority), one single Price Control in respect of the Appointed Business's water services and sewerage services other than Sewerage Services for the Thames Tideway Tunnel Project in relation to the period from 1 April 2015 to 31 March 2020, each such Price Control consisting 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 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 shall be expressed as a percentage, and which shall limit the change in the charges to be levied by and/or revenue allowed to the Appointed Business in each Charging Year in respect of the Wholesale Activities concerned; and

- (1A) for the five year period commencing on 1 April 2015 and ending on 31 March 2020 only, one single Price Control in respect of the Appointed Business's Sewerage Services for the Thames Tideway Tunnel Project ("**the Thames Tideway Tunnel Price Control**"), such Price Control to 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 Year and that published for the immediately preceding November; and

- (b) a number, " $K_t$ ", which may be a positive number or a negative number or zero,

which together shall be expressed as a percentage, and which shall limit the change in the charges to be levied by and/or revenue allowed to the Appointed Business in each Charging Year in respect of the Wholesale Activities concerned; and

- (2) how the Appointee shall, in respect of each such Price Control applicable to it, demonstrate the compliance referred to in subparagraph 9.1.

9.4A If either the Appointee or the Water Services Regulation Authority considers that the value of  $K_t$  should be adjusted, the Appointee or the Water Services

Regulation Authority may apply for an Interim Determination of  $K_t$  and Part IV of this Condition B will apply, provided that:

- (1) in respect of a Notified Item or a Relevant Change of Circumstance, the question in sub-paragraph 14.2 (7) of Condition B shall be modified to read:

“is the Materiality Amount equal to or does it exceed ten percent (10%) of the regulatory capital value of the Thames Tideway Tunnel Price Control as at 31 March in the preceding year as published by the Water Services Regulation Authority”;

- (1A) the questions in sub-paragraphs 14.2(6)(a), 14.2(8) and 14.2(9) of Condition B shall have effect as if they included the words “the Charging Year starting on 1 April 2020” instead of:

- (a) in the case of sub-paragraph 14.2(6)(a), the words “the first of the Charging Years for which the next Periodic Review falls to be carried out”; and
- (b) in the case of sub-paragraphs 14.2(8) and 14.2(9), the words “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)”;

- (2) for the purposes of sub-paragraphs 14.1 and 14.2 of Condition B:

- (a) a single reference may be made to adjust the value of  $K_t$  in respect of any number of Notified Items and Relevant Changes of Circumstances relevant to the Thames Tideway Tunnel Price Control;
- (b) no costs, receipts or savings reasonably attributable to the Sewerage Services for the Thames Tideway Tunnel Project may be included in any reference under sub-paragraph 14.1 of condition B which relates to a Price Control determined pursuant to sub-paragraph 9.3 or 9.4(1) of Condition B; and

(c) no costs, receipts or savings reasonably attributable to the Appointed Business' sewerage services other than Sewerage Services for the Thames Tideway Tunnel Project may be included in any reference under sub-paragraph 14.1 of Condition B which relates to the Thames Tideway Tunnel Price Control;

(3) this paragraph 9.4A shall cease to apply on 31 March 2020.

9.5 Each Price Control determined under sub-paragraph 9.3 pursuant to a Periodic Review shall be set for a period which shall be a number of Charging Years to be determined by the Water Services Regulation Authority, in conjunction with its determination pursuant to sub-paragraph 9.3, in each case starting on 1 April, with the first such period starting on 1 April 2015, provided that no such period shall exceed five consecutive Charging Years.

9.6 Subject to paragraph 9.6A, each Price Control determined under sub-paragraph 9.4 pursuant to a Periodic Review shall be set:

(1) for the five consecutive Charging Years starting on 1 April 2015; 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.

9.6A The Price Control determined under sub-paragraph 9.4(1A) of this Condition B shall be set only for the five consecutive Charging Years starting on 1 April 2015 and shall cease to apply on 31 March 2020. From 1 April 2020, the activities and costs associated with the Thames Tideway Tunnel Project shall be determined and remunerated as part of the Appointed Business's sewerage services, and the words "other than Sewerage Services for the Thames Tideway Tunnel Project in relation to the period from 1 April 2015 to 31 March 2020" wherever they appear in sub-paragraph 9.4(1) of Condition B shall be deemed to be of no further effect from 1 April 2020 as though such words were deleted from that paragraph.

- 9.7 If, at any time after 1 April 2015, the Water Services Regulation 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 sub-paragraph 9.3 – in so far as that determination includes the matters decided under sub-paragraphs 9.3(1) and (2) – in respect of the final Charging Year of the period that was set in that previous determination pursuant to sub-paragraph 9.3(3), shall continue to apply for consecutive Charging Years until the next relevant determination under sub-paragraph 9.3 (or equivalent determination by the Competition and Markets Authority pursuant to paragraph 16) or the next relevant Interim Determination becomes effective;
  - (2) in respect of Wholesale Activities:
    - (a) subject to sub-paragraph 9.7(2)(b), the previous determination pursuant to sub-paragraph 9.4(1) in respect of the final Charging Year of the period that was set in that previous determination shall continue to apply for consecutive Charging Years until the next relevant determination under sub-paragraph 9.4(1) (or equivalent determination by the Competition and Markets Authority pursuant to paragraph 16) or the next relevant Interim Determination becomes effective (the “**Continuing Wholesale Price Control**”); and
    - (b) where the Water Services Regulation Authority is unable to conduct a Periodic Review by 31 December 2019, the previous determination pursuant to sub-paragraph 9.4(1A) in respect of the 2019/2020 Charging Year shall be incorporated into the Continuing Wholesale Price Control, such that the Continuing Wholesale Price Control comprises both the previous determination pursuant to sub-paragraph 9.4(1) and the previous determination pursuant to sub-paragraph 9.4(1A);

- (3) the Water Services Regulation Authority shall conduct a Periodic Review as soon as reasonably practicable thereafter, provided that the Appointee has not given a relevant notice under paragraph 16.

9.8 Where there is a material change to the basis of compiling the Retail Prices Index, this Condition, in so far as it relates to that part of the calculation of any Price Control to which the Retail Prices Index is relevant, shall be modified in such a manner as the Water Services Regulation Authority, after prior consultation with the Appointee, may determine to be appropriate to take account of such change.

9.9 The Water Services Regulation Authority (or such person or persons as may be nominated by the Water Services Regulation Authority to do so) may at its discretion from time to time (whether pursuant to a Periodic Review in conjunction with a determination pursuant to sub-paragraph 9.3 or sub-paragraph 9.4, or at other times) designate any activity that constitutes the provision of goods or services by the Appointee directly to one or more End-Users or that are ancillary to such provision

- (i) as a Retail Activity where previously and until that designation it had been designated as a Wholesale Activity; and
- (ii) as a Wholesale Activity where previously and until that designation it had been designated as a Retail Activity,

provided that, for the avoidance of doubt, none of the following shall be designated as a Retail Activity:

- (a) water resources, raw water distribution, water treatment, treated water distribution, sewage collection, sewage treatment, sludge treatment or sludge disposal (as each of those is defined in the Water Services Regulation Authority's Regulatory Accounting Guideline 4.04); or
- (b) in so far as the ownership of meters is so designated, the ownership of meters that were installed at, or in order to measure supplies to, End-Users' premises on or before the date of such designation.

9.10 Where a designation is made under sub-paragraph 9.9 pursuant to a Periodic Review in conjunction with a determination pursuant to sub-paragraph 9.3 or sub-paragraph 9.4, that designation shall be treated for the purposes of sub-paragraph 16.1 as part of the determination.

9.11 Where a designation is made under sub-paragraph 9.9 otherwise than pursuant to a Periodic Review in conjunction with a determination pursuant to sub-paragraph 9.3 or sub-paragraph 9.4, that designation shall be treated for the purposes of sub-paragraph 16.1 as part of the next following determination in respect of the activity concerned.

## 10 Wholesale Charges Publication

10.1 The Appointee may from time to time be required to publish charges fixed for the purposes of demonstrating compliance with the Price Controls determined in respect of its Wholesale Activities. Such requirement shall be made by way of a notice from the Water Services Regulation Authority to the Appointee 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 Appointee shall comply with the said requirement by notice and adhere to the charges accordingly published.

10.2 The Appointee may from time to time be required to publish charges fixed for the purposes of demonstrating how the Appointee is collecting the IP Charge. Such requirement shall be made by way of a notice from the Water Services Regulation Authority to the Appointee 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 Appointee shall comply with the said requirement by notice and adhere to the charges accordingly published.

## 10A. The IP Charge

10A.1 For the purposes of this paragraph:

**“IP Charge Estimate”** means the Infrastructure Provider’s current best estimate of the IP Charge for a particular Charging Year, delivered to the Appointee in accordance with the Revenue Agreement.

10A.2 Subject to paragraph 10A.3, the Appointee shall pay to the Infrastructure Provider the relevant proportion of the wastewater charges collected in respect of any Charging Year when and to the extent received from wastewater customers up to the IP Allowed Revenue for that Charging Year, as calculated and adjusted in accordance with the Revenue Agreement.

10A.3 The collection of the IP Charge shall not be deemed to constitute funding for the Appointee to carry out the Thames Tideway Tunnel Project.

10A.4 In calculating the relevant proportion the Appointee may, in accordance with the Revenue Agreement, rely on the most recent IP Charge or IP Charge Estimate notified to it by the Infrastructure Provider as at 1 December prior to the relevant Charging Year.

10A.5 The Appointee shall not, without the prior written consent of the Water Services Regulation Authority, agree to an amendment or variation of the Revenue Agreement.

11 Periodic Reviews relating to the Appointed Business where a Termination Notice has been given

11.1 Where a Termination Notice has been given by the Secretary of State to the Appointee, the Appointee may refer to the Water Services Regulation Authority for determination by it the question whether, on the assumption that such a Termination Notice had not been given, (but subject thereto, having regard to all the circumstances which are relevant in the light of the principles which apply by virtue of Part I of the Water Industry Act 1991 in relation to the Water Services Regulation Authority's determination or determinations, 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 Price Controls, and in the case of Retail Activities, the nature, form and level of one or more Price Controls should be changed (and if so what change should be made to the relevant Price Control or Price Controls and, in the



case of Retail Activities, to the nature, form and level of the relevant Price Control or Price Controls) for one or more periods (as decided by the Water Services Regulation Authority) of consecutive Charging Years starting with the Charging Year starting 1 April last before the Termination Notice is to expire.

11.2 A reference to the Water Services Regulation Authority under this paragraph 11 shall be made by notice given to the Water Services Regulation Authority not earlier than 1 July and not later than 14 July in the Charging Year next but one before that commencing on the said 1 April.

12 **[Not used]**

Part IV. Interim Determinations

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

13.1 In this Part of this Condition:

**"the 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 under this Condition, investors and creditors would reasonably expect of a properly managed company holding the Appointments whose sole business consists of being a water undertaker and a sewerage undertaker and, without excluding other considerations which may also be relevant, having its equity share capital listed on The London Stock Exchange, and the same Appropriate Discount Rate shall be applied for all purposes in determining questions the subject of the same reference (including questions determined by the Water Services Regulation Authority under paragraph 15 when it determines questions referred to it by the Appointee under paragraph 14);

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

**"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 sub-paragraph 9.3 or sub-paragraph 9.4, 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;

"**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 14 but the Water Services Regulation Authority gives a notice to the Appointee under paragraph 15, as at 30 September in the year in which the Water Services Regulation Authority gives that notice, by discounting subsequent cash flows and inflating earlier cash flows at the Appropriate Discount Rate, assuming all cash flows in any Charging Year occur on 30 September in that Charging Year;

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

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

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

- (1) (a) the application to the Appointee of any legal requirement; and

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

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

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

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

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

- (viii) references to "**value received or expected to be received**" shall be construed so as to include receipts by, and grants to, the Appointee, any Associated Company or any other business in which either the Appointee or any Associated Company has a material direct or indirect interest;
- (ix) in the case of a right or benefit, but subject to the proviso to (vii) above, value shall be deemed to have been received at the time the right is granted or the benefit arises;

(3) where:

- (i) in making a Relevant Determination, an amount has been allowed for on account of steps taken or to be taken for the purpose of securing or facilitating compliance with a legal requirement or achieving a service standard adopted or to be adopted by the Appointee; and
- (ii) in any such case:
  - (A) the Appointee has not taken (by the date by which it was assumed for the purposes of assessing the amount allowed for as aforesaid it would take those steps) any or all of those steps which, for the purpose of assessing the amount allowed for as aforesaid, it was assumed it would take; and
  - (B) as a result, the amount allowed for as aforesaid is substantially greater than the costs (if any) actually incurred by the Appointee for the relevant purpose; and

(C) that purpose has not been otherwise achieved;

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

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

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

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

- (1) a "**legal requirement**" is any of the following:
  - (a) any enactment or subordinate legislation to the extent that it applies to the Appointee in its capacity as a water undertaker or sewerage undertaker (and for this purpose, but without prejudice to the generality of the foregoing, "subordinate legislation" includes any order made under section 18 of the Water Industry Act 1991, and any authorisation granted, approval given, or prohibition imposed, by the Secretary of State under The Water Supply (Water Quality) Regulations 2000);
  - (b) any regulation made by the Council or the Commission of the European Union to the extent that it applies to the Appointee in its capacity as a water undertaker or sewerage undertaker, or decision taken by the said Commission which is binding on the Appointee in its capacity as a water undertaker or sewerage undertaker and to the extent that it is so binding;
  - (c) any licence, consent or authorisation given or to be given by the Secretary of State, the Environment Agency or other body of

competent jurisdiction to the Appointee for the purpose of carrying on any of the functions of a water undertaker or sewerage undertaker;

- (d) any undertaking given by the Appointee to, and accepted by, the Secretary of State or, as the case may be, the Water Services Regulation Authority for the purposes of section 19(1)(b) of the Water Industry Act 1991 ;
- (e) other than any such undertaking as is referred to in (d), any undertaking given by the Appointee to any enforcement authority, and accepted by that enforcement authority, to take all such steps:
  - (i) as are specified by that enforcement authority to be necessary or appropriate for the Appointee to take for the purpose of securing or facilitating compliance with any legal requirement in relation to which that enforcement authority is the enforcement authority; or
  - (ii) the taking of which is specified by that enforcement authority to be a condition or requirement of granting or renewing any such licence, consent or authorisation as is referred to in (c) or agreeing not to withdraw the same;
- (f) the Conditions of these Appointments; and
- (g) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within (a) to (f) above to have effect in a way:
  - (i) different to that in which it previously had effect; or
  - (ii) different to that in which it was taken to have effect:
    - (A) for the purpose of 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 sub-paragraphs (a) to (g) above shall apply so as to include:

- (i) any such legal requirement as is referred to in section 41 of the Environment Act 1995 or any such legal requirement that is equivalent to those referred to in section 113 of the Water Act 1989 (as originally enacted), or
- (ii) those sections

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

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

13.3 In paragraph 14 and in the definition of a "Relevant Change of Circumstance":

- (1) references to costs include references to expenditure and loss of revenue and references to costs being incurred include references to expenditure being made and loss of revenue being suffered;
- (2) references to receipts include references to receipts, cash or other assets of any sort, whether of a capital or revenue nature and including receipts of grants, contributions, gifts and loans; and
- (3) without prejudice to sub-paragraph (1) above, "**Operating Expenditure**" in sub-paragraph 14.2(6) includes third party services as defined in pro forma A7 and A8 of the Water Services Regulation Authority's Regulatory 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.

13.4 (1) In paragraphs 14.2(8) and 14.2(9) "**Base Cash Flows at Current 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.

- (2) In paragraph 14.2(8), "**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.

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

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

14.1 The Appointee may from time to time refer to the Water Services Regulation Authority for determination by it (having considered the proposals of the Appointee) the questions set out in sub-paragraph 14.2 or, as the case may be, sub-paragraph 14.3. Such reference shall be made by notice given to the Water Services Regulation Authority, which, in the case of the questions set out in sub-paragraph 14.2, shall be given in accordance with sub-paragraph 14.4. For the purposes of sub-paragraph 14.2 (and subject to sub-paragraph 9.4A(2)) a single reference may be made in respect of any number of Notified Items and Relevant Changes of Circumstance and sub-paragraph 14.2 shall be construed accordingly.

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

- (1) what are, or are likely to be, the costs, receipts and savings reasonably attributable to the Relevant Item and also, in the case of a Relevant Change of Circumstance falling within sub-paragraph (2) of the

definition, the costs, receipts and savings reasonably connected with the Relevant Disposal of Land;

- (2) except in the case of a Relevant Change of Circumstance falling within sub-paragraph (2) of the definition, to what extent:
  - (a) are the costs determined under (1) reasonably recoverable through charges for services provided, functions carried out by, and other activities of, the Appointee in its capacity as a water undertaker or sewerage undertaker which are not Standard Charges for water supply, sewerage services and the reception, treatment and disposal of trade effluent (not being Excluded Charges);
  - (b) in the case of receipts and savings, is the Relevant Item relevant to services provided, functions carried out by, and other activities of, the Appointee as a water undertaker or sewerage undertaker which are not water supply, sewerage services and the reception, treatment and disposal of trade effluent in respect of which the Appointee makes Standard Charges (not being Excluded Charges)

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

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

- (b) what receipts and savings reasonably attributable to, or connected with, the Relevant Item as determined under (1) and what timing of such receipts and savings is appropriate and reasonable for the Appointee in all the circumstances to achieve and programme or, as the case may be, to have achieved and programmed, by reason of the Relevant Item

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

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

- (ii) in the case of a Relevant Change of Circumstance falling within sub-paragraph (1) of the definition, regard shall be had to whether either:
    - (a) the Secretary of State has notified the Water Services Regulation Authority of any change of policy, concerning any environmental or water-quality standard, which has been made since the last Relevant Determination or
    - (b) the Appointee has itself given notice to the Water Services Regulation Authority of the application to it of, or any change to, any legal requirement, before referring that legal requirement to the Water Services Regulation Authority under sub-paragraph 14.1;
  - (4) having determined under (3) the separate amounts of costs and of receipts and savings in respect of each Relevant Item, what are the annual cash flows thereof (costs being netted off against the amount of receipts and savings for this purpose) over each Charging Year included in the timing determined under (3) (those annual cash flows being hereinafter referred to as "**the Base Cash Flows**");
  - (5) what is the annual aggregate of:
    - (a) one half of the Base Cash Flows in respect of Relevant Changes of Circumstance falling within sub-paragraph (2) of that definition; and
    - (b) the Base Cash Flows in respect of all other Relevant Changes of Circumstance and Notified Items
- in both cases the subject of the notice or notices under sub-paragraph 14.4 or paragraph 15;
- (6) (a) where any part of an annual aggregate derived under sub-paragraph (5) consists of items to which (b) below does

- not apply, what is the Net Present Value of that part of the annual aggregate, calculated up to the start of the first of the Charging Years for which the next Periodic Review falls to be carried out;
- (b) where any part of the annual aggregate derived under sub-paragraph (5) consists of revenue and/or Operating Expenditure, what is the Net Present Value of that part of the annual aggregate, calculated over 15 years; and
  - (c) what is the aggregate of the Net Present Values calculated under (a) and (b) ("**the Materiality Amount**");
- (7) is the Materiality Amount equal to or does it exceed ten per cent of the turnover attributable to the Appointed Business in the latest financial year for which accounting statements have been prepared and delivered to the Water Services Regulation Authority under Condition F, as shown by those accounting statements, and for this purpose where the Materiality Amount is a negative figure it shall be treated as though it were a positive figure;
- (8) if so, for each year ("**the relevant year**") until the first of the Charging Years for which the next Periodic Review falls to be carried out (having regard to any Review Notice or Reference Notice which has been given at the time when the reference is made),
- (a) what are the following amounts:
    - (i) all Base Cash Flows at Current Prices attributable to the creation or acquisition of depreciable assets ("**Allowable Capital Expenditure**");
    - (ii) all the Base Cash Flows at Outturn Prices (save in respect of Relevant Changes of Circumstance falling within sub-paragraph (2) of that definition, where one half of the Base Cash Flow at Outturn Prices shall be used) attributable to the creation, acquisition or disposal of non-

depreciable assets ("**Allowable Infrastructure Asset Expenditure**");

- (iii) all other Base Cash Flows at Current 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 Current Value of the sum 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**");
- (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;



- (b) a substantial favourable effect on the Appointed 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 level of Price Control or Price Controls.

For this purpose:

- (i) what constitutes "prudent management action" shall be assessed by reference to the circumstances which were known or which ought reasonably to have been known to the Appointee at the relevant time;
- (ii) an effect shall not be regarded as a substantial adverse effect or a substantial favourable effect in any case unless, if the questions set out in sub-paragraph 14.2 were to be asked in relation to the circumstance giving rise to it, the answer to that in 14.2(7) (taking the reference in it to ten per cent as a reference to twenty per cent) would be in the affirmative.

14.4 A Reference Notice given to the Water Services Regulation Authority in respect of sub-paragraph 14.2 shall contain or be accompanied by reasonable details of the Relevant Item in respect of which the Reference Notice is given and, unless the Water Services Regulation Authority otherwise consents, shall be given not later than:

- (1) the fifteenth day of September immediately preceding the first of the Charging Years in respect of which the Appointee wishes the change to the level of Price Control or Price Controls to take effect; or
- (2) if later, where the Water Services Regulation Authority has given a notice to the Appointee under sub-paragraph 15.1 in respect of the same Charging Year, within fourteen days from the receipt by the Appointee of that notice.



15 Changes to the level of a Price Control or Price Controls initiated by the Water Services Regulation Authority relating to Notified Items and Relevant Changes of Circumstance and circumstances within sub-paragraph 14.3(1)(b)

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

- (1) the fifteenth day of September immediately preceding the first of the Charging Years in respect of which it proposes the change to the level of a Price Control or Price Controls to take effect; or
- (2) if later, where the Appointee has given a Reference Notice to the Water Services Regulation Authority in respect of sub-paragraph 14.2 and falling within sub-paragraph 14.4(1) in respect of the same Charging Year, within fourteen days from the receipt by the Water Services Regulation Authority of that Reference Notice

determine the questions set out in sub-paragraph 14.2 in respect of that Notified Item or, as the case may be, that Relevant Change of Circumstance. A single notice may be given under this sub-paragraph 15.1 in respect of any number of Notified Items and Relevant Changes of Circumstance and sub-paragraph 14.2 shall be construed accordingly.

15.2 Where sub-paragraph 14.4(2) or 15.1(2) applies, the questions set out in (5) to (9) inclusive of sub-paragraph 14.2 shall be determined in respect of all Notified Items and Relevant Changes of Circumstance in respect of which the Appointee and the Water Services Regulation Authority have given notice, taken as a whole.

15.3 In the case of sub-paragraph 14.3, the Water Services Regulation Authority shall give notice to the Appointee of its intention to determine the questions set out in sub-paragraph 14.3(1)(b) and (2).

Part V. References to the Competition and Markets Authority

16 References to the Competition and Markets Authority

16.1 Where:

- (1) pursuant to paragraph 9 or following a reference under paragraph 11, the Water Services Regulation Authority has not given notice to the Appointee of its determination or determinations within one year from the Review Notice Date or, in the case of a reference under paragraph 11, within one year from the date of the relevant Reference Notice;
- (2) following a reference under paragraph 14, the Water Services Regulation Authority has not given notice to the Appointee of its determinations (including any determinations under paragraph 15 which fall to be taken into account in determining the questions the subject of the reference under paragraph 14) within 3 months from the date of the relevant Reference Notice; or
- (3) the Appointee disputes any determination made by the Water Services Regulation Authority under sub-paragraph 9.3 or sub-paragraph 9.4 or any Interim Determination made by the Water Services Regulation Authority under Part IV of this Condition

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

- (a) 13 months from the Review Notice Date or, in the case of a reference under paragraph 11, from the date of the relevant Reference Notice (in the cases referred to in sub-paragraph (1));
- (b) 4 months from the date of the relevant Reference Notice (in the case referred to in sub-paragraph (2)); or
- (c) 2 months from the date on which the Water Services Regulation Authority gives notice of its determination or determinations to the Appointee (in the case referred to in sub-paragraph (3))

require the Water Services Regulation Authority to refer to the Competition and Markets Authority for determination (such determination to be effective as if made by the Water Services Regulation 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 15); or
- (ii) in any case referred to in sub-paragraph (3), the disputed determination.

16.2 Where the Appointee requires the Water Services Regulation Authority to make a reference to the Competition and Markets Authority under sub-paragraph 16.1 in the case referred to in section (3) of that sub-paragraph, the Appointee shall levy charges in a way best calculated to comply with the Price Control or Price Controls determined by the Water Services Regulation Authority (and to continue to collect the IP Charge) as if a reference had not been made until the Competition and Markets Authority makes its determination following such reference. The determination made by Competition and Markets Authority shall then take effect as if it had been made by the Water Services Regulation Authority.

17 **[Not used]**

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

18

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

- (1) ...
- (2) not later than 30 September immediately following the date of the Reference Notice (in the case of a reference under paragraph 11);

- (3) at the time when it gives the relevant Reference Notice to the Water Services Regulation Authority: (in the case of a reference under paragraph 14);
- (4) as soon as reasonably practicable and in any event not later than the expiry of one month from the date of the Water Services Regulation Authority's notice to the Appointee under paragraph 15

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

- 18.2 The Appointee shall also furnish to the Water Services Regulation Authority from time to time when so requested by the Water Services Regulation Authority such Information as the Water Services Regulation Authority may reasonably require to decide whether or not to make determinations under paragraph 15.
- 18.3 Any Information furnished to the Water Services Regulation Authority under this paragraph 18 or under paragraph 9 shall, if the Water Services Regulation Authority so requires to make its determination, be reported on by a person appointed by the Appointee and approved by the Water Services Regulation Authority (such approval not to be unreasonably withheld) ("**the Reporter**").
- 18.4 The Appointee shall enter into a written contract of engagement with the Reporter which shall:
  - (1) where such a report is required by the Water Services Regulation Authority under sub-paragraph 18.3, require the Reporter to prepare and furnish to the Water Services Regulation Authority, and separately to the Appointee, a written report addressed jointly to the Water Services Regulation Authority and the Appointee in form and

substance such as may be specified by, or consistent with any guidelines specified by, the Water Services Regulation Authority at the time when it requires the report to be furnished, the matters so specified being reasonably appropriate to enable the Water Services Regulation Authority to make its determination (to the extent that the Information in respect of which that report is required to be prepared and furnished is relevant to that determination); and

- (2) include a term that the Reporter will provide such further explanation or clarification of his report as the Water Services Regulation Authority may reasonably require and such further Information in respect of, or verification of, the matters which are the subject of his report as the Water Services Regulation Authority may reasonably require.

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

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

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

- (c) to take on to such premises or on to or in to any Relevant Plant such other persons and such equipment as may be necessary for the purposes of preparing and completing his report.

18.6 Nothing in sub-paragraph 18.5 shall require the Appointee:

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

18.7 In sub-paragraphs 18.4 and 18.5:

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

Part VII. Developing the Price Controls

19

19.1 The Appointee will use all reasonable endeavours to work with the Water Services Regulation Authority, subject to the Appointee's legal duties and obligations, in a constructive and cooperative manner on the development of the Price Controls so that they might be appropriately targeted or operated more effectively in respect of specific activities undertaken as part of the Appointed Business.

Part VIII. Price Controls in effect before 1 April 2015

20

20.1 The provisions of Condition B of this instrument in the form that had effect immediately prior to 22 July 2013 shall continue to have effect in respect of the Price Control set for a period ending before 1 April 2015 and in respect of the making of any Interim Determinations to set any such Price Controls.

20.2 In the event that the Water Services Regulation Authority is, in respect of the Appointed Business, unable to determine Price Controls, for the period or periods starting on 1 April 2015, under sub-paragraph 9.3 and sub-paragraph 9.4 of this Condition B by 31 December 2014, the provisions of Condition B in the form that had effect immediately prior to 22 July 2013 shall continue to have effect in respect of the Price Control until such time as a determination under sub-paragraph 9.3 and sub-paragraph 9.4 of the current Condition B is made and takes effect.”

3. Condition D is deleted and the replaced with the following text:

**“Condition D: Charges Schemes**

1 In this Condition:

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

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

the reference to domestic purposes in relation to the drainage of premises is a reference to the domestic sewerage purposes specified in 117(1) of the Water Industry Act 1991.

2 **[Not used]**

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

- (1) it fixes the charges to be paid for supplies of water for domestic purposes and for the drainage for domestic purposes of premises except where such charges are determined by or in accordance with such an agreement as is referred to in section 142 of the Water Industry Act 1991 (including any such agreement made or entered into by the Water Authority under section 30 of the 1973 Act as, in



accordance with a scheme under Schedule 2, is transferred to the Appointee);

- (2) it fixes the charges to be paid for such connections as are described in section 146(2) of the Water Industry Act 1991; and
- (3) it fixes the charges to be collected by the Appointee in respect of the IP Charge pursuant to Condition B and the Revenue Agreement.

2.2 The relevant date for the purpose of sub-paragraph 2.1(1) is the transfer date and for the purpose of sub-paragraph 2.1(2) is 1<sup>st</sup> April 1990.

3 For the purposes of paragraph 2 so much of any such charges scheme made by the Water Authority under section 31 of the 1973 Act as by virtue of paragraph 16(1) of Schedule 26 has effect on and after the transfer date as if it were a scheme made under section 143 of the Water Industry Act 1991 by the Appointee shall be treated as a charges scheme in accordance with section 143 of the Water Industry Act 1991.

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

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

5 The Appointee shall:

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

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

4. Condition L is deleted and replaced with the following text:

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

1 Interpretation and Construction

In this Condition:

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

**“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 to be operated and maintained by the Infrastructure Provider pursuant to the Project Licence;

**“Network Assets”** means

(1) in respect of a water undertaker:

- (a) water mains and trunk mains (other than any pumps, valves and hydrants);
- (b) resource mains and discharge pipes; and
- (c) so much of any service pipe as is vested in the water undertaker;

and

(2) in respect of a sewerage undertaker:

- (a) public sewers (other than any pumps and other than the IP Owned Structures);
- (b) any outfall pipe or other pipe for the conveyance of effluent from any sewage disposal works of the sewerage undertaker; and

- (c) any pipe vested in the sewerage undertaker and used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilage

but excluding any pipe which discharges directly into the sea or coastal waters;

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

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

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

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

## 2 Duty to furnish Information

- 2.1 The Appointee shall prepare and furnish to the Water Services Regulation Authority an underground asset management plan (an **"Underground Asset Management Plan"**) showing separately:

(1) an estimate and other Information in respect of Network Expenditure required to be made or incurred by the Appointee in each year during the Plan Period for the purposes of ensuring:

- (a) that Network Assets used by the Appointee as at the transfer date (or, in the case of a revised Underground Asset Management Plan, as at the date of that revised Underground Asset Management Plan) are, and will throughout the Plan Period be, maintained in such a state or condition as is necessary for the purposes described in sub-paragraph 2.2 ("**the Relevant Purposes**"), insofar as Network Assets are necessary for, or relevant to, the Relevant Purposes; and
- (b) that the capacity of the system of water supply or, as the case may be, of public sewers comprising solely those Network Assets (but not including any other part of the Appointee's system of water supply or, as the case may be, of public sewers) is maintained

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

(2) an estimate and other Information in respect of Network Expenditure required to be made or incurred by the Appointee in each year during the Plan Period for the purpose of ensuring that, taking into account the expenditure to be made or incurred for the purposes referred to in sub-paragraph 2.1(1):

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

water supply or, as the case may be, of public sewers) is and will be such as is necessary for the Relevant Purposes.

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

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

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

2.3 Where the Appointee has specified any such assumptions as are referred to in sub-paragraph 2.2, the Appointee shall also furnish an estimate and other Information as described in sub-paragraphs 2.1(1) and (2) on the basis of such other assumptions as to the matters referred to in sub-paragraph 2.2 as may be specified by the Water Services Regulation Authority.

2.4 The Appointee shall keep the Underground Asset Management Plan prepared under sub-paragraph 2.1 under review and shall prepare a revised Underground Asset Management Plan in respect of the Plan Period from time to time and in any event by each Review Date, to the extent that such revision is necessary having regard to the Relevant Purposes, this Condition and

Condition B and shall furnish to the Water Services Regulation Authority any such revised Underground Asset Management Plan. Sub-paragraph 2.3 shall apply to any such revised Underground Asset Management Plan and references in this Condition to a revised Underground Asset Management Plan shall include references to any estimate and other Information which the Appointee is required to furnish under sub-paragraph 2.3 in respect of that revised Underground Asset Management Plan.

2.5 For the purposes of sub-paragraphs 2.1 and 2.4:

- (1) due allowance shall be made for Network Assets ceasing to be required for the Relevant Purposes during the Plan Period;
- (2) the Appointee shall include in any Underground Asset Management Plan furnished to the Water Services Regulation Authority under this paragraph a description of any agreement or arrangement under which the Appointee uses Network Assets which are owned by, or used in conjunction with, another water undertaker or sewerage undertaker (including, without limitation, a description of any arrangements, as between the Appointee and the other undertaker, for the repair, renewal, maintenance and improvement of any such Network Assets) and an estimate and other Information in respect of any expenditure required to be made or incurred by the Appointee during the Plan Period in respect of such Network Assets for the Relevant Purposes; and
- (3) there shall be taken into account any changes in the nature of the Regulated Activities and the Appointment Obligations which the Appointee knows have occurred or will occur or which the Appointee reasonably believes will, or are likely to, occur (including, without limitation, any change in demand for the provision by the Appointee of any services provided by it in the course of carrying out the Regulated Activities).

### 3 Information Systems

- 3.1 The Appointee shall establish and maintain methods and procedures for the purposes of:
- (1) keeping under review, collecting Information in respect of, and carrying out surveys of, the state, condition, capacity and performance of Network Assets; and
  - (2) preparing, keeping under review and revising from time to time the Underground Asset Management Plan for the purposes of:
    - (a) providing Information to the Water Services Regulation Authority in accordance with Condition B to enable it to carry out Periodic Reviews; and
    - (b) providing Information to the Water Services Regulation Authority in accordance with paragraph 18 of Condition B.
- 3.2 The Appointee shall furnish to the Water Services Regulation Authority a written description of such methods and procedures. The Appointee shall keep under review and shall revise such methods and procedures from time to time to the extent necessary having regard to the purposes for which such systems and procedures are intended to be used, this Condition and Condition B and shall furnish to the Water Services Regulation Authority a written description of any revision of such methods and procedures.

#### 4 Reports

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



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

- (1) where such a report is required by the Water Services Regulation Authority under sub-paragraph 4.1, require the Assessor to prepare and furnish to the Water Services Regulation Authority, and separately to the Appointee, a written report addressed jointly to the Water Services Regulation Authority and the Appointee:
  - (a) in the case of a revised Underground Asset Management Plan, stating whether, in his opinion, the estimate included in the revised Underground Asset Management Plan has been prepared in accordance with the methods and procedures established and maintained by the Appointee under sub-paragraph 3.1 at the date at which the revised Underground Asset Management Plan has been prepared and if the action to be taken as described in the other Information included in the Underground Asset Management Plan were taken it would be sufficient for the Relevant Purposes, in so far as Network Assets are necessary for, or relevant to, the Relevant Purposes, (both on the basis of any assumptions specified by the Appointee and on the basis of any assumptions specified by the Water Services Regulation Authority) and, if not, what other action would need to be taken; and
  - (b) in the case of a revision of the methods and procedures referred to in paragraph 3, stating whether, in his opinion, the methods and procedures (as so revised) are sufficient for the purposes described in sub-paragraph 3.1 and if not, what changes would need to be made to those methods and procedures so that they were sufficient for those purposes; and
- (2) include a term that the Assessor will provide such further explanation or clarification of his report as the Water Services Regulation Authority may reasonably require and that where, by reason of anything in the

Assessor's report, it appears to the Water Services Regulation Authority:

- (a) that the state or condition or capacity of Network Assets is such that they are or may be materially inadequate for the Relevant Purposes, in so far as Network Assets are necessary for, or relevant to, the Relevant Purposes, (either on the basis of the assumptions specified by the Appointee or on the basis of the assumptions specified by the Water Services Regulation Authority, if any); or
- (b) that the methods and procedures are insufficient for the purposes described in sub-paragraph 3.1 and that as a result information as to the state, condition, capacity or performance of Network Assets is or may be materially inaccurate or incomplete

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

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

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

- (1) subject to reasonable prior notice to the Appointee, giving to the Assessor access at reasonable hours to any Network Assets used by the Appointee and to any premises occupied by the Appointee in relation to the carrying out of the Regulated Activities; and
- (2) subject to reasonable prior notice to the Appointee, allowing the Assessor at reasonable hours:

- (a) to inspect and make photocopies of, and take extracts from, any books and records of the Appointee maintained in relation to the carrying out of the Regulated Activities;
- (b) to carry out inspections, measurements and tests on or in relation to any such premises or Network Assets; and
- (c) to take on to such premises or on to or in to any Network Assets such other persons and such equipment as may be necessary for the purposes of preparing and completing his report.

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

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

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

## 5 General

5.1 The provision by the Water Authority to the Secretary of State of the estimate and other information enclosed with the letter entitled "Underground Asset Management Plan" dated 4<sup>th</sup> August 1989 and the description in the Underground Asset Management Plan of the Appointee's relevant methods and procedures shall be deemed to have been furnished to the Water Services Regulation Authority by the Appointee under sub-paragraphs 2.1 and 3.2 and to satisfy the obligations of the Appointee under those sub-paragraphs (insofar as sub-paragraph 3.2 requires the Appointee to furnish a written description of the methods and procedures established by it).

5.2 Any other Information required to be furnished by the Appointee to the Water Services Regulation Authority under this Condition shall be furnished within three months of the revision which gives rise to the requirement to furnish Information.

5.3 The Appointee shall deliver to the Water Services Regulation Authority, at the same time as it delivers to it accounting statements in respect of a financial year prepared under paragraph 4 of Condition F, a statement of the expenditure made or incurred in relation to Network Assets during that financial year, distinguishing between amounts which have been expensed and amounts which have been capitalised, together with the details necessary to explain any difference between that expenditure and the expenditure which the Appointee had informed the Secretary of State or, as the case may be, the Water Services Regulation Authority under this Condition it intended to make or incur in relation to Network Assets during that financial year.”

5. The following new condition T is inserted after condition S:

**“Condition T: Thames Tideway Tunnel Project**

**1 Interpretation and Construction**

1.1 Unless the context otherwise requires, in this Condition:

**“Government Support Package”** means the suite of agreements (other than the Project Documents) entered into between the Secretary of State and the Infrastructure Provider, among others, on or about Licence Award;

**“IP Regulated Asset”** means (i) prior to the issue by the Appointee of the acceptance certificate pursuant to the Interface Agreement, the sewerage assets to be constructed and maintained by the Infrastructure Provider in accordance with the Project Specification Notice, excluding (from the issue by the Appointee of the handover certificate pursuant to the Interface Agreement) the storm pump exercising system and (ii) from the issue by the Appointee of the acceptance certificate pursuant to the Interface Agreement, the IP Owned Structures;

**“IP Works”** means the design, construction and commissioning of the Thames Tideway Tunnel Project (including all necessary permanent and temporary works) and any other work carried out by the Infrastructure Provider in accordance with the Project Specification Notice, the Project Licence and the Project Documents, excluding the TWUL Works;

**“Mandatory Variation Dispute”** means a dispute that is referred to the Water Services Regulation Authority under paragraph 3.7.2 of Schedule 3 to the Liaison Agreement;

**“Liaison Agreement”** means the Agreement of that name entered into between the Appointee, the Infrastructure Provider and the Secretary of State on or about the date of Licence Award;

**“Project Documents”** means the suite of agreements entered into between the Appointee and the Infrastructure Provider, among others, on or about

Licence Award, and includes the Liaison Agreement and the Revenue Agreement;

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

**“Project Land”** means protected land that has been acquired by the Appointee for the purposes of the Thames Tideway Tunnel Project;

**“Relevant Determination”** has the meaning given to that term in Part 4 of Condition B;

**“TWUL Works”** means the design, construction and commissioning of any works (including all necessary permanent and temporary works) carried out by the Appointee pursuant to the Preparatory Work Notice and the Project Documents excluding the IP Works; and

**“UWWT Regulations”** means the Urban Waste Water Treatment Regulations 1994.

- 1.2 Unless the contrary intention appears, references in this Condition to any of the Project Documents (including any schedules to those Documents), the Government Support Package and to the Project Specification Notice includes reference to any modification to those Documents or that Notice after Licence Award.

## **2 Estimate of IP Charge for inclusion in the Appointee’s charges scheme**

- 2.1 If the Project Licence has not been awarded by 15 September 2015, the Appointee may request the Water Services Regulation Authority to provide an estimate of the likely IP Charge for the period from (and including) the date on which the Water Services Regulation Authority determines that Licence Award is likely to occur to (and including) 31 March 2017. A request under this paragraph 2 must be made prior to 1 October 2015 and the Water Services Regulation Authority must notify the Appointee of its estimate by no later than 1 December 2015.

- 2.2 At the same time that the Appointee makes a request under paragraph 2.1, it must furnish the Water Services Regulation Authority with such Information as the Water Services Regulation Authority may reasonably require to enable it to make an estimate of the likely IP Charge and to demonstrate how the Appointee will comply with paragraph 2.3(b) of this Condition T.
- 2.3 If the Water Services Regulation Authority agrees to provide an estimate of the likely IP Charge:
- (a) that estimate shall be deemed to be the IP Charge (Deemed IP Charge) for the period from (and including) the date on which the Water Services Regulation Authority determines that Licence Award is likely to occur to (and including) 31 March 2017 and paragraph 9.1 of condition B and paragraph 2.1 (3) of Condition D shall be interpreted accordingly;
  - (b) the Appointee shall collect the Deemed IP Charge in the Appointee's 2016/2017 Charging Year and ensure that any amounts collected pursuant to this paragraph 2 (and any associated interest) shall be adequately ring-fenced as amounts payable in accordance with sub-paragraph 2.4; and
  - (c) the Water Services Regulation Authority may direct the Appointee as to the treatment of any amounts collected by the Appointee with respect to the Deemed IP Charge prior to Licence Award (and any associated interest) including in respect of ring-fencing the amounts, and the Appointee shall comply with any such direction.
- 2.4 Subject to sub-paragraph 2.3(c), amounts collected pursuant to this paragraph 2 (and any associated interest) must be paid to the Infrastructure Provider under the terms of the Revenue Agreement and the Project Licence.

### **3 Determination of Mandatory Variation Disputes**

- 3.1 The Appointee must refer a Mandatory Variation Dispute to the Water Services Regulation Authority if required to do so pursuant to the Liaison Agreement setting out:

- (a) details of the Proposed Variation; and
  - (b) objections received to the Proposed Variation.
- 3.2 The Water Services Regulation Authority shall determine a Mandatory Variation Dispute on such terms as it considers to be appropriate including determining that:
  - (a) the Proposed Variation should be implemented by the Appointee with or without modification; or
  - (b) the Proposed Variation should not be implemented,and any such determination shall be binding on the Appointee.
- 3.3 In determining a Mandatory Variation Dispute, the Water Services Regulation Authority must have regard to:
  - (a) its duties and obligations under the Water Industry Act 1991;
  - (b) the duties and obligations of the Appointee;
  - (c) the duties and obligations of the Infrastructure Provider;
  - (d) the interests of customers; and
  - (e) any representations received from the Appointee, the Infrastructure Provider, the Secretary of State or any other interested party.
- 3.4 Subject to paragraph 2(10) of Condition N, the costs incurred or to be incurred by the Water Services Regulation Authority in determining a Mandatory Variation Dispute, will be divided equally between the Appointee and the Infrastructure Provider and will be amounts payable by the Appointee and the Infrastructure Provider as fees due to the Secretary of State.
- 3.5 The amount payable by the Appointee under paragraph 3.4, must be paid to the Secretary of State:
  - (a) under paragraph 2(10) of Condition N if the determination was made in the Eligible Period (as defined in Condition N); or



- (b) within 30 days of being notified by the Water Services Regulation Authority of the amount, if the determination was made outside the Eligible Period.

#### **4 Disposal of Project Land**

4.1 The disposal of Project Land will be dealt with on the basis that customers will:

- (a) benefit from any gains arising from a disposal of Project Land; and
- (b) bear any losses arising from a disposal of Project Land,

in both cases, taking into account the costs, receipts and savings reasonably attributable to or connected with the relevant disposal which shall include associated costs related to the Project Land, such as compensation and mitigation costs, to the extent that such costs, receipts and savings were not previously allowed for when a Relevant Determination was made.

4.2 For the purposes of sub-paragraph 9.2 of Condition B, the information required to be given to the Water Services Regulation Authority by the Appointee to enable the Water Services Regulation Authority to carry out a Periodic Review pursuant to sub-paragraph 9.4 of Condition B, must include information about any disposals of Project Land.

4.3 Where the Water Services Regulation Authority determines the questions set out in sub-paragraph 14.2 of Condition B in relation to the disposal of Project Land, Condition B applies with the following modifications:

4.3.1 Sub-paragraph 14.2(5) is modified to read as follows:

“(5) what is the annual aggregate of:

- (a) one half of the Base Cash Flows in respect of Relevant Changes of Circumstance falling within sub-paragraph (2) of that definition, excluding Project Land; and

(b) the Base Cash Flows in respect of Project Land and all other Relevant Changes of Circumstance and Notified Items,

in both cases the subject of the notice or notices under sub-paragraph 14.4 or paragraph 15.”

4.3.2 Sub-paragraph 14.2(8) (ii) is modified to read as follows:

“(ii) all the Base Cash Flows at Outturn Prices (including in respect of Project Land but excluding other Base Cash Flows at Outturn Prices in respect of Relevant Changes of Circumstance falling within sub-paragraph (2) of that definition, where one half of the Base Cash Flow at Outturn Prices shall be used) attributable to the creation, acquisition or disposal of non-depreciable assets ("Allowable Infrastructure Asset Expenditure");”

## **5 Termination of Revenue Agreement**

5.1 If the Revenue Agreement is terminated under its own terms, the Water Services Regulation Authority may, having consulted the Appointee and the Infrastructure Provider, direct the Appointee as to the treatment of any revenue collected by the Appointee with respect to the IP Charge pursuant to Condition B that it has not already passed on to the Infrastructure Provider, and the Appointee shall comply with any such direction. Before issuing a direction under this paragraph, the Water Services Regulation Authority will consult the Appointee and the Infrastructure Provider.

5.2 The direction given by the Water Services Regulation Authority under sub-paragraph 5.1 may relate to all revenue collected by the Appointee with respect to the IP Charge but not yet passed on to the Infrastructure Provider at the date the Revenue Agreement terminates, and any revenues subsequently collected by the Appointee in respect of the IP Charge.

## **6 Revocation of the IP Licence**

6.1 If the IP Licence is revoked in circumstances where the Project Specification Notice is not revoked, then:

- 6.1.1 the Water Services Regulation Authority may, having consulted the Appointee, determine the question of whether some or all of the amendments listed in paragraph 8.2 will apply from the commencement of the next Charging Year; and
- 6.1.2 if the Water Services Regulation Authority determines that some or all of the amendments listed in paragraph 8.2 will apply from the commencement of the next Charging Year, the Water Services Regulation Authority will also direct the Appointee as to the treatment of any revenue collected by the Appointee with respect to the IP Charge pursuant to Condition B that it has not already passed on to the Infrastructure Provider in accordance with the Revenue Agreement and the Appointee shall comply with any such direction. Before issuing a direction under this paragraph, the Water Services Regulation Authority will consult the Appointee and the Infrastructure Provider.
- 6.1.3 The direction given by the Water Services Regulation Authority under sub-paragraph 6.1.2 may relate to all revenue collected by the Appointee with respect to the IP Charge but not yet passed on to the Infrastructure Provider in accordance with the Revenue Agreement at the date the Project Licence is revoked, and any revenues subsequently collected by the Appointee in respect of the IP Charge.

## **7 De-specification of the Thames Tideway Tunnel Project**

- 7.1 Subject to paragraph 7.2, if the Project Specification Notice is revoked, the Water Services Regulation Authority will direct the Appointee as to the treatment of any revenue collected by the Appointee with respect to the IP Charge pursuant to Condition B that it has not already passed on to the Infrastructure Provider in accordance with the Revenue Agreement and the Appointee shall comply with any such direction. Before issuing a direction under this paragraph, the Water Services Regulation Authority will consult the Appointee and the Infrastructure Provider.

7.2 The direction given by the Water Services Regulation Authority under subparagraph 7.1 may relate to all revenue collected by the Appointee with respect to the IP Charge but not yet passed on to the Infrastructure Provider in accordance with the Revenue Agreement at the date the Project Specification Notice is revoked, and any revenues subsequently collected by the Appointee in respect of the IP Charge.

7.3 If and to the extent that the Project Specification Notice is revoked, then:

7.3.1 within a period of 6 months of the Project Specification Notice being revoked (or such period as shall be agreed between the Appointee, the Secretary of State and the Water Services Regulation Authority), the Appointee shall present a proposal to the Secretary of State and the Water Services Regulation Authority which addresses the issue of sewage discharges into the river Thames with a view to securing compliance with the UWWT Regulations together with an estimate of the costs of delivering such proposal;

7.3.2 a proposal presented pursuant to paragraph 7.3.1 must consider, and be considered in view of:

- (i) the obligations of each of the Appointee, the Water Services Regulation Authority and the Secretary of State pursuant to the Water Industry Act 1991 and this Appointment;
- (ii) the need for the Appointee to finance its functions (including the delivery of the proposal);
- (iii) the circumstances resulting in the revocation of the Project Specification Notice;
- (iv) the fact that the Thames Tideway Tunnel Project was specified under the SIP Regulations; and
- (v) the Project Documents and the Government Support Package;

- 7.3.3 a proposal presented pursuant to paragraph 7.3.1 may include such elements and assets of the Thames Tideway Tunnel Project as the Appointee deems appropriate;
- 7.3.4 the Appointee shall not be required to implement a proposal presented pursuant to paragraph 7.3.1 without additional funding in respect of that proposal having been awarded to the Appointee through either a determination by the Water Services Regulation Authority or following a reference to Competition and Markets Authority pursuant to Condition B; and
- 7.3.5 the Authority will not require the Appointee to accept a transfer of an IP Regulated Asset unless:
- (i) that IP Regulated Asset has been included in a proposal for which the Appointee has received funding pursuant to paragraph 7.3.4; and
  - (ii) such transfer is directed by the Authority at no cost to the Appointee.

## **8 Amendments to conditions of appointment**

- 8.1 The amendments set out in paragraph 8.2 will take effect on the earlier of:
- 8.1.1 1 April in the Charging Year immediately following the coming into effect of Appendix 3 (*Direct Charging Conditions following the Post Construction Review*) of the IP Licence;
  - 8.1.2 1 April in the Charging Year immediately following the Project Specification Notice being revoked; or
  - 8.1.3 1 April in the Charging Year immediately following a notice by the Water Services Regulation Authority under paragraph 6.1.2, to the extent set out in that notice.

### **8.2 Condition A (Interpretation and Construction)**

In paragraph 3, the words “which are not IP Licensed Activities” will be deleted from the definition of ‘Regulated Activities’.

In paragraph 3, the definitions of “IP Allowed Revenue” and “IP Licensed Activities” will be deleted.

### **Condition B (Charges)**

Paragraphs 1.7 and 1.8 will be deleted.

Paragraph 9.1 will be deleted and replaced with the following paragraph:

“The Appointee shall levy charges in a way best calculated to comply with the Price Control or Price Controls determined by the Water Services Regulation Authority pursuant to sub-paragraph 9.3 or sub-paragraph 9.4.”

Paragraph 10.2 and 10A will be deleted.

Paragraph 16.2 will be deleted and replaced with the following paragraph:

“16.2       Where the Appointee requires the Water Services Regulation Authority to make a reference to the Competition and Markets Authority under sub-paragraph 16.1 in the case referred to in section (3) of that sub-paragraph, the Appointee shall levy charges in a way best calculated to comply with the Price Control or Price Controls determined by the Water Services Regulation 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 Competition and Markets Authority shall then take effect as if it had been made by the Water Services Regulation Authority.”

### **Condition D (Change Schemes)**

Paragraph 2.1(3) will be deleted.

### **Condition L (Underground Asset Management Plans)**

In paragraph 1, the definition of “IP Owned Structures” will be deleted.

In paragraph 1, the words “and other than the IP Owned Structures” will be deleted from the definition of “Network Assets”.