

WATER SERVICES REGULATION AUTHORITY

WATER INDUSTRY ACT 1991, SECTION 13(1)

Modification of the Conditions of Appointment of Leep Networks (Water) Limited

Made on 13 August 2020

The modifications in the Schedule attached hereto will come into effect on 1 October 2020

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

Signed for and on behalf of the Water Services Regulation Authority

Emma Kelso

Senior Director

Schedule

1. Paragraph 2 of **Condition A** is amended by:

- a. deleting 'and' from the end of subsection (1);
- b. replacing '.' with ';' at the end of subsection (2); and
- c. inserting the following new subsections:

“(3) references to a liability shall be taken to include the creation of any mortgage, charge, pledge, lien or other form of security or 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 such sum; and

(5) references to a transfer of any asset or liability includes 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.”

2. Paragraph 3 of Condition A is amended by inserting the following definitions in the appropriate place determined alphabetically:

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

“**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;

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

“**Ring-fencing Certificate**” means a certificate, submitted to Ofwat 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 out 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 out the Regulated Activities, for at least the twelve month period following the date on which the certificate is submitted;

(c) the Appointee has available to it sufficient rights and resources other than financial resources, as required by paragraph P11; and

(d) 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 out the Regulated Activities;

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

“**Ultimate Controller**” means any person which, whether alone or jointly and whether directly or indirectly, is, in the reasonable determination of Ofwat, in a position to control or in a position to materially influence the policy or affairs of the Appointee or any Holding Company of the Appointee;

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

3. **Condition I** is deleted in its entirety.

4. **Condition K** is deleted in its entirety.

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

“Condition P: Regulatory ring-fence

Conduct of the Appointed Business

P1 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:

P1.1 the composition of the Board of the Appointee should be such that the directors of the Appointee, acting as such, act independently of the parent company or controlling shareholder and exclusively in the interests of the Appointee;

P1.2 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;

P1.3 where potential conflicts exist between the interests of the Appointee as a water and a sewerage 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 and a sewerage undertaker;

P1.4 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;

P1.5 the Appointee should inform Ofwat without delay when:

P1.5.1 a new director is appointed;

P1.5.2 the resignation or removal of a director takes effect; or

P1.5.3 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;

P1.6 the dividend policy adopted by the Appointee and the implications of paragraph P20; and

P1.7 the Principles of Good Governance and Code of Best Practice (or any successor document having a similar purpose 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.

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

P2 The Appointee must ensure that, at all times:

P2.1 there is an undertaking in place which is given by the Ultimate Controller of the Appointee in favour of the Appointee; and

P2.2 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.

P3 The Appointee must ensure that any undertaking given pursuant to paragraph P2 provides that the person giving the undertaking must:

P3.1 provide, and procure that each of its subsidiaries other than the Appointee and its subsidiaries provide to the Appointee such information as is necessary to enable the Appointee to comply with its obligations under the Water Industry Act 1991 or under these Conditions;

P3.2 not take any action, and procure that each of its subsidiaries other than the Appointee and its subsidiaries do not take any action which may cause the Appointee to breach any of its obligations under the Water Industry Act 1991 or under these Conditions;

P3.3 ensure that at all times after Ofwat 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 Appointments and an understanding of the interests of the customers of the Appointee and how these can be respected and protected; and

P3.4 at all times make available to the Appointee such money as Ofwat determines in writing is necessary to enable the Appointee to comply with its obligations under the Act or the conditions of the Appointments.

P4 In the circumstances set out in P5, the Appointee may only enter into any new contract or arrangement with a person who is required to give an undertaking under paragraph P2 or the subsidiaries of such a person other than subsidiaries of the Appointee, with the prior written approval of Ofwat.

P5 The circumstances referred to in P4 are:

P5.1 where an undertaking required to be given by a person in accordance with paragraph P2 is not in place; or

P5.2 where 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.

P6 The Appointee must provide to Ofwat such certified copies of any undertaking given pursuant to paragraph P2 as are requested by Ofwat.

P7 The Appointee must immediately inform Ofwat in writing if the Appointee becomes aware that:

P7.1 an undertaking given by a person pursuant to paragraph P2 has ceased to be legally enforceable; or

P7.2 there has been a breach of the terms of such an undertaking by the person that gave it.

P8 The Appointee shall inform Ofwat as soon as reasonably practicable if the Appointee becomes aware that:

P8.1 arrangements are in progress or in contemplation which, if carried into effect, may lead to a change to the Ultimate Controller(s) of the Appointee; or

P8.2 arrangements have been put into effect which might be considered to have led to a change to the Ultimate Controller(s) of the Appointee; or

P8.3 any person intends to submit a merger control filing to the Competition and Markets Authority or the European Commission with respect to an actual or potential change of control of the Appointee.

P9 The Appointee must comply with any direction given by Ofwat to the Appointee to enforce the terms of an undertaking given to it pursuant to paragraph P2.

Assets, rights and resources

P10 To enable it to carry out the Regulated Activities the Appointee must, at all times, act in a manner which is best calculated to ensure that it has in place adequate:

P10.1 financial resources and facilities;

P10.2 management resources to enable it to carry out the Regulated Activities (including the investment programme necessary to fulfil its obligations under the Appointments); and

P10.3 systems of planning and internal control.

P11 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.

P12 For the purposes of paragraph P11, 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.

P13 Where rights and resources which are required to be made available pursuant to paragraph P11 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 P11.

Transfer pricing and Cross-Default Obligation

P14 In accordance with Regulatory Accounting Guideline 5 (Transfer Pricing in the Water and Sewerage Industry) published by Ofwat and revised from time to time, the Appointee must ensure that:

P14.1 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

P14.2 the Appointed Business neither gives nor receives any cross-subsidy from any other business or activity of the Appointee.

P15 The Appointee must provide Ofwat with any information about the costs of an Associated Company which provides services to the Appointee which Ofwat reasonably requires.

P16 The Appointee must not, without the prior approval of Ofwat:

P16.1 give a guarantee in relation to any liability of an Associated Company;

P16.2 make a loan to an Associated Company; or

P16.3 enter into an agreement or other legal instrument incorporating a Cross-Default Obligation.

P17 The Appointee must not continue or permit to remain in effect an agreement or other legal instrument incorporating a Cross-Default Obligation unless:

P17.1 prior approval has been given by Ofwat; or

P17.2 the Cross-Default Obligation would only arise on a default by a subsidiary of the Appointee and the Appointee ensures that:

P17.2.1 the period for which the Cross-Default Obligation is in effect is not extended;

P17.2.2 liability under the Cross-Default Obligation is not increased; and

P17.2.3 no change is made to the circumstances in which liability under the Cross-Default Obligation may arise.

P18 The Appointee must not, without the consent of Ofwat, transfer to any Associated Company any right or asset to which paragraph P11 applies.

P19 In giving consent under P18, Ofwat may also give a direction to the Appointee on the valuation of the asset and the treatment of the consideration in respect of that asset in the Appointee's accounts.

Dividend policy

P20 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:

P20.1 the dividends declared or paid will not impair the ability of the Appointee to finance the Appointed Business; and

P20.2 under a system of incentive regulation dividends would be expected to reward efficiency and the management of economic risk.

Ring-fencing statement and certificate

P21 No later than the date on which the Appointee is required to deliver to Ofwat a copy of each set of regulatory accounting statements prepared under Condition F, the Appointee must submit a Ring-fencing Certificate to Ofwat.

P22 Where the Board of the Appointee becomes aware of 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:

P22.1 inform Ofwat; and

P22.2 within fourteen days of becoming aware of the activity, submit a new Ring-fencing Certificate to Ofwat.

P23 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 Ofwat of this in writing.

P24 Whenever the Appointee submits a Ring-fencing Certificate to Ofwat, 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 Ring-fencing Certificate.

P25 A Ring-fencing Certificate must be:

P25.1 signed by all directors of the Appointee on the date of submission; or

P25.2 approved at a meeting of the Board of the Appointee, convened in accordance with the Appointee's articles of association, in which case the Ring-fencing Certificate must:

P25.2.1 be signed by a director of the Appointee or the Appointee's company secretary; and

P25.2.2 have appended to it a certified copy of the minutes of the approval.

P26 Each Ring-fencing Certificate 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 Ring-fencing Certificate and either the statements referred to in condition F6.1 or any information which the Auditors obtained in the course of their work as the Appointee's Auditors and, if so, what they are.

Reporting of material issues

P27 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 Ofwat as soon as possible."