

**WATER SERVICES REGULATION AUTHORITY**

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

**Modification of the Conditions of Appointment of South East Water Limited**

**Made on 17 December 2018**

**The modifications in Schedule 1 attached hereto will come into effect on 1 January 2019**

**The modifications in Schedule 2 attached hereto will come into effect on 1 March 2019**

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

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

**Aileen Armstrong**

**Senior Director**

## Schedule 1

1. **Condition A** is deleted in its entirety and is replaced with the following new condition:

### **“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 Appointment Date;
  - (3) words and expressions used in these Conditions shall have the same meaning as in any provision of the Water Industry Act 1991;
  - (4) references in these Conditions to sections and Schedules are references to sections of, and Schedules to, the Water Industry Act 1991; and
  - (5) references in these Conditions to paragraphs are references to paragraphs of the Condition in which the reference appears and references to sub-paragraphs are references to sub-paragraphs of the paragraph in which the reference appears.
- 2 In construing these Conditions:
  - (1) the heading or title of any Condition or of any paragraph of any Condition shall be disregarded; and
  - (2) any description of the purposes of a Condition shall be construed subject to the provisions of the rest of the Condition in which that description appears.
- 3 Unless the context otherwise requires, in these Conditions:

**"the Act"** means the Water Industry Act 1991;

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

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

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

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

**“Appointee’s customer”** means a customer of the Appointee who is not also a customer of a Licensee, and the expressions **“customer of the Appointee”** and **“Appointee’s own customer”** shall have the same meaning;

**“Appointee's Turnover Share”** means, in relation to a Charging Year, the amount calculated as  $t / T$  where:

- (a) **“t”** means an amount equal to the turnover of the Appointed Business as shown in the accounting statements prepared by the Appointee under Condition F for the twelve month period ending twelve months before the start of the Charging Year; and
- (b) **“T”** means an amount equal to the sum of the turnover of the appointed businesses of all relevant undertakers, including the Appointee, as shown in their accounting statements prepared under Condition F, and the provisions of appointments which are equivalent to Condition F, for the twelve month period ending twelve months before the start of the Charging Year;

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

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

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

**“Bespoke Charge”** means any charge fixed or agreed by the Appointee, in respect of any customer of the Appointee, which is not a Class Charge;

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

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

**“Class Charge”** means any charge fixed or agreed by the Appointee which applies to a particular class of the Appointee's customers;

**"the Consumer Prices Index (H)"** means the all items Consumer Prices Index including owner occupiers’ housing costs published by the Statistics Board;

**“customer”** means any person who is provided with water or sewerage services by the Appointee either directly or indirectly via a Licensee, but does not include a Licensee acting in its capacity as such;

**"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;

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

"**Eligible Premises**" has the meaning given in the Wholesale-Retail Code (as amended from time to time);

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

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

"**Household Premises**" has the meaning given in the Wholesale-Retail Code (as amended from time to time);

"**Infrastructure Charge**" means a Water Infrastructure Charge or a Sewerage Infrastructure Charge;

"**Information**" means information which the Appointee:

- (a) holds;
- (b) can reasonably obtain; or
- (c) can reasonably prepare from information which it holds or can reasonably obtain;

"**Licensee**" means the holder of a water supply licence or a sewerage licence granted by Ofwat under (respectively) section 17A or section 17BA of the Water Industry Act 1991;

"**Metered Charges**" means charges for services that are based wholly or partly on measured quantities of volume of water supplied;

"**Ofwat**" means the Water Services Regulation Authority;

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

**“potential customer”** means any person who is capable of becoming a customer on making an application for that purpose to either the Appointee or a Licensee;

**“Prior Five Year Period”** means the period of five consecutive Charging Years immediately before the Relevant Five Year Period;

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

**"Reference Notice"** means a notice given to Ofwat under paragraph 10 or 13 of Condition B;

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

**"Related Company"** means any 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 or which has such a participating interest in the Appointee or any Group Company;

**“Relevant Five Year Period”** means, as the context requires:

- (a) the period from 1 April 2015 to 31 March 2020; or
- (b) the subsequent period of five consecutive Charging Years starting on the relevant five year anniversary of 1 April 2015;

**"the Relevant Index”** means –

- (a) for any period before 1 April 2020, the Retail Prices Index,
- (b) for any period including, or after, 1 April 2020, the Consumer Prices Index (H),
- (c) in any year where the Statistics Board has not published the index to be applied by 31 December, such index for such month as Ofwat may not later than the following 7 January determine to be appropriate in all the circumstances after such consultation with the Appointee as is reasonably practicable;

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

**"the Retail Prices Index"** means the Retail Prices Index published by the Statistics Board each month in respect of all items or, if the said index for the month of November is not published by 31 December next following, such index for such month as Ofwat may not later than 7 January next following determine to be appropriate in the

circumstances, after such consultation with the Appointee as is reasonably practicable, and in such a case references to the Retail Prices Index shall be construed for the purpose of all subsequent calculations for which the value of the Retail Prices Index for that year is relevant as references to that other index;

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

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

"**Statistics Board**" has the same meaning as in the Statistics and Registration Service Act 2007;

"**Supply Pipe**" means that part of the service pipe which is not owned by the Appointee;

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

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

"**Wholesale-Retail Code**" means the code issued by Ofwat pursuant to sections 66DA and 117F of the Water Industry Act 1991.

- 4 Any notification required or permitted to be given under any Condition shall be given in writing and cognate expressions shall be construed accordingly.
- 5 The Appointee may refer to Ofwat for determination by it (having considered any representations by the Appointee and any other water undertaker) any question arising as to whether any area, island, premises or installation is, or, as the case may be, are, comprised within the Area."

2. Paragraph 9 of **Condition C** is deleted.
3. **Condition D** is deleted in its entirety and is replaced with the following new condition:

### **“Condition D: New connections**

#### **Introduction**

This condition requires that, where the Appointee makes a new connection to one of its water mains, the Appointee must provide specified information to any separate sewerage undertaker for the premises.

#### **Informing sewerage undertakers of connections**

- D1 Where the Appointee connects premises to a water main which is owned by the Appointee, and the drainage of those premises is into a public sewer owned by a sewerage undertaker which is not the Appointee, the Appointee must as soon as reasonably practicable inform that sewerage undertaker of:
- D1.1 the address of the premises;
  - D1.2 the date of the connection; and
  - D1.3 to the extent known to the Appointee:
    - D1.3.1 the name and address of the person who is liable to pay charges for the supply of water to the premises; and
    - D1.3.2 the name and address of any other person who is liable to pay Infrastructure Charges in respect of the premises.”

4. **Condition E** is deleted in its entirety and is replaced with the following new condition:

**“Condition E: Undue Preference/Discrimination in Charges**

**Introduction**

This condition requires that the Appointee must not set its charges in a way which results in undue preference in favour of, or undue discrimination against, any of its customers or potential customers. This condition also sets out a number of limits to this requirement.

**Requirement not to show undue preference or undue discrimination**

- E1 Subject to paragraphs E2 to E4, in fixing or agreeing any charges for the carrying out of the Regulated Activities (whether Class Charges or Bespoke Charges), the Appointee must not show undue preference to, or exercise undue discrimination against:
- E1.1 any class of customers or potential customers of the Appointee;
  - E1.2 any particular customer in relation to whom the Appointee has fixed or agreed a Bespoke Charge; or
  - E1.3 any potential customer in relation to whom the Appointee has offered to fix or agree a Bespoke Charge.

**Limits to requirement not to show undue preference or exercise undue discrimination**

- E2 Paragraph E1 shall not apply to the fixing or agreeing of:
- E2.1 any charge which is an Infrastructure Charge the amount of which is subject to a limit set out in Condition C (Infrastructure Charges);
  - E2.2 any charge which is determined by terms or conditions of an agreement that was:
    - E2.2.1 entered into by the Water Authority and transferred to the Appointee in accordance with a scheme under Schedule 2 to the Water Act 1989; or
    - E2.2.2 entered into by the Appointee before the transfer date but continuing in effect after that date;
  - E2.3 any charge which is determined by:



- E2.3.1 where the Appointee is a water undertaker, terms or conditions on which any supply of water in bulk is given by the Appointee to another water undertaker; or
  - E2.3.2 where the Appointee is a sewerage undertaker, terms or conditions on which any main connection by another sewerage undertaker is permitted into the Appointee's sewerage system;
- E2.4 any charge which is determined by terms or conditions determined by Ofwat (or by a person appointed by Ofwat) under section 56 of the Water Industry Act 1991;
- E2.5 any charge which is determined by conditions imposed by Ofwat under section 122 of the Water Industry Act 1991; or
- E2.6 any charge which is determined by the provisions included in any notice served by the Environment Agency or Natural Resources Wales under section 132 of the Water Industry Act 1991 or anything required to be done by the Appointee under section 133 of the Water Industry Act 1991 so as to secure compliance with those provisions.
- E3 In fixing or agreeing any charges in compliance with paragraph E1, the Appointee is not required to consider any charges referred to in paragraph E2.
- E4 Paragraph E1 shall not require the Appointee to take any action in contravention of any local statutory provision.”

5. **Condition G** is deleted in its entirety and is replaced by the following new condition:

### **“Condition G: Core Customer Information**

#### **Introduction**

This condition requires the Appointee to publish and make available specified information for customers. It also requires the Appointee to have a complaints handling procedure and to provide specified information with its bills.

#### **Core Customer Information**

- G1 The Appointee must maintain information in written form for customers (the **Core Customer Information**) in accordance with this condition.
- G2 The Core Customer Information must include, in relation to all customers, a description of:
- G2.1 how customers can contact the Appointee, and what customers should do, in the event of an emergency;
  - G2.2 the means by which customers may identify officers authorised by the Appointee when those officers visit customers' premises;
  - G2.3 the arrangements which the Appointee has in place for the testing of meters and any charge which may be payable for such testing;
  - G2.4 the charges which the Appointee may levy where metered premises have been vacated; and
  - G2.5 the offences set out in section 175 of the Water Industry Act 1991 (offence of tampering with meter).
- G3 The Core Customer Information must include, in relation to customers whose premises are not Eligible Premises, a description of:
- G3.1 how those customers can contact the Appointee to make general enquiries;
  - G3.2 the role of the Consumer Council for Water and how those customers can contact it;
  - G3.3 the services provided to those customers by the Appointed Business;

- G3.4 the terms on which those services are provided, including the charges levied for the services;
  - G3.5 the payment methods available to customers in respect of those charges, including payment by instalments and budget plans;
  - G3.6 the Complaints Handling Procedure which applies for those customers; and
  - G3.7 any independent dispute resolution scheme which is in place for resolving disputes between the Appointee and those customers and how customers can access the scheme.
- G4 The Core Customer Information must include guidance for customers whose premises are not Eligible Premises who are having difficulty paying their bills and a description of the procedures which the Appointee may apply to collect outstanding debt from those customers.
- G5 The Core Customer Information must include, in relation to Domestic Customers, the procedures which the Appointee applies in relation to leakage (in accordance with Condition H) and the charges which the Appointee may levy where there is an unidentified leak on the Supply Pipe at metered Domestic Premises.

#### **Publication of the Core Customer Information**

- G6 The Appointee must:
- G6.1 publish the Core Customer Information, presenting it in a manner which is effective, accessible and clear as a means of informing customers;
  - G6.2 publicise the Core Customer Information to its customers; and
  - G6.3 where any customer requests information which is part of the Core Customer Information, provide that information to the customer in writing.

#### **Revising the Core Customer Information**

- G7 The Appointee must ensure that the Core Customer Information is accurate and up to date.
- G8 The Appointee must review the Core Customer Information as a whole and, where necessary, revise it:
- G8.1 at least once every three years; and

- G8.2 whenever requested to do so by Ofwat, provided that such a request may not be made more than once in each year.
- G9 In carrying out any review under paragraph G8, the Appointee must consider whether the content of the Core Customer Information remains appropriate and whether the manner in which the Core Customer Information is published is effective.
- G10 Whenever it undertakes a review of the Core Customer Information under paragraph G8 or proposes to make any substantive revision to the Core Customer Information or the manner in which it is presented, the Appointee must consult the Consumer Council for Water and take its representations into account before (as the case may be) completing the review or making the revision.
- G11 Where a revision is made to the Core Customer Information or the manner in which it is presented, the Appointee must inform the Consumer Council for Water of the revision which has been made and of how the revised Core Customer Information may be accessed.
- G12 Where a revision is made to the Core Customer Information, the Appointee must publicise the revised Core Customer information to its customers.

#### **Inclusion of information with bills**

- G13 The Appointee must:
- G13.1 with every bill for Metered Charges, inform the customer of how the Core Customer Information set out at paragraphs G2.3 to G2.5 may be accessed;
  - G13.2 with every bill for charges payable by a customer whose premises are not Eligible Premises, inform the customer of how the Core Customer Information set out at paragraph G4 may be accessed; and
  - G13.3 with every bill for Metered Charges payable by a Domestic Customer, inform the customer of how the Core Customer Information set out at paragraph G5 may be accessed.

#### **Complaints Handling Procedure**

- G14 The Appointee must establish, maintain and comply with a **Complaints Handling Procedure** for handling complaints from customers.”

6. **Condition H** is deleted in its entirety and is replaced with the following new condition:

### **“Condition H: Procedure on leakage**

#### **Introduction**

This condition sets out the procedure which the Appointee must follow in relation to leaks or potential leaks on Supply Pipes of Domestic Premises.

#### **Application**

- H1. The Appointee must follow the procedure set out in this condition in relation to customers whose premises are Domestic Premises.
- H2. In this condition, any reference to the Appointee making an adjustment to Metered Charges for water supply in respect of premises means:
- H2.1 in any case where the Appointee supplies water at the premises, making an adjustment to the Metered Charges payable by the customer for that supply; and
- H2.2 in any case where the premises are supplied by a Licensee with whom the Appointee has an agreement under section 66D of the Water Industry Act 1991, making an adjustment to the Metered Charges payable by the Licensee for that supply.
- H3. In this condition, any reference to the Appointee making an adjustment to Metered Charges for sewerage services in respect of premises means:
- H3.1 in any case where the Appointee provides sewerage services at the premises, making an adjustment to the Metered Charges payable by the customer for those services; and
- H3.2 in any case where the premises are provided with sewerage services by a Licensee with whom the Appointee has an agreement under section 117E of the Water Industry Act 1991, making an adjustment to the Metered Charges payable by the Licensee for those services.

#### **Checking for a leak on the Supply Pipe**

- H4. At the time of the installation of a meter at a customer’s premises, the Appointee must check the Supply Pipe between the meter and the customer's tap to detect whether there are any leaks.

- H5. Where, as a result of that check, a leak is detected on the Supply Pipe:
- H5.1 if the leak can be repaired without additional excavation at the time the meter is installed, the Appointee must repair the leak; and
  - H5.2 if the leak cannot be repaired without additional excavation at that time, the Appointee must notify the customer of the leak and either:
    - H5.2.1 repair the leak; or
    - H5.2.2 request that the customer repairs the leak at the customer's own expense.

**Adjustment of charges for water supply**

- H6. Paragraph H7 applies where, after a meter has been installed:
- H6.1 a meter reading indicates that there could be an undetected leak on the Supply Pipe; and
  - H6.2 such a leak is subsequently discovered.
- H7. Where this paragraph applies, the Appointee must make an adjustment to the Metered Charges for water supply in respect of the premises, subject to paragraphs H8 and H9.
- H8. The requirement to adjust Metered Charges under this condition is conditional on the leak being repaired within any reasonable period of time specified by the Appointee.
- H9. The Appointee is not required to make any adjustment to Metered Charges under this condition in relation to any leak:
- H9.1 detected following the repair of a previous leak in relation to which such an adjustment has been made;
  - H9.2 which was caused through the negligence of the customer, the owner of the Supply Pipe or anyone acting on behalf of either of them;
  - H9.3 where the Appointee has requested that a customer repairs the leak under paragraph H5.2.2 and the customer has failed to repair it; or
  - H9.4 which the customer otherwise knew or ought to have known about and failed to repair.

### **The amount of the adjustment of charges for water supply**

H10. In making an adjustment to the Metered Charges for water supply in respect of the premises under this condition:

H10.1 where the Appointee has a record of the customer's past consumption, the adjustment must be based on that consumption, and

H10.2 where the Appointee has no such record:

H10.2.1 the adjustment must be based on typical usage for properties of a similar type; and

H10.2.2 the Metered Charges in respect of the premises must be further adjusted if the customer's subsequent actual usage is significantly different.

### **Adjustment of charges for sewerage services**

H11. Where the Appointee is required to make any adjustment to the Metered Charges for water supply under this condition:

H11.1 if the Appointee is the sewerage undertaker for the premises, it must also make an adjustment to the Metered Charges for sewerage services in respect of the premises; and

H11.2 if another relevant undertaker is the sewerage undertaker for the premises, the Appointee must inform that undertaker as soon as reasonably possible of the adjustment the Appointee is required to make to the Metered Charges for water supply (specifying the basis on which the adjustment has been, or will be, made).

H12. The Appointee must also make an adjustment to the Metered Charges for sewerage services in respect of premises where:

H12.1 the Appointee is the sewerage undertaker for the premises; and

H12.2 the Appointee is informed by a water undertaker that the undertaker is required to make an adjustment to the Metered Charges for a supply of water to the premises (specifying the basis on which the adjustment has been, or will be, made).

H13. Where the Appointee is required to make any adjustment to Metered Charges for sewerage services under this condition, it must make that adjustment on a similar basis

to the adjustment being made to the Metered Charges for water supply in respect of the premises.”



7. **Condition I** is deleted in its entirety and is replaced by the following new condition:

### **“Condition I: Ring-fencing**

#### **Introduction**

The purposes of this Condition are to ensure that:

- (1) 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;
- (2) the transfer of assets (including the provision of financial support) to Associated Companies does not adversely affect the Appointee's ability to carry out its functions as a water undertaker or to finance those activities; and
- (3) the Appointee has at its disposal sufficient financial and managerial resources to carry out the Regulated Activities (including any investment programme necessary to fulfil its obligation under the Appointment).

#### **Interpretation and Construction**

I1. In this Condition and for the purposes of this Condition:

I1.1 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; and

I1.2 "**sewerage services**" includes sewage treatment and disposal and reception, treatment and disposal of trade effluent.

I2. 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.

I3. For the purposes of this Condition:

I3.1 all forms of property shall be assets, whether situated in the United Kingdom or not, including:

I3.1.1 options, debts and incorporeal property generally; and

- I3.1.2 any currency including sterling;
- I3.2 references to the supply of a service include references to anything (including the services of any employee) being made available; and
- I3.3 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.

**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**

- I4. The Appointee shall ensure that every transaction between the Appointed Business and any Associated Company (or between the Appointed Business and any other business or activity of the Appointee) is at arm's length, so that neither gives to nor receives from the other any cross-subsidy.
- I5. The Appointee shall not, in respect of any Charging Year, make any payment to any Associated Company in respect of the services rendered to the Appointee by that company, which exceeds:
  - I5.1 such prices in respect of the service in question which the Appointee has ascertained by market testing in accordance with such arrangements as Ofwat may have approved for the purpose of this Condition I 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
  - I5.2 if, in the opinion of Ofwat, the Appointee has demonstrated that market testing as described in paragraph I5.1 above is inappropriate, such proportion as Ofwat 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).
- I6. Without prejudice to paragraph I4 above, the Appointee shall obtain from any Associated Company referred to in paragraph I5, such information about the latter's costs as Ofwat may reasonably require.
- I7. The Appointee shall not, without the consent of Ofwat and otherwise than in compliance with its directions concerning the valuation of the asset and the treatment of the consideration in the Appointee's accounts, transfer to any Associated Company to which paragraph I5 applies any right or asset to which paragraph 3 of Condition K of these Conditions applies.

- I8. The Appointee shall not, without the consent of Ofwat:
- I8.1 give any guarantee of any liability of any Associated Company; or
  - I8.2 make to any such company any loan.
- I9. The Appointee shall not, without the consent of Ofwat:
- I9.1 enter into any agreement or incur any commitment incorporating a cross-default obligation, or
  - I9.2 subject to paragraph I10 below, continue or permit to remain in effect any agreement or commitment incorporating a cross-default obligation.
- I10. Where liability under the cross-default obligation would arise only on a default by a subsidiary company of the Appointee, the Appointee may permit that cross-default obligation to remain in effect for the period for which it was fixed by the instrument which created it, so long as its potential liability is not increased and no changes are made in the terms under which that liability might arise.
- I11. For the purposes of paragraphs I8 to I10:
- I11.1 "**liability**" includes the creation of any mortgage, charge, pledge, lien or other form of security or encumbrance, the making of any loan and the undertaking of any other indebtedness;
  - I11.2 "**loan**" includes the transfer or lending, by any means, of any sum of money or of any rights in respect of that sum; and
  - I11.3 "**cross-default obligation**" means a term of any agreement or arrangement whereby the Appointee's liability to pay or repay any debt or other sum arises or is increased or accelerated by reason of a default of any person other than the Appointee.

### **Dividend policy**

- I12. The Appointee shall declare or pay dividends only in accordance with a dividend policy which has been approved by the Board of the Appointee and which complies with the following principles:
- I12.1 the dividends declared or paid will not impair the ability of the Appointee to finance the Appointed Business; and

I12.2 under a system of incentive regulation dividends would be expected to reward efficiency and the management of economic risk.

### **Ring-fencing**

I13. The Appointee shall at all times act in the manner best calculated to ensure that it has adequate:

I13.1 financial resources and facilities;

I13.2 management resources; and

I13.3 systems of planning and internal control,

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

I14. For the purposes of paragraph I13.3 above, the Appointee shall ensure that its systems of planning and internal control comply with such guidance as Ofwat may, from time to time, specify in writing for the purposes of this Condition.

I15. Paragraph F4 shall apply to revisions to the guidance referred to in paragraph I14 above, as it applies to revisions to the Regulatory Accounting Guidelines.

I16. In paragraphs I17 and I18:

I16.1 “**Wholesale Business**” means the business undertaken as part of the Appointed Business excluding the Retail Business;

I16.2 “**Retail Business**” means those activities that constitute the provision of goods or services by the Appointee directly to one or more End-Users, and such activities ancillary to such provision including ownership of meters, and that are so designated from time to time (which designation, for the avoidance of doubt, shall be reversible) by Ofwat or by such person or persons as may be nominated by Ofwat 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 Ofwat’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;

I16.3 “**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 to the Water Industry Act 1991 or restricted retail authorisation as set out in Schedule 2A to that Act;

I16.4 “**Residual Business**” means the Retail Business excluding the NHH Retail Business together with the Wholesale Business;

I16.5 “**End-User**” means a person who, otherwise than as a person holding an appointment or a licence under the Water Industry Act 1991 or under other legislation in respect of the supply of water or sewerage services enacted from time to time, is a customer of the Appointee or a user of the goods or services concerned; and

I16.6 “**Exit Date**” shall have the same meaning as in the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016.

### **Requirement for certificates of adequacy**

I17. The Appointee shall, at the same time as it complies with any requirement in the Regulatory Accounting Guidelines to submit regulatory accounting statements to Ofwat, submit to Ofwat separate Certificates in respect of each of its NHH Retail Business and its Residual Business in the following terms:

"(1) that in the opinion of the Directors, the Appointee will have available to it sufficient financial resources and facilities to enable it to carry out, for at least the next 12 months, the Regulated Activities (including the investment programme necessary to fulfil the Appointee's obligations under the Appointment(s));

(2) that in the opinion of the Directors the Appointee will, for at least the next 12 months, have available to it –

- (a) management resources; and

- (b) methods of planning and internal control

which are sufficient to enable it to carry out those functions as required by paragraph I13 above; and

- (3) in respect of the Wholesale Business only, that in the opinion of the Directors, all contracts entered into with any Associated Company include all necessary provisions and requirements concerning the standard of service to be supplied to the Appointee, to ensure that it is able to meet all its obligations as a water and a sewerage undertaker".
- I18. The provisions in paragraph I17 requiring a separate certificate of adequacy for the Appointee's NHH Retail Business shall cease to have effect on the Exit Date.
- I19. The Appointee shall, when it complies with paragraph I17, submit with each Certificate a statement of the main factors which the directors have taken into account in giving that Certificate.
- I20. Without prejudice to paragraphs I21 and I22 below, the directors shall inform Ofwat in writing as soon as they become aware of any circumstance which causes them to believe that the most recent Certificate under paragraph I27 could not be repeated in the light of that circumstance.
- I21. Whenever the directors become aware that the Appointee or any Group Company is proposing to embark upon any activity which is not one of those described in paragraph I13 and which may be material in relation to the Appointee's ability to finance the carrying out of the functions mentioned in that paragraph, they shall as soon as practicable, having regard to the purposes of this Condition, notify Ofwat about that proposal.
- I22. Not later than 14 days after the directors become aware that the Appointee or any Group Company has embarked upon any activity to which paragraph I21 applies, they shall submit to Ofwat a Certificate in the terms specified in paragraph I17.
- I23. Each Certificate under paragraphs I17 to I22 shall be either:
- I23.1 signed by all the directors of the Appointee for the time being; or
- I23.2 approved by a duly-convened meeting of the board of directors of the Appointee for the time being, signed (in confirmation of that approval) by a director or the Secretary of the Appointee and have attached to it a certified copy of an extract of the minutes of the relevant meeting containing the resolution to approve it.
- I24. Each Certificate under paragraph I17, shall be accompanied by a report prepared by the Appointee's Auditors and addressed to Ofwat, stating whether they are aware of any inconsistencies between that Certificate and either the regulatory accounting statements referred to in paragraph F5 or any information which the Auditors obtained in the course of their work as the Appointee's Auditors and, if so, what they are.

- I25. [Not used]
- I26. The Appointee shall, at all times, conduct the Appointed Business as if it were substantially the Appointee's sole business and the Appointee were a separate public limited company. The Appointee should have particular regard to the following in the application of this Condition:
- I26.1 the composition of the Board of the Appointee should be such that the directors, acting as such, act independently of the parent company or controlling shareholder and exclusively in the interests of the Appointee;
  - I26.2 the Appointee must ensure that each of its Directors must disclose, to the Appointee and Ofwat, conflicts between duties of the directors as directors of the Appointee and other duties;
  - I26.3 where potential conflicts exist between the interests of the Appointee as a water undertaker and those of other Group Companies, the Appointee and its directors must ensure that, in acting as directors of the Appointee, they should have regard exclusively to the interests of the Appointee as a water undertaker;
  - I26.4 no director of the Appointee should vote on any contract or arrangement or any other proposal in which he has an interest by virtue of other directorships. This arrangement should be reflected in the Articles of Association of the Appointee;
  - I26.5 the Appointee should inform Ofwat without delay when:
    - I26.5.1 a new director is appointed;
    - I26.5.2 the resignation or removal of a director takes effect; or
    - I26.5.3 any important change in the functions or executive responsibilities of a director occurs.

The Appointee should notify Ofwat of the effective date of the change and, in the case of an appointment, whether the position is executive or non-executive and the nature of any specific function or responsibility;
  - I26.6 the dividend policy adopted by the Appointee and the implications of paragraph I12; and
  - I26.7 the Principles of Good Governance and Code of Best Practice (or any successor document having similar purposes and content) as may from time to time be incorporated into or approved for the purposes of the Listing Rules of the Financial Conduct Authority.

- I27. 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.
- I28. Subject to paragraph I29 below, the Appointee shall maintain the listing of a financial instrument and shall use all reasonable endeavours to retain the listing of that financial instrument, whose market price should react to the financial position of the Appointee's Appointed Business, on the London Stock Exchange, or, with the prior agreement of Ofwat, some other exchange of similar standing.
- I29. The obligation in paragraph I28 applies unless the Appointee satisfies Ofwat that market conditions make it inappropriate for the Appointee to maintain such a financial instrument.
- I30. The Appointee shall use all reasonable endeavours to ensure that it, or any Associated Company as an issuer of corporate debt on its behalf, maintains at all times an Issuer credit rating which is an Investment grade rating.

I31. In this Condition:

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

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

I32. Except with the prior consent of Ofwat, the Appointee shall not transfer, lease, license or lend any sum or sums, asset, right or benefit to any Associated Company of the Appointee if:

I32.1 the Appointee does not hold an Issuer credit rating that is an Investment grade rating;

I32.2 where the Appointee holds more than one Issuer credit rating, one or more of the ratings so held is not an Investment grade rating; or



I32.3 any Issuer credit rating held by the Appointee is BBB- by Standard & Poor's Ratings Group or Fitch Ratings Ltd or Baa3 by Moody's Investors Service, Inc. (or such higher Issuer credit rating as may be specified by any of these credit rating agencies from time to time as the lowest Investment grade rating), or is an equivalent rating from another credit rating agency that has been notified to the Appointee by Ofwat as of comparable standing for the purposes of paragraph I30 and:

I32.3.1 is on review for possible downgrade; or

I32.3.2 is on "Credit Watch" or "Rating Watch" with a negative designation;

or, where neither I32.3.1 nor I32.3.2 applies:

I32.3.3 the rating outlook of the Appointee as specified by any credit rating agency referred to in paragraph I32.3 above which at the relevant time has assigned the lower or lowest Issuer credit rating that is an Investment grade rating held by the Appointee has been changed from stable or positive to negative.

I33. Where any of paragraphs I32.1, I32.2 or I32.3 apply the exceptions are:

I33.1 payment properly due for any goods, services or assets in relation to commitments entered into prior to the date on which the circumstances described in paragraph I32 arise, and which are provided on an arm's length basis and on normal commercial terms;

I33.2 a transfer, lease, licence or loan of any sum or sums, asset, right or benefit on an arm's length basis, on normal commercial terms and where the value of the consideration due in respect of the transaction in question is payable wholly in cash and is paid in full when the transaction is entered into. For the avoidance of doubt this exception does not include a dividend or other distribution out of distributable reserves or a repayment of capital;

I33.3 repayment of, or payment of interest on, or payments to an Appointee's financing subsidiary of any fees, costs and other amounts arising under:

I33.3.1 a loan made between the Appointee and the Appointee's financing subsidiary, for so long as the Appointee's financing subsidiary continues to be an Associated Company of the Appointee; or

I33.3.2 a loan not prohibited under other provisions of these Conditions and which was contracted prior to the date on which the circumstances in paragraph I32 arise, provided that payment in respect of such loan is

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

- I33.4 payments for group corporation tax relief or for the surrender of Advance Corporation Tax calculated on a basis not exceeding the value of the benefit received, provided that the payments are not made before the date on which the amounts of tax thereby relieved would otherwise have been due.
- I34. For the purposes of paragraph I33.3 a financing subsidiary is a subsidiary of the Appointee which is wholly owned by the Appointee and is dedicated solely to raising finance on behalf of, and on lent to the Appointee for the purposes of the Appointee's Regulated Activities and this is reflected in the Articles of Association of the financing subsidiary.”

8. Paragraphs 8 to 12 of **Condition J** are deleted.
9. Sub-paragraph 5.3 of **Condition L** is modified by deleting the words “paragraph 4 of”.
10. **Condition M** is deleted in its entirety and replaced with the following new condition:

### **“Condition M: Provision of Information to Ofwat**

#### **Introduction**

This condition requires the Appointee to provide information to Ofwat (subject to certain limitations) and to co-operate with certain investigations carried out by Ofwat for purposes relating to standards of performance.

#### **Duty to provide Information**

- M1 The Appointee must provide Ofwat with any Information that Ofwat may reasonably require for the purpose of carrying out its functions under any enactment.
- M2 The Appointee must provide any Information required by Ofwat by such time, and in such form and manner, as Ofwat may reasonably require.

#### **Limits on the duty to provide Information**

- M3 The Appointee is not required to provide Ofwat with Information for the purpose of Ofwat carrying out any function under section 14 or 201 of the Water Industry Act 1991, but if Ofwat requires it to do so the Appointee must provide reasoned comments on the accuracy of any information or advice which Ofwat proposes to publish under section 201 of that Act.
- M4 The Appointee is not required to provide Ofwat with any Information for the purpose of Ofwat carrying out an enforcement function if the Appointee could not have been required to provide that Information under section 203 of the Water Industry Act 1991.
- M5 The Appointee is not required to provide Ofwat with any Information that is protected by legal professional privilege.

#### **Use of Information provided**

- M6 Ofwat may use or disclose any Information which it has received from the Appointee for the purpose of carrying out any of its functions under the provisions of any

enactment, including its functions under sections 14 and 201 of the Water Industry Act 1991.

### **Relationship to other conditions**

- M7 Any duty on the Appointee to provide Information to Ofwat under any other Condition does not limit the duty of the Appointee to provide Information under paragraph M1.
- M8 The requirement in paragraph M2, and the limits in paragraphs M4 and M5, also apply in any other Condition under which the Appointee has a duty to provide Information to Ofwat.

### **Standards of Performance**

- M9 Paragraph M10 applies in any case in which Ofwat notifies the Appointee that, for the purpose of deciding whether to make an application to the Secretary of State under either section 39 or 96 of the Water Industry Act 1991, it intends to investigate:
- M9.1 any Information provided by the Appointee to Ofwat in relation to the Appointee's service levels in carrying out the Regulated Activities; or
- M9.2 the means by which that Information was collated or recorded.
- M10 Where this paragraph applies, the Appointee must co-operate fully with any investigation by Ofwat, including in particular by allowing Ofwat (at reasonable hours and on reasonable notice) to:
- M10.1 access any plant or premises used by the Appointee in carrying out the Regulated Activities;
- M10.2 while at the plant or premises, carry out inspections, measurements or tests, and take copies of any document or record held for the purpose of the Appointed Business; and
- M10.3 take with it any persons or equipment necessary for those purposes.”

11. **Condition O** is deleted in its entirety and is replaced by the following new condition:

**“Condition O: Termination and replacement appointments**

**Introduction**

This condition, which sets out circumstances in which the Appointee can be replaced as the undertaker for its area, has effect under section 7(4)(c) of the Water Industry Act 1991.

Other circumstances of potential replacement are also set out at section 7(4) of that Act.

**Circumstances when a replacement appointment may be made**

- O1 An appointment replacing the Appointee as either water or (where applicable) sewerage undertaker in respect of the Area may be made where:
  - O1.1 the Secretary of State has given at least 25 years' notice to the Appointee of the termination of the relevant Appointment in respect of the whole of the Area; and
  - O1.2 the replacement appointment is to come into effect on the expiry of that notice.”

12. Sub-paragraph 1(2)(c) of **Condition P** is modified by the insertion of the word “Appointee” after the words “and who shall collectively have connections with and knowledge of the”.

13. **Condition Q** is deleted in its entirety and is replaced by the following new condition:

**“Condition Q: Interruptions in supply because of drought**

**Introduction**

This condition sets out the payments that the Appointee must make where customers have their water supply interrupted because of a drought order.

**Payments following interruption in supply**

Q1 Subject to paragraph Q5, where the supply of water to Household Premises is interrupted under the authority of a drought order, the Appointee must make a payment to the customer who is liable to pay charges for water supply at the premises or credit that customer’s account in accordance with paragraph Q2.

Q2 The Appointee must pay or credit an amount equal to  $D \times d$ , subject to a maximum of A in any Charging Year, where:

Q2.1 D is £10;

Q2.2 d is the number of days during which, or part of which, the supply of water to the premises is interrupted; and

Q2.3 A is the average water charge payable to the Appointee in respect of Household Premises for the Charging Year preceding the date of the interruption.

Q3 Subject to paragraph Q5, where the supply of water to premises other than Household Premises is interrupted under the authority of a drought order:

Q3.1 where the Appointee supplies water at the premises, it must make a payment to the customer who is liable to pay charges for that supply or credit that customer’s account in accordance with paragraph Q4; and

Q3.2 where the premises are supplied with water by a Licensee with whom the Appointee has an agreement under section 66D of the Water Industry Act 1991, the Appointee must make a payment to the Licensee in accordance with paragraph Q4.

Q4 The Appointee must pay or credit (as the case may be) an amount equal to  $B \times d$ , subject to a maximum of N in any Charging Year, where:

Q4.1 B is £50;

Q4.2 d is the number of days during which, or part of which, the supply of water to the premises is interrupted; and

Q4.3 N is:

Q4.3.1 the amount of water charges which were payable in respect of those premises by the customer who is liable to pay such charges for the Charging Year preceding the date of the interruption (excluding any amount payable in respect of any separate supply which was provided solely for purposes other than domestic purposes); or

Q4.3.2 if the customer was not liable to pay those charges, £500.

Q5 The Appointee is not required to pay or credit (as the case may be) any amount under this condition if it can demonstrate that it took all reasonable steps to avoid the circumstances which gave rise to the making of the drought order.

#### **Determination of disputes**

Q6 Where there is a dispute between the Appointee and a customer, or between the Appointee and a Licensee, over a right to a payment or credit under this condition:

Q6.1 either party may refer the matter to Ofwat for determination; and

Q6.2 the Appointee must give effect to any determination which is made.”

14. Sub-paragraph 5(4) of **Condition R** is modified by deleting the words “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)” and replacing them with the words “in paragraphs I4 to I11 of Condition I (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).”
15. **Conditions R1, R2, R4 and R5** are deleted.



## **Schedule 2**

1. **Condition F** is deleted in its entirety and is replaced with the following new condition:

### **“Condition F: Regulatory accounting statements**

#### **Introduction**

This condition requires the Appointee to keep appropriate accounting records which are consistent with guidelines published by Ofwat. Ofwat will publish the guidelines and revise them, subject to certain procedural protections.

#### **The Regulatory Accounting Guidelines**

- F1 Ofwat will publish the **Regulatory Accounting Guidelines** which will:
- F1.1 relate to the accounting records that must be kept by the Appointee and the accounting Information that must be provided by it to Ofwat; and
  - F1.2 have the purpose of ensuring that:
    - F1.2.1 Ofwat may obtain all appropriate accounting Information in respect of the Appointed Business; and
    - F1.2.2 the financial affairs of the Appointed Business are recorded and reported on, and may be assessed, separately from any other business or activity of the Appointee.
- F2 The Regulatory Accounting Guidelines may in particular include provisions in relation to:
- F2.1 the form and content of the accounting records that the Appointee is required to keep;
  - F2.2 the form and content of the accounting statements, and any associated reports or analyses, that the Appointee is required to prepare;
  - F2.3 any audit of the accounting records and statements that the Appointee is required to procure, the terms on which that audit is to be procured, and the basis on which the record and conclusions of that audit must be provided to Ofwat; and

- F2.4 the time by which the Appointee is required to provide any accounting Information to Ofwat and any requirement on the Appointee to publish that Information.
- F3 The Regulatory Accounting Guidelines may not require the disclosure of Information which relates solely to a transaction wholly unconnected with the Appointed Business.
- F4 Ofwat may, from time to time, revise the Regulatory Accounting Guidelines in any manner that it considers appropriate, provided that, before any revision takes effect, Ofwat:
- F4.1 consults the Appointee on a draft of the proposed revision;
- F4.2 has regard to any representations made by the Appointee;
- F4.3 publishes a final version of the revision, incorporating any changes made to the draft following consultation; and
- F4.4 gives reasonable notice (of at least one month) to the Appointee of the date on which that revision will take effect.
- F5 The Appointee may notify Ofwat, within one month of receiving notice that a revision to the Regulatory Accounting Guidelines will take effect, that it disputes the revision, and in that case:
- F5.1 the question of whether the revision is appropriate shall (unless Ofwat withdraws the decision to make it) be referred by Ofwat to the Competition and Markets Authority for determination; and
- F5.2 the revision shall not take effect unless and until the Competition and Markets Authority determines that it shall.

### **Compliance with the Regulatory Accounting Guidelines**

- F6 The Appointee must:
- F6.1 prepare a set of regulatory accounting statements, in respect of the twelve month period ending on 31 March in each Charging Year, which are in accordance with the Regulatory Accounting Guidelines; and
- F6.2 comply with all other requirements that are set out in the Regulatory Accounting Guidelines.”

2. **Condition N** is deleted in its entirety and is replaced by the following new condition:

### **“Condition N: Fees**

#### **Introduction**

This condition provides for the payment of fees by the Appointee to cover costs incurred by Ofwat, the Consumer Council for Water and the Competition and Markets Authority and sets out how the amount of those fees will be determined.

#### **Fees**

- N1 The Appointee must pay the following **Fees** to the Secretary of State in accordance with this condition:
- N1.1 the Annual General Fee (or such part of the Annual General Fee as is payable under paragraph N2);
  - N1.2 the Special Fee (if any);
  - N1.3 the Interim Determination Fee (if any);
  - N1.4 the Consumer Council for Water Fee; and
  - N1.5 the Competition and Markets Authority Fee (if any).
- N2 Where Ofwat notifies the Appointee of an amount which is payable towards the Annual General Fee, the Appointee must pay that amount no later than 30 days following the notification, provided that:
- N2.1 the total of such amounts in a Charging Year may not exceed the Annual General Fee; and
  - N2.2 Ofwat may not give such a notification more than twice for a Charging Year.
- N3 Where Ofwat notifies the Appointee of the amount of any Fee other than the Annual General Fee, the Appointee must pay that amount no later than 30 days following the notification, provided that Ofwat may not give such a notification in respect of any one of these Fees more than once in a Charging Year.

N4 In this condition any determination by Ofwat of a fair proportion of an amount may only be made in accordance with a method which Ofwat has disclosed to the Appointee in writing.

### **Annual General Fee**

N5 The **Annual General Fee** is Ofwat's determination of a fair proportion of its estimate of costs incurred or likely to be incurred by it in the Charging Year in the carrying out of its functions under any enactment, provided that any such determination is subject to paragraph N13.

### **Special Fee**

N6 The **Special Fee** is Ofwat's determination of a fair proportion of its estimate of any costs incurred or likely to be incurred by it which:

N6.1 could have been included in the estimate used by it to determine the Annual General Fee for the Charging Year; and

N6.2 were not included in that estimate,

provided that any such determination is subject to paragraph N13.

### **Interim Determination Fee**

N7 The **Interim Determination Fee** is an amount determined by Ofwat which represents its estimate of any costs incurred by it in the previous twelve months in relation to any Interim Determination which it is required to make.

### **Consumer Council for Water Fee**

N8 The **Consumer Council for Water Fee** is:

N8.1 Ofwat's determination of a fair proportion of its estimate of costs incurred or likely to be incurred by the Consumer Council for Water in the Charging Year in the carrying out of its functions under any enactment, provided that no such amount will exceed the amount calculated in accordance with paragraph N10; or

N8.2 where a direction has been given to Ofwat by the Secretary of State under section 37(8) of the Water Act 2003, any greater amount which Ofwat determines is necessary to give effect to that direction.

N9 Any estimates which are used in the determination of the Consumer Council for Water Fee will be arrived at following consultation with the Consumer Council for Water

N10 A Consumer Council for Water Fee determined under paragraph N8.1 shall not exceed an amount calculated as  $G \times A$  where:

N10.1 G is the amount of £7.65 million, as increased from November 2015 to the November immediately before the Charging Year using the Retail Prices Index (for any period up to November 2019) and the Relevant Index (for any period thereafter); and

N10.2 A is the Appointee's Turnover Share for the Charging Year.

### **Competition and Markets Authority Fee**

N11 The **Competition and Markets Authority Fee** is an amount determined by Ofwat (in accordance with paragraph N12) which is the sum of:

N11.1 Ofwat's estimate of the costs incurred by the Competition and Markets Authority in the previous twelve months in relation to any reference under section 12 or section 14 of the Water Industry Act 1991, where the reference related solely to the Appointed Business; and

N11.2 Ofwat's determination of a fair proportion of Ofwat's estimate of the costs incurred by the Competition and Markets Authority in the previous twelve months in relation to any reference under section 14 of the Water Industry Act 1991, where the reference related to the Appointed Business and the appointed businesses of other relevant undertakers.

N12 Any estimates which are used in the determination of the Competition and Markets Authority Fee will be arrived at following consultation with the Competition and Markets Authority.

### **Cap on Annual General Fee and Special Fee**

N13 The sum of the Annual General Fees and any Special Fees in a Relevant Five Year Period must not exceed the Regulation Fee Cap.

N14 Subject to paragraph N16, the **Regulation Fee Cap** is an amount which is the sum of:

N14.1 the sum of the amounts calculated as  $S \times A$  for each Charging Year in the Relevant Five Year Period, where:

N14.1.1 S is the amount of £18.8 million, as increased from November 2015 to the November immediately before the Charging Year using the Retail Prices Index (for any period up to November 2019) and the Relevant Index (for any period thereafter); and

N14.1.2 A is the Appointee's Turnover Share for the Charging Year; and

N14.2 an amount equal to 0.3% of the average of the annual turnover of the Appointed Business, as shown in the accounting statements prepared by the Appointee under Condition F, over the Prior Five Year Period.

N15 Ofwat may refer to the Secretary of State for determination the question of whether the Regulation Fee Cap should be changed in relation to any Relevant Five Year Period (and if so what change should be made).

N16 The Regulation Fee Cap shall be changed to the extent required to give effect to any determination which:

N16.1 has been made following a reference made under paragraph N15; and

N16.2 is made before the start of the Relevant Five Year Period to which it relates.”