

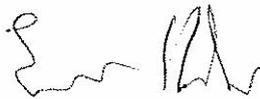
**WATER SERVICES REGULATION AUTHORITY
WATER INDUSTRY ACT 1991, SECTIONS 6 TO 9 AND 11**

**Appointment of County Water Limited as a Sewerage Undertaker and
Variation of the Appointment of Thames Water Utilities Limited as a
Sewerage Undertaker**

Made on 13 April 2018
Coming into effect on 13 April 2018

1. County Water Limited ("County Water") has applied under sections 6(1) and 7(4)(b) of the Water Industry Act 1991 ("the Act") to be appointed as the sewerage undertaker for a site at Heyford Park in Cherwell that is currently within the Sewerage Services Area of Thames Water Utilities Limited ("Thames Water").
2. On 27 June 1995, the Secretary of State for the Environment and the Secretary of State for Wales acting jointly and pursuant to sections 6(1) and 7(2) of the Act authorised the Director General of Water Services¹ to make appointments and variations such as those contained in paragraphs 3 and 5 below.
3. Therefore, as provided by sections 6(1) and 7(2) and (4)(b) of the Act, the Water Services Regulation Authority **appoints** County Water ("**the Appointee**") to be the sewerage undertaker for the Sewerage Services Area described in Schedule 1.
4. The appointment made in paragraph 3 ("**the Appointment**") is subject to the conditions set out in Schedule 2.
5. In consequence of the Appointment, the Water Services Regulation Authority **varies** the Appointment of Thames Water as a sewerage undertaker so that the area described in Schedule 1 is excluded from Thames Water's Sewerage Services Area.

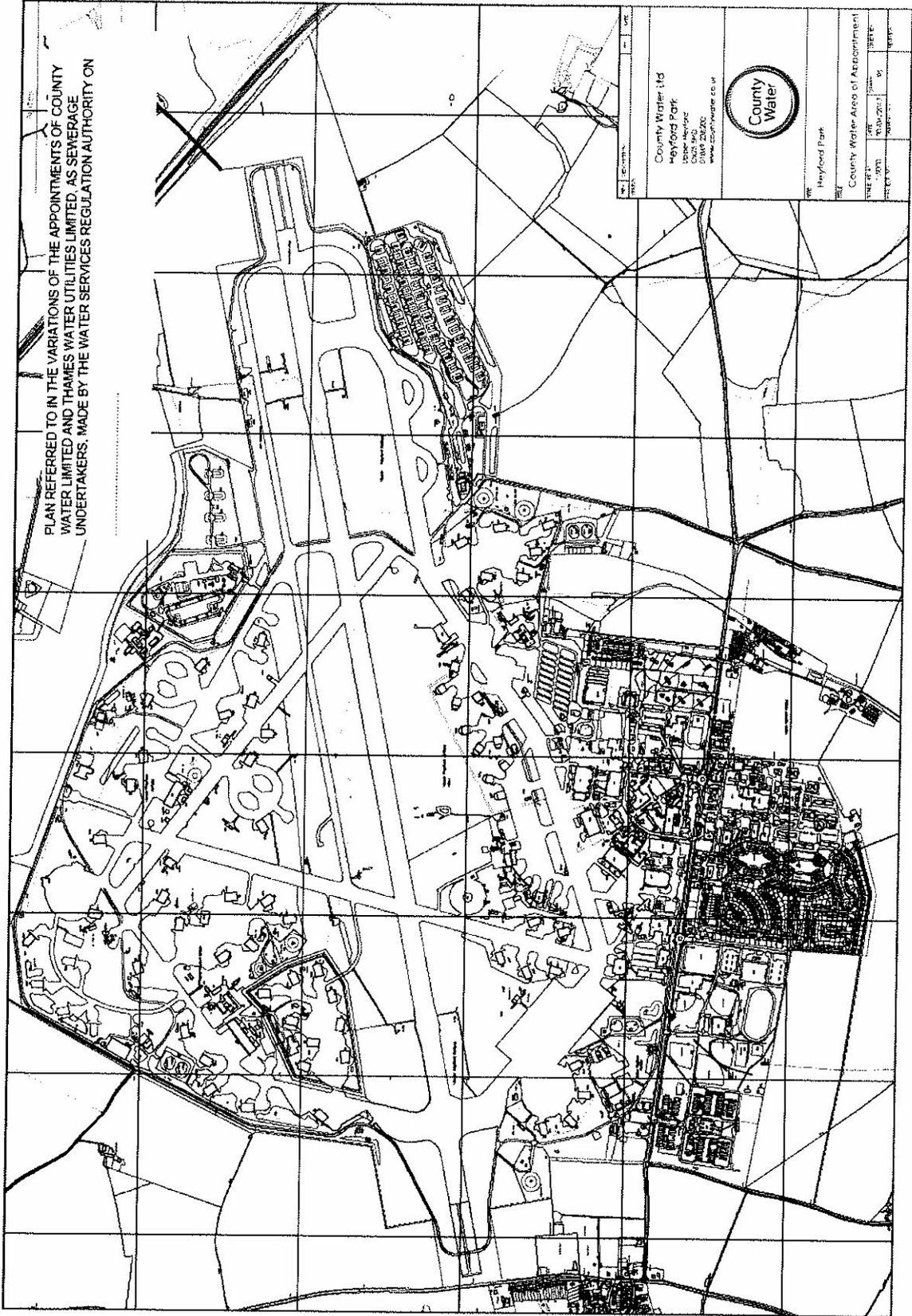
Signed for and on behalf of the Water Services Regulation Authority



**Emma Kelso
Senior Director – Market Outcomes and Enforcement**

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

PLAN REFERRED TO IN THE VARIATIONS OF THE APPOINTMENTS OF COUNTY WATER LIMITED AND THAMES WATER UTILITIES LIMITED, AS SEWERAGE UNDERTAKERS, MADE BY THE WATER SERVICES REGULATION AUTHORITY ON



County Water Ltd
Hayford Park
Upper Heyford
Oxon OX9 3DQ
www.countywater.co.uk



WE	Hayford Park
WE	County Water Area of Appointment
DATE	15/03/2011
BY	15/03/2011
SCALE	1:1000

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PLAN REFERRED TO IN THE VARIATIONS OF THE APPOINTMENTS OF COUNTY WATER LIMITED AND THAMES WATER UTILITIES LIMITED, AS SEWERAGE UNDERTAKERS, MADE BY THE WATER SERVICES REGULATION AUTHORITY ON



<p>County Water Ltd Heyford Park Heyford Road Heyford Park Heyford Park Heyford Park</p>	
<p>County Water</p>	
<p>Heyford Park</p>	
<p>County Water Area of Appointment</p>	
<p>Scale of Drawing</p>	<p>Scale of Drawing</p>
<p>Scale of Drawing</p>	<p>Scale of Drawing</p>

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SCHEDULE 2: Conditions of the Appointment

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 date on which the Appointment is made;
 - (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;
 - (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;
 - (5) words and expressions used in these Conditions shall have the same meaning as in any provision of the Water Industry Act 1991;
 - (6) references in these Conditions to sections and Schedules are references to sections of, and Schedules to, the Water Industry Act 1991; and
 - (7) 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 2014 Act” means the Water Act 2014;

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

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

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

"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 1st April;

“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;

"Effective Date" means the date this Appointment comes into effect;

“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;

“Holding Company” has the meaning set out in section 1159 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);

"Incumbent" means in relation to any particular part of the Area the company that was the sewerage undertaker before the Appointee became the sewerage undertaker for that particular part of the Area or such other company or companies as the Water Services Regulation Authority may determine to be appropriate;

"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;

"Licensee" means a water supply licensee or a sewerage licensee;

"Periodic Review" means a review of the Appointed Business carried out under paragraph 9 or 11 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 following the giving of Information to the Water Services Regulation Authority in accordance with paragraph 9;

"Prior Year" means the year commencing 1st 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;

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

"Related Company" means any body corporate in 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 (SI 2008/410) or which has such a participating interest in 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 Prices Index" means the Retail Prices Index published by the Office for National Statistics each month in respect of all items or, if the said index for the month of November is not published by 31st December next following, such index for such month as the Water Services Regulation Authority may not later than 7th 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;

"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) 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;

"Sewerage Infrastructure Charge" means such a charge as is described in section 146(2)(b);

"subsidiary" has the meaning set out in section 1159 of the Companies Act 2006;¹

"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;

"UK Corporate Governance Code" means the document of that title published in April 2016 by the Financial Reporting Council, or any document published to be the successor of the document, which has similar purpose and content;

"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;

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

4. Any notification required or permitted to be given under any Condition shall be given in writing and cognate expressions shall be construed accordingly.
5. The Appointee may refer to the Water Services Regulation Authority for determination by it (having considered any representations by the Appointee and any

1 s.1159 of the Companies Act 2006:

Meaning of "subsidiary"

- (1) A company is a "subsidiary" of another company, its "holding company", if that other company—
- (a) holds a majority of the voting rights in it, or
 - (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or
 - (c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it, or if it is a subsidiary of a company that is itself a subsidiary of that other company.
- (2) A company is a "wholly-owned subsidiary" of another company if it has no members except that other and that other's wholly-owned subsidiaries or persons acting on behalf of that other or its wholly-owned subsidiaries.
- (3) Schedule 6 contains provisions explaining expressions used in this section and otherwise supplementing this section.(4) In this section and that Schedule "company" includes any body corporate.

other 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 Sewerage Services Area, as that expression is defined in Schedule 1 to this instrument.

6. The Appointee will use all reasonable endeavours to work with the Water Services Regulation Authority, in a constructive and cooperative manner to improve the conditions that attach to this Project Licence.

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 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 the Appointment 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 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".
- 1A. **Application and transitional provisions**
- 1A.1 Paragraphs 3 to 17 of this Condition shall not apply until the Water Services Regulation Authority has given notice to the Appointee of their application.
 - 1A.2 Before the Water Services Regulation Authority gives notice under sub-paragraph 1A.1, it may determine appropriate Price Controls for such number of consecutive Charging Years (not exceeding five) as the Water Services Regulation Authority considers appropriate, starting with the Charging Year starting on 1st April immediately after it has given notice under sub-paragraph 1A.1. The Water Services Regulation Authority shall give notice to the Appointee of its determination not later than the thirty-first day of December immediately preceding the first of the Charging Years in respect of which it is setting Price Controls.
 - 1A.3 Subject to sub-paragraph 1A.5, until the Water Services Regulation Authority has given notice under sub-paragraph 1A.1, the Appointee shall not make or fix the amount of any Relevant Charge at an amount that is greater than the amount set out in sub-paragraph 1A.4.

1A.4 A Relevant Charge may not be greater than:

- a) For Eligible Customers, where the Incumbent's area is a retail exit area, a charge fixed in the most recent Scheme of Terms and Conditions published by the Relevant Licensee for Transferred Premises, that would have been applicable to each Eligible Customer had that customer occupied Transferred Premises and been a customer of the Relevant Licensee;
- b) For all other charges, a Relevant Charge fixed by the Incumbent for the same charging year that would, but for the Appointment or any subsequent variation, have applied to any particular part of the Area.

1A.5 Sub-paragraph 1A.3 does not apply to Eligible Customers who employ more than 250 employees and who became customers of the Appointee after 1 April 2018. For these customers, the Appointee's charges must be reasonable and must comply with Condition E.

1A.6 Sub-paragraph 1A.4 does not place an obligation on the Appointee to change its Relevant Charges more than once with respect to any Charging Year.

1A.7 For the purposes of this paragraph 1A:

"Relevant Charge" means, for any provision of sewerage services made, or reception, treatment and disposal of trade effluent which takes place, a charge fixed under any such charges scheme as is referred to in section 143 of the Water Industry Act 1991;

"Eligible Customer" means the owner or occupier of Eligible Premises in the Appointee's Area and "Eligible Premises" has the meaning given in the Wholesale-Retail Code;

"Relevant Licensee" means the Acquiring Licensee, or its successors in title, specified in the Incumbent's Exit Application, and "Acquiring Licensee" and "Exit Application" have the meaning given in the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016;

“Scheme of Terms and Conditions” means a Scheme of Terms and Conditions made under the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016; and

“Transferred Premises” has the meaning given in the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016.

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) [not used];
- (2) [not used];
- (3) charges for the reception and disposal by the Appointee, or other person specified by the Appointee 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) [not used];
- (5) [not used];
- (6) [not used];
- (7) [not used]; and

- (7A) charges in any Charging Year 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 sewerage services and the reception, treatment and disposal of trade effluent, shall also include

- (8) charges payable for any such connection as is described in section 146(2) of the Water Industry Act 1991;
- (9) [not used];
- (10) amounts payable under any such agreement as is described in section 20(1)(b) of the Water Resources Act 1991;

"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;

"Price Control" means a control set by the Water Services Regulation Authority, under sub-paragraph 1A(2), or 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;

"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) 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;

"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 Bioresources Activities and Wastewater Network Plus Activities;
- (3) charges payable under any such agreement as is referred to in section 142 of the Water Industry Act 1991;
- (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;

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.

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;

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 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.

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 sewerage services , 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

- (2) how the Appointee shall, in respect of the Price Control demonstrate the compliance referred to in sub-paragraph 9.1.

9.5 The 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 determined by the Water Services Regulation Authority when it gives notice to

the Appointee under paragraph 1.A.1 of this Condition, provided that no such period shall exceed five consecutive Charging Years.

9.6 The Price Control determined under sub-paragraph 9.4 pursuant to a Periodic Review shall be set:

- (1) for five consecutive Charging Years starting on a date determined by the Water Services Regulation Authority under paragraph 9.5; 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.

9.7 If, at any time after 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, 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; and
- (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) 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) [not used].

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.

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);
- (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) [not used]

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 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 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 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;
- (2) 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 subparagraph (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;

(ii) Allowable Depreciation; and

(iii) the Allowable Return;

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

(9) what changes to the level of Price Control or Price Controls over the period until the first of the Charging Years for which the next Periodic Review falls to be carried out (having regard to any Review Notice or Reference Notice which has been given at the time when the reference is made) (the "**Relevant Period**") is most likely to allow, or, as the case may be, require, the Appointee to make such charges over the Relevant Period ("**Adjusted Charges**"), in such a manner as to secure that the increase, or, as the case may be, decrease, in revenue attributable to the making of Adjusted Charges would, in each year of the Relevant Period, be equal to

(i) the Annual Allowable Amount for that year

plus

(ii) where Base Cash Flows at Current Prices have occurred prior to the first year

of the Relevant Period, the amount which, calculated as a constant annual amount over the Relevant Period, would result in the sum of the Net Present Values of these amounts equalling the sum of the Net Present Values of the Annual Allowable Amounts for each of the years prior to the Relevant Period.

14.3 All of the following:

- (1) whether any circumstance (other than a Relevant Change of Circumstance) has occurred which has or will have:
 - (a) a substantial adverse effect on the Appointed Business or on its assets, liabilities, financial position, or profits or losses, not being one which would have been avoided by prudent management action taken since the transfer date; or
 - (b) a substantial favourable effect on the Appointed Business, or on its assets, liabilities, financial position, or profits or losses, being one which is 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) 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 or by no later than the fifteenth day of September, whichever is the later.

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) 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, or by no later than the fifteenth day of September, whichever is the later,

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 as if a reference had not been made until the Competition and Markets Authority makes its determination following such reference. The determination made by the Competition and Markets Authority shall then take effect as if it had been made by the 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.

Condition C: [Not used]

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 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 section 117(1).

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 by which:

- (1) it fixes the charges to be paid 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; and
- (2) it fixes the charges to be paid for such connections as are described in section 146(2)(b).

2.2 The relevant date for the purpose of sub-paragraph 2.1 is the Effective Date.

3. [Not used]

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 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)(b) 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.

Condition E: Prohibition on undue discrimination and undue preference and information on charges

1. This Condition applies in relation to charges:
 - (1) fixed by the Appointee under any such charges scheme as is referred to in section 143 by which the Appointee fixes the charges to be paid:
 - (a) for any sewerage services provided by the Appointee in the course of carrying out its functions; or
 - (b) in any of the cases described in section 143(1)(b);
 - (2) for any sewerage services provided by the Appointee in the course of carrying out its functions or in connection with the carrying out of the Appointee's trade effluent functions payable under any such agreement as is referred to in section 142 which are in accordance with standard charges published or fixed by the Appointee;
 - (3) 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 which are in accordance with standard charges published or fixed by the Appointee;
 - (4) [not used]
 - (5) [not used]
 - (6) for any sewerage services provided by the Appointee in the course of carrying out its functions or in connection with the carrying out of the Appointee's trade effluent functions payable under any such agreement as is referred to in section 142 which are not in accordance with standard charges published or fixed by the Appointee;
 - (7) 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 which are not in accordance with standard charges published or fixed by the Appointee.
 - (8) [not used]

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

2. It shall be the duty of the Appointee in fixing or agreeing charges falling within any of sub-paragraphs 1(1) to 1(4) inclusive to ensure that no undue preference is shown to, and that there is no undue discrimination against, any class of customers or potential customers.
3. It shall be the duty of the Appointee in fixing or agreeing charges falling within any of sub-paragraphs 1(6) to 1(8) inclusive to ensure that no undue preference is shown to, and that there is no undue discrimination against, any customer or potential customer.
4. The Appointee shall provide to the Water Services Regulation Authority such Information as the Water Services Regulation Authority may reasonably request in order to satisfy itself that the Appointee is complying with this Condition, it being acknowledged that Information with which the Water Services Regulation Authority is furnished from time to time under Condition F may not be sufficient or relevant of itself for this purpose.
5. The Appointee shall provide to the Water Services Regulation Authority such Information as the Water Services Regulation Authority may from time to time reasonably request about the nature of any supply, service or trade effluent function made, provided or carried out under any such agreement or consent as is referred to in sub-paragraphs 1(6), 1(7) and 1(8) and the terms and conditions on which that supply, service or trade effluent function is made, provided or carried out.
6. This Condition shall not apply:
 - (1) [not used]
 - (2) [not used]
 - (3) so as to require the Appointee to contravene any local statutory provision;
 - (4) to:
 - (a) [not used]
 - (b) any such conditions as are imposed by the Water Services Regulation Authority under section 122; or
 - (c) the provisions included in any notice served by the Environment Agency under section 132 or anything required to be done by the Appointee under section 133 so as to secure compliance with those provisions

or so as to require the Appointee to have regard to any such terms, conditions or provisions;
or

(5) to any Sewerage Infrastructure Charge the amount of which does not exceed the relevant amount specified in Condition C which applies from time to time for the purposes of that Condition.

(6) [not used]

Condition F: Accounts and accounting information

1 Introduction and application

1.1 The purpose of this Condition is to ensure that:

- (1) the financial affairs of the Appointed Business can be assessed and reported on separately from other businesses and activities of the Appointee, as if its sole business consisted of being a sewerage undertaker having its equity share capital listed on the London Stock Exchange PLC;
- (2) information on revenues, costs, assets and liabilities attributable to specified activities of the Appointed Business can be provided and reported on;
- (3) transactions between the Appointed Business and any other business or activity of the Appointee or any Associated Company can be assessed and reported on;
- (4) there is no cross-subsidy between the Appointed Business and any other business of the Appointee or between the Appointed Business and any Associated Company; and
- (5) the Water Services Regulation Authority is furnished with regular accounting and other information to enable it to compare the financial position and performance (including, without limitation, costs) of the Appointed Business and of so much of the respective businesses and activities of all other undertakers holding appointments made under Chapter I of Part II of the Water Industry Act 1991 as consists of the carrying out of the Regulated Activities.

1.2 Paragraphs 5, 7 and 8 of this Condition shall not apply until the Water Services Regulation Authority has given notice to the Appointee of their application.

2. Interpretation and construction

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

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

"infrastructure assets" means

- (1) **network assets**; and
- (2) all of the following:
 - (a) [not used]
 - (b) [not used]
 - (c) [not used]
 - (d) sludge pipe lines; and
 - (e) outfall pipes and other pipes for the conveyance of effluent from any sewage disposal works of the Appointee which discharge directly into the sea or coastal waters;

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

"network assets" means

- (a) public sewers (other than any pumps);
- (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;

"Principal Services" means

(1) [not used]

(2) **sewerage services;**

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

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

2.3 For the purposes of this Condition:

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

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

(b) any currency including sterling;

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

(3) references to a transfer of an asset or liability include references to a part transfer of an asset or liability and, without limitation, there is a part transfer of an

asset where an interest or right in or over the asset is created.

3. **Accounting records**

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

4. **Accounting Statements**

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

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

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

4.2 Accounting statements prepared under sub-paragraph 4.1 shall:

- (1) so far as reasonably practicable having regard to the purposes of this Condition, have the same content as the annual accounts of the Appointee prepared under the Companies Act 2006 and be prepared in accordance

with the formats and the accounting policies and principles which apply to those accounts; and

(2) state the principal accounting policies applied.

5. Segmental Information

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

(1) an analysis of total operating costs (excluding interest and taxation) of the Appointed Business showing separately:

- (a) manpower costs;
- (b) other costs of employment;
- (c) power;
- (d) local authority rates;
- (e) water charges (including abstraction charges and amounts payable for taking supplies of water in bulk);
- (f) local authority sewerage agencies;
- (g) materials and consumables;
- (h) hired and contracted services;
- (i) charges for bad and doubtful debts;
- (j) depreciation and amortisation (where charged);
- (k) intangible assets written off;

- (l) infrastructure renewals expenditure;
- (m) exceptional items; and
- (n) on an aggregated basis, all other operating costs.

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

- (2) an analysis of total turnover of the Appointed Business showing separately turnover attributable to:
 - (a) on an aggregated basis, sewerage and sewage treatment and disposal (excluding reception, treatment and disposal of trade effluent), distinguishing in each case between the provision of those services on a measured and unmeasured basis respectively;
 - (b) on an aggregated basis, reception, treatment and disposal of trade effluent;
 - (c) grants; and
 - (d) on an aggregated basis, all other sources;
- (3) an analysis of total tangible fixed assets attributable to the Appointed Business showing separately:
 - (a) for each of the items included in the annual accounts of the Appointee prepared under the Companies Act 2006 required to be disclosed under section B of Part I of Schedule 4 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008; or
 - (b) for each of the items included in such other analysis of tangible fixed

assets by asset type as is disclosed in those annual accounts; and

- (c) if not separately disclosed in those annual accounts, for infrastructure assets

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

The analysis shall include:

- (i) the details reasonably necessary to reconcile the tangible fixed assets shown in it with the tangible fixed assets shown in the analysis prepared under this sub-paragraph in respect of the immediately preceding financial year (including details of grants);
 - (ii) a statement of any assets which have been re-classified as current assets during the relevant financial year; and
 - (iii) to the extent that information is required to be given in respect of any of the items included in the annual accounts of the Appointee prepared under the Companies Act 2006 referred to in this sub-paragraph 5.1(3) by virtue of Part III of Schedule 4 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008, the same information in respect of those items; and
- (4) details necessary to reconcile expenditure made or incurred in relation to infrastructure assets with the expenditure made or incurred in relation to network assets during the same financial year.

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

5.3 The Water Services Regulation Authority may, after consulting with such bodies as are reasonably representative of undertakers holding appointments made under Chapter 1 of Part II of the Water Industry Act 1991 or, if none, the Appointee, from time to time by reasonable notice to the Appointee specify in such guidelines as are reasonable and appropriate for the purpose set out in sub-paragraph 1(5), variations of:

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

and thereafter the Appointee shall show or disclose information under sub-paragraph 5.1(1) in respect of those matters or, as the case may be, shall prepare the analysis under sub-paragraph 5.1(3) in respect of those items, in each case as so varied from time to time.

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

6.1 [Not Used]

6.2 Subject to sub-paragraphs 6.3 to 6.7, accounting statements prepared under paragraph 4 shall disclose in relation to each transaction of a description specified in the first column of the Appendix to this Condition which took place during the financial year to which those statements relate, the company or, as the case may be, the business or activity which was party to the transaction with the Appointee or, as the case may be, the Appointed Business or which otherwise benefited from the transaction and the information in relation to that transaction specified in the second column of that Appendix.

6.3 Subject to sub-paragraph 6.4, any amount required to be disclosed in relation to a transaction specified in paragraph 3, 4, 5, or 6 of the Appendix may be aggregated

with any amount relating to any other transaction falling within the same paragraph with the same company or other business or activity of the Appointee.

- 6.4 Subject to sub-paragraph 6.7, if the amount to be disclosed under sub-paragraph 6.2 in respect of any single transaction between the Appointee and any Associated Company (or between the Appointed Business and any other business or activity of the Appointee) exceeds 0.5% of the turnover of the Appointed Business, or £100,000, whichever is the greater, then that transaction shall not be aggregated under sub-paragraph 6.3 and the Appointee shall include in any accounting statement prepared under paragraph 4 the information about that transaction which is specified in the Appendix in relation to a transaction of that kind and which complies with any guidelines issued by the Water Services Regulation Authority for this purpose.
- 6.5 The Appointee shall, when submitting accounting statements prepared under paragraph 4 to the Water Services Regulation Authority, report to it the turnover of any Associated Company with which the Appointed Business has undertaken any transaction of any kind specified in the Appendix.
- 6.6 Nothing in sub-paragraph 6.2 shall require the disclosure of any information if the aggregate of any amounts required to be disclosed under paragraphs 3, 4, 5 and 6 of the Appendix relating to transactions with the same company or other business or activity of the Appointee is not material to the Appointed Business as a whole. For the avoidance of doubt, if the aggregate of such amounts is material to the Appointed Business as a whole then information shall be disclosed in accordance with this paragraph and the Appendix in relation to each such transaction (subject always to sub-paragraph 6.3). For the purpose of this sub-paragraph the question whether an amount is material to the Appointed Business as a whole shall be determined by the Auditors by reference to whichever is the greater of:
- (1) The book value of the asset or liability the subject of, or affected by, the transaction; and
 - (2) The consideration or other charge given, paid or waived.
- 6.7 Nothing in this paragraph 6 or the Appendix shall require the disclosure of information

which relates solely to a transaction wholly unconnected with the Appointed Business.

6.8 The Appointee shall not, in respect of any Charging Year, make any payments to any Associated Company in respect of the services rendered to the Appointee by that company, which exceeds:

- (i) such prices in respect of the service in question which the Appointee has ascertained by market testing in accordance with such arrangements as the Water Services Regulation Authority may have approved for the purpose of this paragraph and as set out in Regulatory Accounting Guideline 5 (Transfer Pricing in the Water and Sewerage Industry) or any revision or modification of it for the time being in force, provided that those arrangements have no prejudicial effect upon the proper carrying out of the Appointee's functions or any of them; or
- (ii) if, in the opinion of the Water Services Regulation Authority, the Appointee has demonstrated that market testing as described in (i) above is inappropriate, such proportion as the Water Services Regulation Authority may agree of the Associated Company's costs in providing to the Appointee the service in question (including a reasonable return to the Associated Company).

7. Basis of allocations and apportionments

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

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

- (1) describe the basis of any apportionment or allocation of revenues, costs, assets and liabilities between the Appointed Business and any other business or activity

of the Appointee or between the Appointee and any Associated Company;

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

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

8. Current Cost Accounting Statements

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

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

- (1) specify the form and content of current cost accounting statements, including information on specified types of revenue, cost, asset or liability and information

on the revenues, costs, assets and liabilities attributable to specified activities, provided that the guidelines may not require the Appointee to disclose information in such current cost accounting statements in respect of items in respect of which the Appointee is not required to give information in accounting statements prepared under paragraph 4 from time to time;

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

9. Audit and publication of accounting statements

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

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

reasonably attributable to, the businesses and activities mentioned in paragraph 4; and

(3) in respect of each set of accounting statements prepared under paragraph 8, a statement of opinion as to such other matters as may be specified in the guidelines applying to those accounting statements.

9.2 The Appointee shall enter into a contract of appointment with the Auditors which shall include a term that the Auditors will provide such further explanation or clarification of their reports, and such further Information in respect of the matters which are the subject of their reports, as the Water Services Regulation Authority may reasonably require.

9.3 The Appointee shall deliver to the Water Services Regulation Authority a copy of each set of accounting statements prepared under this Condition and of each report referred to in sub-paragraph 9.1 as soon as reasonably practicable and in any event not later than 15th July following the end of the financial year to which they relate.

9.4 Accounting statements prepared under this Condition (excluding the information required to be disclosed under sub-paragraphs 5.1(4) and 5.2, paragraph 6 and sub-paragraphs 7.1 and 7.2 and any information exempted from this sub-paragraph from time to time by the Water Services Regulation Authority by notice to the Appointee), together with the Auditors' reports delivered to the Water Services Regulation Authority under sub-paragraph 9.3 in respect of those accounting statements (but excluding any part of any such report to the extent that it relates specifically to any information excluded or exempted from this sub-paragraph as aforesaid), shall be published with the annual accounts of the Appointee prepared under the Companies Act 2006 or, at the Appointee's option, with the annual accounts of its holding company prepared under the Companies Act 2006 and copies thereof made available upon request to customers.

10. **Guidelines and references to the Competition and Markets Authority**

10.1 The Appointee may, by notice given to the Water Services Regulation Authority within 1 month of the date of any such notice or notification as is referred to in paragraphs 5,

6, 7 and 8, require the Water Services Regulation Authority to refer to the Competition and Markets Authority for determination by it the question whether the guidelines the subject of the relevant notice or notification are appropriate and reasonable for the purposes specified in the relevant paragraph.

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

APPENDIX

COLUMN 1	COLUMN 2
<p>1 Any borrowings or sums lent:</p> <p>(a) by or to the Appointed Business to or by any other business or activity of the Appointee; or</p> <p>(b) by or to the Appointee to or by any Associated Company.</p>	<p>1. The principal of the amount borrowed or lent, the date on which or the dates between which repayment is to be made and the rate of interest payable.</p>
<p>1A Any dividend paid to any Associated Company.</p>	<p>1A The basis on which the dividend has been established.</p>
<p>2. The giving of any guarantee or any other form of security by the Appointee for or in respect of any obligations of any Associated Company.</p>	<p>2. The form of the guarantee or other security given, the assets the subject of the security, the amount of the obligation (including where relevant the rate of interest payable) and the date of maturity of the obligation.</p>
<p>3. The transfer of any asset or liability:</p> <p>(a) to or by the Appointee by or to an Associated Company; or</p> <p>(b) to or by the Appointed Business by or to any other business or activity of the Appointee.</p>	<p>3. The asset or liability the subject of the transfer, the amount of the consideration for the transfer and the value attributed to the asset or liability in the accounting records kept by the Appointee.</p>
<p>4. The supply of any service by or to the Appointee to or by an Associated Company or by or to the Appointed</p>	<p>4. The nature of the service supplied, the terms on which it was supplied and the total charge made for the service.</p>

Business to or by any other business or activity of the Appointee.	
5. The omission by the Appointee or any Associated Company to exercise a right as a result of which the value* of the aggregate assets less the aggregate liabilities ("net assets") of the Appointee is decreased.	5. The company omitting to exercise the right and the amount by which the value* of the net assets of the Appointee is decreased.
6. The waiver by the Appointee or the Appointed Business of any consideration, remuneration or other payment owed to it by any Associated Company or other business or activity of the Appointee.	6. The amount of the consideration, remuneration or payment waived.

*For this purpose the value shall be taken to be the value attributed to the relevant items in the accounting records kept by the Appointee or, in the case of an interest in land or buildings which is affected by the omission, the open market value of that interest.

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

1 Customer Information

- 1.1 The Appointee must, at all times, have a code of practice (the “Customer Code”) in place that complies with this Condition.
- 1.2 The Customer Code must identify for customers:
- (1) the nature of the Information which the Appointee makes available to its customers;
 - (2) how the Appointee makes Information available to its customers; and
 - (3) how the Appointee keeps the adequacy of the Information it provides to customers under review.
- 1.3 Information that must be made available to customers includes:
- (1) a description of the services provided by the Appointee to domestic customers;
 - (2) the tariffs that apply for domestic customers and such other terms on which services to domestic customers are provided as the Appointee considers appropriate;
 - (3) arrangements for the payment of bills by domestic customers including information about payment by instalments and budget plans;
 - (4) details of the Appointee’s complaint handling procedure for domestic customers established by the Appointee under paragraph 1.7;
 - (5) guidance for domestic customers who have difficulty paying their bills;
 - (6) a description of the Appointee’s range of procedures that it may adopt to collect outstanding debt from domestic customers;
 - (7) information on the testing of meters;
 - (8) information on what customers should do in cases of emergency and when making enquiries of the Appointee; and
 - (9) a description of the functions of the Consumer Council for Water under the Water Industry Act 1991 and informing customers where they can contact the Consumer Council for Water.

2. Modification of Customer Code

- 2.1 The Appointee must, not less frequently than once every three years and if and whenever requested to do so by the Authority but not more frequently than once a year, review the Customer Code and the manner in which it has operated, with a view to determining whether any modification should be made to it or to the manner of its operation.
- 2.2 In carrying out any review of, or making any substantive revision of, the Customer Code or its operation (whether under paragraph 2.1 or otherwise) the Appointee must consult the Consumer Council for Water and must consider any representations made by it about the Customer Code or the manner in which it is likely to be or, as the case may be, has been operated.
- 2.3 The Appointee must make any modification to its Customer Code as the Water Services Regulation Authority, after prior consultation with the Appointee, may specify in order to ensure that the Customer Code complies with the requirements specified in paragraph 1.

3. Dealings with customer

3.1 The Appointee must:

- (1) send a copy of the Code and each revision of it to the Water Services Regulation Authority and to the Consumer Council for Water;
- (2) draw the attention of domestic customers to the existence of the Code and each substantive revision of it and how they may inspect or obtain a copy of the Code in its latest form;
- (3) with every demand for payment of charges, provide those customers whose charges are fixed by reference to metered volume, information on the testing of meters;
- (4) make a copy of the Code in its latest form available on its website; and
- (5) send a copy of the Code in its latest form free of charge to any person requesting it.

- 3.2 Within two months of this Condition applying, the Appointee must establish a procedure for handling complaints from customers about the manner in which the Appointee carries out the Regulated Activities, which shall include particulars of the training to be given to staff in the handling of complaints.

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

4 Meetings with the Regional Committee

4.1 The Appointee must:

- (1) meet the Regional Committee, at the request of the Regional Committee, at least once in each Charging Year; and
- (2) meet the Regional Committee on such further occasions as may be reasonably requested by the Regional Committee.

4.2 The Appointee must ensure that, at least once in each Charging Year, it is represented by at least one Director of the Appointee at a meeting with the Regional Committee.

Condition H: [Not used]

Condition I: Procedure on leakage

Where the Appointee is informed by any water undertaker that the water undertaker is required to make an adjustment to a customer's measured charges for a supply of water to any premises in relation to which the Appointee provides sewerage services, the Appointee shall make an adjustment to the customer's measured charges for sewerage services on a basis similar to that made by that water undertaker.

Condition J: [Not used]

Condition K: [Not used]

Condition L: [Not used]

Condition M: Provision of Information to the Water Services Regulation Authority

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

Condition is sufficient for the relevant purposes of that Condition but this presumption shall be rebutted, and shall not limit the right of the Water Services Regulation Authority to call for further Information under paragraph 1, if it states in writing that in its opinion such Information is or is likely to be necessary for the purpose of carrying out any of its functions under the Water Industry Act 1991.

Condition N: Fees

1 Introduction

The purpose of this Condition is to provide for the payment of fees in relation to costs incurred by the Water Services Regulation Authority, the Consumer Council for Water and the Competition and Markets Authority.

2 Fees

2.1 The Appointee must pay to the Secretary of State:

- (a) the Annual General Fee;
- (b) the Consumer Council Fee;
- (c) any Fee for costs incurred by the Competition and Markets Authority;
- (d) any Special Fee; and
- (e) any Interim Determination Fee

no later than 30 days after having been notified by the Water Services Regulation Authority of the amount payable.

2.2 The Appointee is not required to pay any of the above Fees more than once in each Charging Year.

3 Cap on Annual General and Special Fees

3.1 Unless sub-paragraph 3.5 applies, the aggregate of the Annual General Fees and any Special Fees payable by the Appointee must not exceed the Regulation Fee Cap.

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

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

3.3 For the purposes of sub-paragraph 3.2:

“Relevant Five Year Period” means:

- (i) the period from 1 April 2015 to 31 March 2020; and
- (ii) every subsequent period of five consecutive Charging Years;

“S” is for any Charging Year the amount of £11.9 million increased by the proportion by which the Retail Prices Index for the November immediately preceding the Charging Year differs from the Retail Prices Index for November 1998;

“t” means, in relation to a payment to be made in a Charging Year, an amount equal to the turnover of the Appointed Business as shown in the accounting statements prepared by the Appointee pursuant to the conditions of the Appointments for the twelve month period ending twelve months before the start of the Charging Year;

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

- (i) the turnover of the Appointed Business as shown in the accounting statements prepared by the Appointee pursuant to the conditions of the Appointments; and
- (ii) the turnover of the appointed businesses of all other companies holding an appointment as a relevant undertaker as shown in their accounting statements prepared pursuant to the equivalent provisions of their appointments,

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

“Y” is an amount equal to 0.3% of the average annual turnover of the Appointed Business, as shown in the accounting statements prepared by the Appointee pursuant to the conditions of the Appointments, over the five consecutive Charging Years preceding the Relevant Five Year Period.

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

3.5 Where:

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

the Regulation Fee Cap set out in sub-paragraphs 3.2 and 3.3 above shall be modified to the extent required to give necessary effect to any such determination.

4 Annual General Fee

The Annual General Fee is, in relation to a payment to be made in a Charging Year, an amount determined by the Water Services Regulation Authority which represents a fair proportion of the Water Services Regulation Authority’s estimation of the costs likely to be incurred by it in the Charging Year in the regulation and enforcement of the appointments of relevant undertakers and in the carrying out of its other functions under the Water Industry Act 1991 (including the preparation for or the carrying out of a Periodic Review), provided that:

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

5 Consumer Council Fee

5.1 The Consumer Council Fee is in relation to a Charging Year:

- (i) an amount equal to $G \times (t / T)$; or
- (ii) such greater amount as is necessary to give effect to a direction given to the Water Services Regulation Authority by the Secretary of State under section 37(8) of the Water Act 2003;

5.2 For the purposes of sub-paragraph 5.1:

“**G**” is for any Charging Year the amount of £5.7 million increased by the proportion by which the Retail Prices Index for the November immediately preceding the Charging Year differs from the Retail Prices Index for November 2005;

“**t**” means, in relation to a payment to be made in a Charging Year, an amount equal to the turnover of the Appointed Business as shown in the accounting statements prepared by the Appointee pursuant to the conditions of the Appointments for the twelve month period ending twelve months before the start of the Charging Year; and

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

- (i) the turnover of the Appointed Business as shown in the accounting statements prepared by the Appointee pursuant to the conditions of the Appointments; and
- (ii) the turnover of the appointed businesses of all other companies holding an appointment as a relevant undertaker as shown in their accounting statements prepared pursuant to the equivalent provisions of their appointments,

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

6 Fee for costs incurred by the Competition and Markets Authority

The Fee for costs incurred by the Competition and Markets Authority is, in relation to a payment to be made in a Charging Year, an amount determined by the Water Services Regulation Authority which is the sum of:

- (i) the Water Services Regulation Authority's estimation, after consulting the Competition and Markets Authority, of the costs incurred by the Competition and Markets Authority in the previous twelve months in relation to references under section 12 of the Water Industry Act 1991 (if the question or matter referred concerned the review of a price control imposed in relation to the Appointed Business) and under section 14 of the Water Industry Act 1991 (if any reference was solely in relation to the Appointed Business); and
- (ii) a fair proportion of the Water Services Regulation Authority's estimation, after consulting the Competition and Markets Authority, of the costs incurred by the Competition and Markets Authority in the previous twelve months in relation to references under section 14 of the Water Industry Act 1991 (if any reference was in relation to the Appointed Business and the businesses of other companies holding an appointment as a relevant undertaker),

provided that any fair proportion must be determined in accordance with a method which the Water Services Regulation Authority has disclosed to the Appointee in writing.

7 Special Fee

The Special Fee is, in relation to a payment to be made in a Charging Year, an amount determined by the Water Services Regulation Authority which represents a fair proportion of the Water Services Regulation Authority's estimation of any costs already incurred or likely to be incurred by the Water Services Regulation Authority in the Charging Year in the regulation and enforcement of the appointments of relevant undertakers and in the carrying out of its other functions under the Water Industry Act 1991 (including the preparation for or the carrying out of a Periodic Review) that exceed, or were not included in, the estimate used by the Water Services Regulation Authority to determine the Annual General Fee for the Charging Year, provided that:

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

8. Interim Determination Fee

The Interim Determination Fee is, in relation to a payment to be made in a Charging Year, an amount determined by the Water Services Regulation Authority which represents the Water Services Regulation Authority's estimation of any costs already incurred or likely to be incurred by the Water Services Regulation Authority in the Charging Year in relation to any determination by the Water Services Regulation Authority under Part IV (Interim Determinations) of Condition B.

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

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

Condition P: Regulatory ring-fence

1 Introduction

1.1 The purpose of this Condition is to ensure that:

- (a) the Appointed Business is conducted as if it is substantially the Appointee's sole business and it is a public limited company separate from any other business carried out by the Appointee;
 - (b) the Appointee retains sufficient rights and assets and has in place adequate financial resources and facilities, management resources and systems of planning and internal controls;
 - (c) any transfers or transactions entered into by the Appointee do not adversely affect the Appointee's ability to carry out the Regulated Activities;
- and
- (d) the Appointee demonstrates that it is complying with the requirements of this condition.

2 Conduct of the Appointed Business

2.1 The Appointee must, at all times, conduct the Appointed Business as if the Appointed Business were:

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

2.2 For the purposes of paragraph 2.1, the Appointee must have regard in particular to:

- (a) whether the composition of the Board of the Appointee is such that the directors of the Appointee act exclusively in the interests of the Appointee and independently of the Ultimate Controller and any United Kingdom Holding Company of the Appointee;

- (b) whether a director of the Appointee discloses, to the Appointee and to the Authority, any conflict between the director's duties as such a director and any other duty held by the director;
- (c) whether, in any case where the interests of the Appointee have the potential to conflict with the interests of a Group Company, the directors of the Appointee have regard exclusively to the interests of the Appointee in carrying out their duties;
- (d) whether directors of the Appointee are prevented from voting on a decision of the Board where the director has an interest in the decision by virtue of another directorship and whether this is underpinned by the Appointee's articles of association; and
- (e) the UK Corporate Governance Code.

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

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

3.1 The Appointee must ensure that, at all times:

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

3.2 The Appointee must ensure that any undertaking given pursuant to paragraph 3.1 provides that :

- (a) those persons providing the undertakings will, and will procure that each of their subsidiaries (other than the Appointee and its subsidiaries) will give to the Appointee all such information as may be necessary to enable the Appointee to comply with its obligations under the Water Industry Act 1991 or the conditions of the Appointment;
- (b) those persons providing the undertakings will, and will procure that each of their subsidiaries (other than the Appointee and its subsidiaries) will refrain from any action which would or may cause the Appointee to breach any of its obligations under the Water Industry Act 1991 or the conditions of the Appointment;
- (c) those persons giving the undertakings will ensure that at all times after the Water Services Regulation Authority has given notice to the Appointee that it considers it appropriate the Board of the Appointee contains not less than two independent non-executive Directors, who shall be persons of standing with relevant experience and who shall collectively have connections with and knowledge of the areas within which the Appointee holds the Appointment and an understanding of the interests of the customers of the Appointee and how these can be respected and protected; and
- (d) those persons providing the undertakings will at all times immediately and on receipt of written demand from the Appointee make available or will procure that there are made available to the Appointee all necessary resources, including management and financial resources, personnel, fixed and moveable assets, rights, licences (but in respect of the latter to the extent that it is legally able) and facilities, on such terms and with all such rights as may be necessary to enable the Appointee to comply with its obligations under the Water Industry Act 1991 or the conditions of Appointment.

3.3 Where:

- (a) an undertaking required to be given by a person in accordance with paragraph 3.1 is not in place; or
- (b) there has been a breach of the terms of such an undertaking by the person that gave it and that breach has not been remedied,

the Appointee must not enter into any contract or arrangement with such a person or the subsidiaries of such a person other than subsidiaries of the Appointee, without the prior written approval of the Water Services Regulation Authority.

3.4 The Appointee must provide to the Water Services Regulation Authority such certified copies of any undertaking given pursuant to paragraph 3.1 as are requested by the Water Services Regulation Authority.

3.5 The Appointee must immediately inform the Water Services Regulation Authority in writing if the Appointee becomes aware that:

(a) an undertaking given by a person pursuant to paragraph 3.1 has ceased to be legally enforceable; or

there has been a breach of the terms of such an undertaking by the person that gave it.

4 Assets, rights and resources

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

(a) financial resources and facilities;

(b) management resources; and

(c) systems of planning and internal control,

to enable it to carry out the Regulated Activities.

4.2 The Appointee must ensure that, as far as reasonably practicable, it has available to it sufficient rights and resources other than financial resources so that if, at any time, a special administration order were to be made in relation to it, the special administrator would be able to manage the affairs, business and property of the Appointee in accordance with the purposes of the special administration order.

4.3 For the purposes of paragraph 4.2, the Appointee is not required to amend the terms of any legal obligation which has been transferred to it in accordance with a scheme made under Schedule 2 to the Water Industry Act 1991.

4.4 Where rights and resources which are required to be made available pursuant to paragraph 4.2 are made available by a Group Company, the Appointee must ensure that if, at any time, a special administration order were to be made in relation to it, the rights and resources would be available to the special administrator for the purpose set out in paragraph 4.2.

5 [Not used]

6 Transfer Pricing and Cross-Default Obligations

6.1 The Appointee must ensure that:

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

in accordance with Regulatory Accounting Guideline 5 (Transfer Pricing in the Water and Sewerage Industry) published by the Water Services Regulation Authority and revised from time to time.

6.2 The Appointee must provide the Water Services Regulation Authority with any Information about the costs of an Associated Company which provides services to the Appointee which the Water Services Regulation Authority reasonably requests.

6.3 The Appointee must not, without the prior approval of the Water Services Regulation Authority:

- (a) give a guarantee in relation to any liability of an Associated Company;
- (b) make a loan to an Associated Company; or

(c) enter into an agreement or other legal instrument incorporating a Cross-Default Obligation.

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

(a) prior approval has been given by the Water Services Regulation Authority; or

(b) the Cross-Default Obligation would only arise on a default by a subsidiary of the Appointee and the Appointee ensures that:

(i) the period for which the Cross-Default Obligation is in effect is not extended;

(ii) liability under the Cross-Default Obligation is not increased; and

(iii) no change is made to the circumstances in which liability under the Cross-Default Obligation may arise.

7 [Not used]

8 Dividend Policy

8.1 The Appointee must, at all times, have in place a dividend policy which effectively embodies:

(a) the principle that dividends declared or paid should not impair the ability of the Appointee to finance the Appointed Business; and

(b) the principle that dividends should be an incentive which is expected to reward efficiency and the management of economic risk,

and has been approved by the Board of the Appointee.

8.2 The Appointee must ensure that any dividends are declared or paid in accordance with the current dividend policy made in accordance with paragraph 8.1.

9 Ring-fencing Statement and Certificate

- 9.1 The Appointee must publish with its audited accounts for each twelve month period a statement as to whether or not (as at the end of the period) the Appointee has available to it sufficient rights and resources other than financial resources, as required by paragraph 4.2
- 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 Ring-fencing Certificate to the Water Services Regulation Authority.
- 9.3 Where the Board of the Appointee becomes aware any activity of the Appointee or any Group Company which does not form part of the Regulated Activities, and which may be material in relation to the Appointee's ability to finance the Regulated Activities, the Appointee must:
- (a) inform the Water Services Regulation Authority; and
 - (b) within fourteen days of becoming aware of the activity, submit a new Ring-fencing Certificate to the Water Services Regulation Authority.
- 9.4 Where the Board of the Appointee becomes aware of any circumstances which would change its opinion such that it would not give the opinion contained in the Ring-fencing Certificate, the Appointee must inform the Water Services Regulation Authority of this in writing.
- 9.5 Whenever the Appointee submits a Ring-fencing Certificate to the Water Services Regulation Authority, the Appointee must submit a statement of the main factors which the Board of the Appointee has taken into account in giving its opinion for the certificate.
- 9.6 A Ring-fencing Certificate must be:
- (a) signed by all directors of the Appointee on the date of submission; or
 - (b) approved at a meeting of the Board of the Appointee, convened in accordance with the Appointee's articles of association, in which case the certificate must:

- (i) be signed by a director of the Appointee or the Appointee's company secretary; and
- (ii) have appended to it a certified copy of the minutes of the approval.

10 Reporting of Material Issues

- 10.1 Where the Board of the Appointee becomes aware of any circumstance that may materially affect the Appointee's ability to carry out the Regulated Activities the Appointee must inform the Water Services Regulation Authority as soon as possible.

Condition Q: [Not used]

Condition R: Provision of combined and wholesale water supplies

1 – 4 [Not used]

Anti-competitive behaviour

5. (1) If and for so long as the Appointee is related to any Licensee it shall ensure that every transaction between the Appointed Business and that Licensee is at arm's length.
 - (2) For the purpose of this paragraph the Appointee is related to a 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 Water Services Regulation Authority if at any time it becomes, or ceases to be, related to a 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 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 Licensee; or
 - (b) a Licensee, as compared with any other Licensee or the Appointee itself.

Obligations about information

7. (1) Whenever the Appointee is -
- (a) negotiating with a Licensee the period for which and terms and conditions on which it might discharge any of its duties under sections 66A to 66C, or 117A to 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 Licensee in the course or contemplation of the discharge of its duties under sections 66A to 66C or 117A to 117B or in the course or contemplation of its dealings with or in relation to that Licensee under sections 66A to 66C or 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 Licensee.

(3) Without prejudice to the generality of sub-paragraphs (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 Licensee in the course or contemplation of the discharge of its duties under sections 66A to 66C or 117A to 117B or in the course or contemplation of its dealings with or in relation to that Licensee under sections 66A to 66C or 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 Water Services Regulation 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) 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 Water Services Regulation Authority where -
 - a. before issuing such guidance, the Water Services Regulation Authority has consulted such persons as it considers appropriate; and
 - b. the Water Services Regulation 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 Water Services Regulation Authority; and
 - (ii) may at any time revise it.
 - (d) If the Water Services Regulation 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 Water Services Regulation Authority, provided that the Water Services Regulation 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 Licensee such information as the Licensee reasonably requires –
- (a) to enable the licensed water supplier 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 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 Water Services Regulation Authority for its determination.
- (4) A reference under sub-paragraph (3) shall have the effect of suspending the requirement so referred pending the Water Services Regulation 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 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 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 Licensee agree; or
 - (ii) the Water Services Regulation 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 Water Services Regulation Authority has consulted such persons as it considers appropriate; and
 - (b) a "relevant notice" is a notice published in such manner as the Water Services Regulation Authority considers appropriate and served on the Appointee.
- (8) (a) The Appointee shall immediately inform each 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
 - (iii) 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 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 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 Licensee; or
 - (b) from a person supplied or seeking to be supplied by a Licensee;
- more information than the Appointee reasonably requires -
- (i) for the purposes of carrying out its functions;
 - (ii) to ascertain whether the 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.

Application

10. (1) This Condition shall not apply to the Appointee in the circumstances and to the extent set out in this paragraph.
- (2) Paragraphs 1 to 9 of this Condition shall not apply if and for so long as the Appointee has no supply system, as defined in section 17B(5) or no sewerage system as defined in section 17BA(7).
- (3) Subject to sub-paragraph (4), the Appointee shall notify the Water Services Regulation Authority as soon as it has a supply system, as defined in section 17B(5) or a sewerage system as defined in section 17BA(7).
- (4) If the Appointee has a supply system, as defined in section 17B(5), or a sewerage system as defined in section 17BA(7) on the Effective Date, it shall be deemed to have notified the Water Services Regulation Authority that it has a supply system or sewerage system at that date.

- (5) If and for such time as the Appointee has a supply system, as defined in section 17B(5) or a sewerage system as defined in section 17BA(7) -
- (a) the Appointee shall notify the Water Services Regulation Authority immediately of the fact and terms of each request the Appointee receives from a Licensee to provide a supply of water or to permit the introduction of water into the Appointee's supply system pursuant to section 66A, 66B or 66C; or pursuant to 117A to 117B to permit the use of the Appointee's sewerage system; and
 - (b) paragraphs 1 to 9 of this Condition shall apply only from and for such time and to such extent as may be specified by the Water Services Regulation Authority from time to time by relevant notice.
- (6) Under sub-paragraph (5)(a) –
- (a) a relevant notice shall not have effect unless, before making the relevant notice, the Water Services Regulation Authority has consulted the Appointee and such persons as it considers appropriate; and
 - (b) a "relevant notice" is a notice published in such manner as the Water Services Regulation Authority considers appropriate and served on the Appointee.

Condition R2: [Not used]

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:
- i. 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**”);
 - ii. 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;
 - iii. 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;
 - iv. 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;
 - v. 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
 - vi. 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.

Condition S: [Not used]



JH