

---

## Schedule – South West Water Limited

Note: new and amended text shown in red

### 1. New conditions

#### Condition R3 - MAC condition

##### Obligations in relation to the Market Arrangements Code

(1) The Appointee must:

- (a) be a party to and comply with the Market Arrangements Code; and
- (b) take all steps within its power to ensure that the Market Arrangements Code remains a document that:
  - (i) is designed to facilitate the principles set out in Schedule 1 of the Market Arrangements Code (the “MAC Principles”);
  - (ii) conforms to the requirements of paragraph (2) of this condition in relation to the modification of the Market Arrangements Code; and
  - (iii) makes express provision for the matters described in paragraph (3) of this condition.

##### Modification of the Market Arrangements Code

(2) The Market Arrangements Code shall contain procedures for its own modification (including procedures for the modification of the modification procedures themselves) which shall ensure that:

- (a) change proposals for the modification of the Market Arrangements Code may be made by any member of the Panel constituted under the Market Arrangements Code pursuant to paragraph 3(d) of this condition (“the

**Panel**”), by the Authority and by such other persons or bodies as may be set out in the Market Arrangements Code;

(b) every change proposal is brought to the attention of all parties mentioned in or pursuant to paragraph (a) above;

(c) any and all representations made in respect of a change proposal are able to be properly considered by the relevant decision makers;

(d) the question of whether any change proposal better facilitates the achievement of the MAC Principles is able to be properly evaluated by the parties to the Market Arrangements Code;

(e) change proposals require Authority approval;

(f) change proposals made by any of the parties stated in paragraph (a) which the Authority reasonably considers are necessary to comply with or implement any Applicable Law are:

(i) to be accepted into the Market Arrangements Code modification procedures by the Panel;

(ii) where they are raised by a person other than the Authority, not to be withdrawn without the Authority’s prior consent; and

(iii) to proceed in accordance with any timetable(s) directed by the Authority in relation to the raising of a change proposal, the completion of relevant procedural steps and the implementation of the change proposal.

(g) a final report is prepared including:

(i) a proposed implementation date either:

A. in accordance with any direction(s) issued by the Authority under paragraph (2)(h); or

B. where no direction has been issued by the Authority under paragraph (2)(h), that would enable any proposed modification to take effect, as soon as reasonably practicable after the decision to implement it has been reached, taking into account the complexity, importance, and urgency of that modification and the most efficient timing for implementing the modification; and

(ii) a summary of and copies of all submissions made in respect of the change proposal;

(iii) an assessment of the extent to which the change proposal would better facilitate achieving the MAC Principles and a detailed explanation of the reasons for that assessment; and

(iv) an assessment of any potential impact on, or consequential amendment to, any other Retail Market Code.

(h) the proposed implementation date may be altered with the consent of or as directed by the Authority;

(i) parties to the Market Arrangements Code are able to consider and comment upon the change proposal report prepared in accordance with paragraph (g) and in particular whether the change would, as compared with the existing provisions of the Market Arrangements Code, better facilitate the achievement of the MAC Principles;

(j) the Panel, having regard to whether the change would, as compared with the existing provisions of the Market Arrangements Code, better facilitate the achievement of the MAC Principles, makes a recommendation to the Authority to approve or reject the proposed modification;

(k) completion of each of the procedural steps outlined in this paragraph (2) to the extent that they are relevant, is in accordance with any timetable(s) directed by the Authority;

(l) the change proposal report prepared in accordance with paragraph (g) (and submitted to the Authority pursuant to the procedures described in paragraph (g)) can be revised and resubmitted upon, and in accordance with, a direction issued to the Panel by the Authority where the Authority determines that it cannot properly form an opinion on the approval of the change proposal;

(m) any proposals to modify the Market Arrangements Code must be designed to better facilitate the achievement of the MAC Principles; and

(n) no modification of the Market Arrangements Code may be made unless the Authority, having had regard to the MAC Principles, directs the Appointee, in conjunction with every other Appointee and Licensee, to modify the Market Arrangements Code in such manner as is stated in that direction.

## Contents of the Market Arrangements Code

(3) The Market Arrangements Code shall make express provision in relation to the following matters:

(a) the creation of an agreement, to which the Appointee, every other Appointee, and every Licensee shall be a party, and which binds the Appointee to comply with the terms of the Market Arrangements Code (the “**MAC Framework Agreement**”);

(b) the referral for determination by the Authority of any dispute arising as to whether a person seeking to be admitted as a party to the MAC Framework Agreement has fulfilled such trading conditions as are set out in the MAC Framework Agreement;

(c) terms that provide for the Appointee and such other parties to the MAC Framework Agreement to be contractually bound by some or all of the provisions of the Market Arrangements Code;

(d) arrangements for establishing and maintaining a Panel which is to be responsible, by way of such proceedings as may be set out in the Market Arrangements Code, for the governance and administration of the Market Arrangements Code and whose members are to be required as a condition of their appointment or election to act independently and not as delegates;

(e) arrangements for the establishment and funding at all times of a body to perform the role of Market Operator fulfilling the functions set out in the Market Arrangements Code; and

(f) a process by which the Panel can make recommendations to the Authority in relation to modifications of any code issued pursuant to section 66DA of the Act and/or section 117F of the Act.

## **Condition R4 - Stapling condition**

### **Application of Wholesale Retail Code**

Interpretation

In this Condition:

**“Eligible Premises”** shall have the meaning given in the Wholesale-Retail Code

**“Wholesale Business”** means the business undertaken as part of the Appointed Business excluding the Retail Business

**“Retail Business”** means those activities that constitute the provision of goods or services by the Appointee directly to one or more customers, 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 customers’ premises on or before the date of such designation

**“NHH Retail Business”** means those aspects of the Appointee’s Retail Business in respect of non-household customers, which would, if carried on by a Licensee, fall within the scope of a retail authorisation as set out in Schedules 2A or 2B WIA91, or restricted retail authorisation as set out in Schedule 2A WIA91

### **Arrangements between Appointee’s Wholesale Business and NHH Retail Business**

If the Appointee carries out activities in respect of its NHH Retail Business in relation to Eligible Premises in its Area of Appointment, the Appointee shall:

1. subject to the provisions of these Conditions in particular conditions F and R, undertake any such activities between its Wholesale Business and its NHH Retail Business as if:

- (a) the Appointee's Wholesale Business and its NHH Retail Business were, in fact, carried out by separate legal entities, and the NHH Retail Business held a water supply licence and/or sewerage licence; and
- (b) there were an agreement pursuant to s66D and/or s117E of the Act (regardless of whether any such agreement exists or not) between the Appointee's Wholesale Business and its NHH Retail Business.

2. put in place written arrangements in relation to any such activities between its Wholesale Business and its NHH Retail Business which are as far as is reasonably practicable consistent with the terms of paragraph 1 of this Condition;

3. provide the Authority upon request with evidence of the written arrangements put in place pursuant to paragraph 2 of this Condition; and

4. as far as is reasonably practicable, and in order to ensure that it does not show any undue preference towards its NHH Retail Business or any undue discrimination against any Licensee in its Area of Appointment, apply to the written arrangements put in place pursuant to paragraph 2 of this Condition any code or codes issued by the Authority from time to time pursuant to s66DA and/or s117F of the Act, provided that:

(a) said code or codes shall be read and construed in accordance with Schedule 8 to the Market Arrangements Code, and

(b) Schedule 8 to the Market Arrangements Code shall be treated by the Appointee as a derogation from complying in full with the particular terms of said code or codes only to the extent set out in the said Schedule 8.

This Condition R4 of the Appointment shall cease to have effect on the Exit Date.

"Exit Date" shall have the same meaning as in the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016.

## **Condition R5 - Customer protection condition**

(1) When dealing with customers in Eligible Premises, the Appointee must comply with the Customer Protection Code of Practice in respect of those customers.

(2) The Customer Protection Code of Practice shall contain the procedure for its own modification.

This Condition R5 of the Appointment shall cease to have effect on the Exit Date.

“Exit Date” shall have the same meaning as in the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016.

## 2. Amended conditions

### 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) references to a liability shall be taken to include the creation of any mortgage, charge, pledge, lien or other form of security of encumbrance, the making of a loan and the taking on of a debt; and

(4) references to a loan shall be taken to include the transfer or lending, by any means, of any sum of money or rights in respect of that sum.

3. Unless the context otherwise requires, in these Conditions:

**“the 2014 Act” means the Water Act 2014;**



"**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;

"**Bournemouth Area**" means the area for which Bournemouth Water Limited was the water undertaker immediately prior to 1 April 2016;

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

"**Credit Rating Agency**" means:

- (a) Standard and Poor's Ratings Group (or any of its subsidiaries);
- (b) Moody's Investors Services Incorporated (or any of its subsidiaries);
- (c) Fitch Ratings Limited; or
- (d) any reputable credit rating agency which has been notified to the Appointee by the Water Services Regulation Authority as having comparable standing to Standard & Poor's Ratings Group, Moody's Investors Services Incorporated and Fitch Ratings Limited in both the United Kingdom and the United States of America;

"**Cross-Default Obligation**" means a legal obligation contained in an agreement or arrangement where the Appointee's liability to pay or repay any debt or other sum arises or is increased or accelerated due to the default of any person other than the Appointee;

"**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;

"**Eligible Premises**" shall have the meaning given in the Wholesale-Retail Code;

**"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;

**"Financing Subsidiary"** means a subsidiary company of the Appointee:

(a) which is wholly owned by the Appointee; and

(b) the sole purpose of which, as reflected in the company's articles of association, is to raise finance on behalf of the Appointee for the purposes of the Regulated Activities;

**"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);

**"Holding Company"** has the meaning set out in section 1159 of the Companies Act 2006;

**"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;

**"Investment Grade Rating"** means an Issuer Credit Rating recognised as investment grade by a Credit Rating Agency;

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

**"Lowest Investment Grade Rating"** means:

(a) an Issuer Credit Rating of BBB- by Standard & Poor's Ratings Group or Fitch Ratings Limited or an Issuer Credit Rating of Baa3 by Moody's Investors Services Incorporated or such Issuer Credit Rating as may be specified from time to time by any of these credit rating agencies as the lowest Investment Grade Rating; or

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

**"Licensee"** means the holder of a water supply licence and/or a sewerage licence granted by the Water Services Regulation Authority under section 17H and/or under section 17HA of the Water Industry Act 1991;

**"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;

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

**"Regional Committee"** means the regional committee to which the Appointee is allocated under section 27A of the Water Industry Act 1991;

**"the Regulated Activities"** means the functions of a water undertaker or, as the case may be, a sewerage undertaker 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;

**"Retail Market Opening Date"** means the date determined by the Authority as the date when the retail water and sewerage market for Eligible Premises opens;

**"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;

**"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;

**"Ring-fencing Certificate"** means a certificate, submitted to the Water Services Regulation Authority by the Appointee, which states that, in the opinion of the Board of the Appointee:

(a) the Appointee will have available to it sufficient financial resources and facilities to enable it to carry on the Regulated Activities, for at least the twelve month period following the date on which the certificate is submitted;

(b) the Appointee will have available to it sufficient management resources and systems of planning and internal control to enable it to carry on the Regulated Activities, for at least the twelve month period following the date on which the certificate is submitted; and

(c) **in respect of the Wholesale Business only**, all contracts entered into between the Appointee and any Associated Company include the necessary provisions and requirements in respect of the standard of service to be supplied to the Appointee, to ensure that it is able to carry on the Regulated Activities;

**"South West Area"** means the area for which South West Water Limited was the water undertaker immediately prior to 1 April 2016;

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

**"subsidiary"** has the meaning set out in section 1159 of the Companies Act 2006;

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

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

**"Ultimate Controller"** means any person which, whether alone or jointly and whether directly or indirectly is, in the reasonable determination of the Water

Services Regulation Authority, in a position to control or in a position to materially influence the policy or affairs of the Appointee or any Holding Company of the Appointee;

**“United Kingdom Holding Company”** means a Holding Company which is registered in the United Kingdom and which is not a subsidiary of any company registered in the United Kingdom;

**"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.

**“Wholesale-Retail Code”** means the code issued by the Water Services Regulation Authority pursuant to sections 66DA and 117F 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.

## Condition R – provision of combined and wholesale water supplies

### Anti-competitive behaviour

- 5 (1) If and for so long as the Appointee is related to any ~~licensed water supplier~~Licensee it shall ensure that every transaction between the Appointed Business and that ~~licensed water supplier~~Licensee is at arm's length.
- (2) For the purpose of this paragraph the Appointee is related to a ~~licensed water supplier~~Licensee if their enterprises are under common ownership or common control (within the meaning those expressions have in section 26(1) of the Enterprise Act 2002).
- (3) The Appointee shall by notice inform the Authority if at any time it becomes, or ceases to be, related to a ~~licensed water supplier~~Licensee.
- (4) This paragraph is without prejudice to anything contained in paragraph 6 of Condition F (Transactions entered into by the Appointee or the Appointed Business with or for the benefit of Associated Companies or other businesses or activities of the Appointee).
- 6 The Appointee shall ~~ensure that its Appointed Business does~~ not show undue preference towards, or undue discrimination against -
- (a) customers or potential customers (or classes of customers) of a ~~licensed water supplier~~Licensee, as compared with either the Appointee's own customers or potential customers (or classes of customers) or the customers or potential customers (or classes of customers) of any other ~~licensed water supplier~~Licensee; or
  - (b) a ~~licensed water supplier~~Licensee, as compared with any other ~~licensed water supplier~~ Licensee or the Appointee itself.

### Obligations about information

- 7 (1) Whenever the Appointee is -
- (a) negotiating with a ~~licensed water supplier~~Licensee the period for which and terms and conditions on which it might discharge any of its duties under sections 66A to 66C, **117A and 117B**; or
  - (b) discharging any of those duties,

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

(2) Without prejudice to the generality of sub-paragraph (1) above, the Appointee shall not use or disclose information received from or in relation to a ~~licensed water supplier~~Licensee in the course or contemplation of the discharge of its duties under sections 66A to 66C, ~~and 117A to 117B~~ or in the course or contemplation of its dealings with or in relation to that ~~licensed water supplier~~Licensee under sections 66A to 66C, ~~and 117A to 117B~~ except

-

(a) for the purpose for which it was furnished and to the minimum extent necessary to discharge those duties or for those dealings;

(b) where required or permitted by law; or

(c) where otherwise agreed with the ~~licensed water supplier~~Licensee.

(3) Without prejudice to the generality of sub-paragraph (1) and (2) above, and subject to sub-paragraphs (2)(a), (b) and (c) above, the Appointee shall ensure that information received from or in relation to a ~~licensed water supplier~~Licensee in the course or contemplation of the discharge of its duties under sections 66A to 66C ~~and 117A to 117B~~ or in the course or contemplation of its dealings with or in relation to that ~~licensed water supplier~~Licensee under sections 66A to 66C ~~and 117A to 117B~~ is not used or disclosed or otherwise distributed or disseminated within the Appointed Business otherwise than for the purposes for which the information was furnished.

(4) (a)The Appointee shall have a Compliance Code which complies with Compliance Guidance issued by the Authority.

(b) Compliance Guidance means guidance -

(i) in relation to the matters specified in this paragraph; in relation to the Appointee's compliance with its obligations under this paragraph and under paragraph 5(1)~~(b)~~ above; and generally in relation to any obligation of confidentiality on the Appointee in relation to information provided to or by it under or for the purposes of this Condition or Condition S, and its compliance with those obligations; and

(ii) for the time being issued by the Authority where -

a. before issuing such guidance, the Authority has consulted such persons as it considers appropriate; and

b. the Authority has published such guidance in such a manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

(c) Subject to sub-paragraph (d) below, the Appointee -

(i) shall review its Compliance Code annually not later than the anniversary of the date upon which Compliance Guidance is first issued by the Authority; and

(ii) may at any time revise it.



(d) If the Authority revises its Compliance Guidance, the Appointee shall revise its Compliance Code to conform to such revised guidance, within the timescales set out by the Authority, provided that the Authority has -

- (i) consulted such persons as it considers appropriate before revising that Compliance Guidance; and
- (ii) published that Compliance Guidance in such a manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

- 8 (1) The Appointee shall provide to a ~~licensed water supplier~~Licensee such information as the ~~licensed water supplier~~Licensee reasonably requires -
- (a) to enable the ~~licensed water supplier~~Licensee to apply for, negotiate and conclude an agreement under section 66D or section 117E;
  - (b) to comply with any condition of its water supply or sewerage licence, or any statutory requirement imposed in consequence of its water supply or sewerage licence; or
  - (c) to comply with any reasonable request for information made by the Environment Agency.
- (2) The Appointee may impose reasonable conditions on the use which any ~~licensed water supplier~~Licensee makes of information provided under this paragraph.
- (3) Any question as to the reasonableness of -
- (a) any requirement to provide information under sub-paragraph (1); or
  - (b) any condition proposed by the Appointee under sub-paragraph (2);
- shall be resolved by referring that question to the Authority for its determination.
- (4) A reference under sub-paragraph (3) shall have the effect of suspending the requirement so referred pending the Authority's determination.
- (5) The Appointee shall not be required under this paragraph to disclose any information or produce any document which it would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court.
- (6) (a) The Appointee shall immediately inform the ~~licensed water supplier~~Licensee of relevant details if the Appointee is or becomes aware that a special consumer occupies or is likely to occupy any premises which the ~~licensed water supplier~~Licensee is proposing to supply.
- (b) For the purpose of sub-paragraph (a) above, a special consumer is a person or a member of a class of persons who -
    - (i) the Appointee and the relevant ~~licensed water supplier~~Licensee agree; or
    - (ii) the Authority specifically or generally determines by relevant notice,



- regularly requires water urgently on medical or other grounds.
- (7) Under sub-paragraph (6) -
- (a) a determination shall not have effect unless, before making the determination, the Authority has consulted such persons as it considers appropriate; and
- (b) a "relevant notice" is a notice published in such manner as the Authority considers appropriate and served on the Appointee.
- (8) (a) The Appointee shall immediately inform each ~~licensed water supplier~~ Licensee which is supplying water to premises in its Water Supply Area of every actual or potential incident which affects adversely, or is likely to affect adversely -
- (i) water quality;
- (ii) water pressure;
- (iii) continuity of supply; or
- (iv) any other matter related to the Appointee's supply system as defined in section 17B(5);
- but the foregoing obligation applies only if and to the extent that the supply or supplies being made by such ~~licensed water supplier~~ Licensee to premises in the Appointee's Water Supply Area is or are, or is or are likely to be, affected by any such actual or potential incident; and
- (b) information provided by the Appointee under sub-paragraph (a) above shall be as detailed as the information which the Appointee uses or intends to use or would use, when dealing with complaints from its own customers arising out of the same matters.
- (9) For the purposes of sub-paragraph (8), an incident includes regulatory infringements which may put the Appointee or relevant ~~licensed water supplier~~ Licensee at risk of supplying water which is unwholesome as determined under section 67 (standards of wholesomeness) or unfit for human consumption within the meaning of section 70 (offence of supplying water unfit for human consumption).

- 9 In so far as the provision of information to the Appointee is not provided for by or under any enactment, the Appointee shall not seek -
- (a) from a ~~licensed water supplier~~ Licensee; or
- (b) from a person supplied or seeking to be supplied by a ~~licensed water supplier~~ Licensee;
- more information than the Appointee reasonably requires -
- (i) for the purposes of carrying out its functions;
- (ii) to ascertain whether the ~~licensed water supplier~~ Licensee has sufficient product and public liability insurance for the activities authorised by its water supply licence;
- (iii) to comply with any condition of the Appointee's appointment;

- (iv) in relation to national security or civil emergencies; or
- (v) to comply with any reasonable request for information made by the Environment Agency.

### General

- 10 (1) Until the coming fully into force of section 36(1) of the Water Act 2003 (transfer to the Water Services Regulation Authority and the Consumer Council for Water of functions, property etc), any reference to the Authority in this Condition shall have effect as if it were a reference to the Director.
- (2) Unless the contrary intention appears, references in this Condition to sections are references to sections of the Water Industry Act 1991.

## **Condition P – Regulatory ring-fence**

### 9. Ring-fencing Statement and Certificate

9.2 No later than the date on which the Appointee is required to deliver to the Water Services Regulation Authority a copy of each set of accounting statements prepared under Condition F, the Appointee must submit **a separate Ring-fencing Certificate in respect of each of its NHH Retail Business and its Residual Business** to the Water Services Regulation Authority.

10. [Reporting of Material Issues]

11. [References to Competition and Markets Authority]

### 12. Defined terms which apply for the purposes of this Condition

In this Condition:

“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 the supply 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;

“Exit Date” shall have the same meaning as in the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016;

“NHH Retail Business” means those aspects of the Appointee’s Retail Business in respect of non-household customers, which would, if carried on by a Licensee, fall within the scope of a retail authorisation as set out in Schedules 2A or 2B Water

Industry Act 1991 or restricted retail authorisation as set out in Schedule 2A Water Industry Act 1991;

“Residual Business” means the Retail Business excluding the NHH Retail Business together with the Wholesale Business;

“Retail Business” means those 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;

“Wholesale Business” means the business undertaken as part of the Appointed Business excluding the Retail Business.

### 13. Cessation of requirement in sub-paragraph 9.2

The provision in sub-paragraph 9.2 in this condition P requiring a separate Ring-fencing Certificate for the Appointee’s NHH Retail Business shall cease to have effect on the Exit Date.

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

### 1 Interpretation

"**business customer**" means the person who is liable to pay the Appointee's charges in respect of a supply of water to premises other than domestic premises and for these purposes includes the customers of a licensee with whom the Appointee has an agreement under s66D Water Industry Act 1991;

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

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

## 2 Liability and amounts of payments

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

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

## 3 Amounts payable to household and business customers

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

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

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

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

3.2.1 The Appointee shall pay to a business customer £50 for each day during which (or during part of which) the supply is interrupted or cut off.

3.2.2 The amount payable to any business customer in any Charging Year shall not exceed

(a) the amount of water charges payable by that customer for the supply of water to those premises for the Charging Year preceding that in which the interruption or cut-off happens or

(b) if that customer was not liable to pay those charges, £500.

- 3.2.3 When calculating the charges payable by a business customer for the supply of water services, amounts payable in respect of any separate supply which was provided solely for purposes other than domestic purposes shall be excluded.
- 3.3 If, when a payment becomes due under this Condition, a customer owes money to the Appointee and the debt has been outstanding for more than 6 weeks, any payment from the Appointee to which the customer is entitled under this Condition shall, to the extent that it does not exceed the amount so owed, be made by way of credit to that customer's account.

#### 4 Determination of Disputes

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

#### 5 Cessation or Modification of this Condition

- 5.1 This Condition shall cease to have effect in relation to any interruptions or cut-offs occurring on or after the commencement date of any Regulations made by the Secretaries of State pursuant to Section 38 of the Water Industry Act 1991, implementing the recommendations made to them by the Director in May 1996 for the making of payments to customers for interruptions or cut-offs because of drought.
- 5.2 If the Regulations referred to in sub-paragraph 5.1 relate to either household customers or business customers only, this Condition shall cease to have effect in so far as it relates to those customers.