

WATER SERVICES REGULATION AUTHORITY

WATER INDUSTRY ACT 1991, SECTION 17IA (AS HAS EFFECT UNDER THE WATER INDUSTRY (SPECIFIED INFRASTRUCTURE PROJECTS) (ENGLISH UNDERTAKERS) REGULATIONS 2013)

Modification of the Project Licence of Bazalgette Tunnel Limited

Made on 31 July 2019

Coming into effect on 1 August 2019

(Re-issued on 26 February 2020 to correct two non-substantial errors as set out in the note on page 10 of the Schedule)

The Water Services Regulation Authority, in exercise of the power conferred on it by section 17IA of the Water Industry Act 1991 (“the 1991 Act”) (as has effect under paragraph 5 of the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (“the SIP Regulations”)), after giving notice as required by section 17IA(3) of the 1991 Act, (as has effect under the SIP Regulations), hereby makes the modifications described in Schedule 1 attached hereto to the Project Licence of Bazalgette Tunnel Limited as an infrastructure provider (“the Infrastructure Provider”), the Infrastructure Provider having consented to these modifications.

Signed for and on behalf of the Water Services Regulation Authority

Keith Mason

Keith Mason

Senior Director

Schedule 1

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 Infrastructure Provider to keep appropriate accounting records which are consistent with guidelines published by the Authority. The Authority will publish the guidelines and revise them, subject to certain procedural protections.

The Regulatory Accounting Guidelines

- F1 The Authority will publish the Regulatory Accounting Guidelines which will:
- F1.1 relate to the accounting records that must be kept by the Infrastructure Provider and the accounting Information that must be provided by it to the Authority; and
 - F1.2 have the purpose of ensuring that:
 - F1.2.1 the Authority may obtain all appropriate accounting Information in respect of the Licensed Business; and
 - F1.2.2 the financial affairs of the Licensed Business are recorded and reported on, and may be assessed, separately from any other business or activity of the Infrastructure Provider.
- 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 Infrastructure Provider is required to keep;
 - F2.2 the form and content of the accounting statements, and any associated reports or analyses, that the Infrastructure Provider is required to prepare;

- F2.3 any audit of the accounting records and statements that the Infrastructure Provider 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 the Authority; and
 - F2.4 the time by which the Infrastructure Provider is required to provide any accounting Information to the Authority and any requirement on the Infrastructure Provider 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 Licensed Business.
- F4 The Authority may, from time to time, revise the Regulatory Accounting Guidelines in any manner that it considers appropriate, provided that, before any revision takes effect, the Authority:
 - F4.1 consults the Infrastructure Provider on a draft of the proposed revision;
 - F4.2 has regard to any representations made by the Infrastructure Provider;
 - 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 Infrastructure Provider of the date on which that revision will take effect.
- F5 The Infrastructure Provider may notify the Authority, 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 the Authority withdraws the decision to make it) be referred by the Authority 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 Infrastructure Provider 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 K** is amended by:

2.1 inserting a new paragraph 4.4A after paragraph 4.4:

“4.4A The Infrastructure Provider must publish with its audited accounts for each twelve month period a statement as to whether or not (as at the end of the period) the Infrastructure Provider has available to it sufficient rights and resources other than financial resources, as required by paragraph 4.4.”;

2.2 inserting new paragraphs 9 and 10 after paragraph 8.3:

“9. Provision of Information

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

9.2 The Infrastructure Provider must provide to the Authority:

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

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

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

10 Condition K Certificate

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

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

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

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

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

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

10.5 A Condition K Certificate must be:

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

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

“Condition M: Provision of Information to the Authority”

Introduction

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

Duty to provide Information

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

Limits on the duty to provide Information

- M3 The Infrastructure Provider is not required to provide the Authority with Information for the purpose of the Authority carrying out any function under sections 17K or 201 of the Water Industry Act 1991¹, but if the Authority requires it to do so the Infrastructure Provider must provide reasoned comments on the accuracy of any information or advice which the Authority proposes to publish under section 201 of that Act.
- M4 The Infrastructure Provider is not required to provide the Authority with any Information for the purpose of the Authority carrying out an enforcement function if the Infrastructure Provider could not have been required to provide that Information under section 203 of the Water Industry Act 1991.
- M5 The Infrastructure Provider is not required to provide the Authority with any Information that is protected by legal professional privilege.

¹ All references in this Condition to the Water Industry Act 1991, are references to that Act as applied by the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013.

Use of Information provided

M6 The Authority may use or disclose any Information which it has received from the Infrastructure Provider for the purpose of carrying out any of its functions under the provisions of any enactment, including its functions under sections 17K and 201 of the Water Industry Act 1991.

Relationship to other conditions

M7 Any duty on the Infrastructure Provider to provide Information to the Authority under any other Condition does not limit the duty of the Infrastructure Provider 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 Infrastructure Provider has a duty to provide Information to the Authority.

4. Paragraph 1.1(iii) of **Appendix 1** is amended by deleting the figure “3/12” and replacing it with the figure “1/4”.
 5. Footnote 5 in paragraph 1.12 of **Appendix 1** is amended by deleting the sentence “The specified percentages may be revisited during the procurement process.”
 6. Subsection (g) in paragraph 1.12 and subsection (g) in paragraph 1.22 of **Appendix 1** are amended by inserting in each subsection the words “3/E1 Electrical Labour” after the words “the index for PAFI Series 3 Specialist Engineering Formulae Indices”.
 7. Part A of **Appendix 1** is amended by:
 - 7.1 in paragraph 1.2, replacing the words “Subject to paragraphs A 1.5 and A 1.6.” with the words “Subject to paragraph A 1.6”;
 - 7.2 deleting paragraph 1.5 and 1.6 and replacing them with the following new paragraphs 1.5 and 1.6;
- “1.5 In the event that Licence Award occurred by 15 September 2015, the Allowed Revenue for the First Charging Year will be calculated by the Infrastructure Provider by 1 November and finalised by no later than 24 December, immediately prior to the commencement of the Second Charging Year, and will be payable in the Second Charging Year together with the Allowed Revenue for the Second Charging Year; provided that, where the Allowed Revenue for the First Charging Year and the Second Charging Year have not been calculated by 1 November and finalised by 24 December immediately prior to the commencement of the Second Charging Year, then the Allowed Revenue for the First Charging Year and the Second Charging Year will be calculated by 1 November and finalised by 24 December, immediately prior to the commencement of the Third Charging Year and will be payable in the Third Charging Year together with the Allowed Revenue for the Third Charging Year.
- 1.6 The Allowed Revenue for the First Charging Year and (where the Allowed Revenue for the Second Charging Year is payable in the Third Charging Year in accordance with this paragraph A 1.6) the Allowed Revenue for the Second Charging Year will be subject to a net present value adjustment as follows:

$$AR Yt \times (1 + BWACC)^{(0.5 + \frac{PD}{2})}$$

where:

AR Yt means the Allowed Revenue for the First Charging Year or the Second Charging Year (as applicable);

PD means:

- (i) in respect of the First Charging Year, the proportion of the First Charging Year, calculated by reference to the number of days from Licence Award until the end of the First Charging Year (if the Allowed Revenue for the First Charging Year is payable in the Second Charging Year) or the Second Charging Year (if the Allowed Revenue for the First Charging Year is payable in the Third Charging Year); or
- (ii) in respect of the Second Charging Year, the proportion of the Second Charging Year, calculated by reference to the number of days during the Second Charging Year.”

8. Clause 2.4 of **Appendix 2** is amended by correcting the word “amongst”.

9. Clause 7.2 of **Appendix 2** is deleted in its entirety and replaced with the following new clause 7.2:

“7.2 In each year In the Construction Period and in the Operational Period, the Infrastructure Provider must pay to the Secretary of State an amount or amounts, to be determined by the Authority, after consultation with the Infrastructure Provider, in respect of the costs estimated by the Authority as likely to be reasonably incurred by it in that Charging Year, or as already having been reasonably incurred by it in the preceding Charging Year (to the extent that such costs have not already been recovered under this paragraph 7.2) in the regulation, monitoring and enforcement of the Infrastructure Provider;

EXCEPT THAT the total of all payments made under this paragraph 7.2 may not exceed the Regulation Fee Cap.”

10. **Appendix 2** is amended by inserting a new clause 7.2A after clause 7.2:

“7.2A Where the Authority notifies the Infrastructure Provider of an amount which is payable under paragraph 7.2, the Infrastructure Provider must pay that amount no later than 30 days following the notification, provided that the Authority may not give such a notification more than twice in a Charging Year.”

11. Clause 7.4 of **Appendix 2** is amended by deleting the word “Authority” after the words “in terms of paragraph 7.5 to the” and replacing it with the words “Secretary of State”.

 12. The definition of “**Project Documents**” in **Appendix 4 (Defined Terms)** is amended by deleting the word “and” from the end of sub-paragraph (i); adding the word “and” to the end of sub-paragraph (j) and inserting the following new subsection (k):

“(k) any other agreement that the Infrastructure Provider and the Authority agree in writing is a Project Document for the purposes of this Project Licence;”
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Note re the reissue of this Modification

This Notice was reissued on 26 February 2020 with the following non-substantive corrections:

1. Paragraph 6 of Schedule 1 was corrected to include the following additional words (underlined) and the deletion of the word ‘is’:

“6. Subsection (g) in paragraph 1.12 and subsection (g) in paragraph 1.22 of **Appendix 1** ~~are~~ is amended by inserting in each subsection the words “3/E1 Electrical Labour” after the words “the index for PAFI Series 3 Specialist Engineering Formulae Indices.”

2. Paragraph 7.1 of schedule 1 was corrected by deleting the words “in paragraph 1.1” and replacing them with the words “in paragraph 1.2”.