

# **Instruments of Appointment as a Water and Sewerage Undertaker**

## **Hafren Dyfrdwy Cyfyngedig**

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## [Appointment as a water undertaker]

### THE APPOINTMENT

- 1 The Secretary of State, in exercise of the powers conferred on him by sections 11 and 14 of the Water Act 1989 ("**the Act**"), hereby appoints **Chester Waterworks Company** [**Hafren Dyfrdwy Cyfyngedig**] ("**the Appointee**") to be the water undertaker for the area described in paragraph 1 of Schedule 1, subject to the Conditions set out in Schedule 2.
- 2 The appointment contained in this instrument ("**the Appointment**") shall come into force on the day appointed as the transfer date under section 4 of the Act.

Authorised by the Secretary of  
State to sign in that behalf

---

A.H.H. JONES  
An Assistant Secretary in the Welsh  
Office

August 1989

## **SCHEDULE 1: Area for which the Appointment is made**

### 1 The Water Supply Area

The area for which the Appointee is appointed to be the water undertaker ("**the Water Supply Area**") comprises the area the boundary of which is more particularly delineated by the line shaded pink in the Water Supply Area Map.

### 2 Interpretation and Construction

In this Schedule "**the Water Supply Area Map**" means the map[s] signed on behalf of the Secretary of State accompanying and forming part of this instrument numbered 14 W 1 [and 38 W 1].

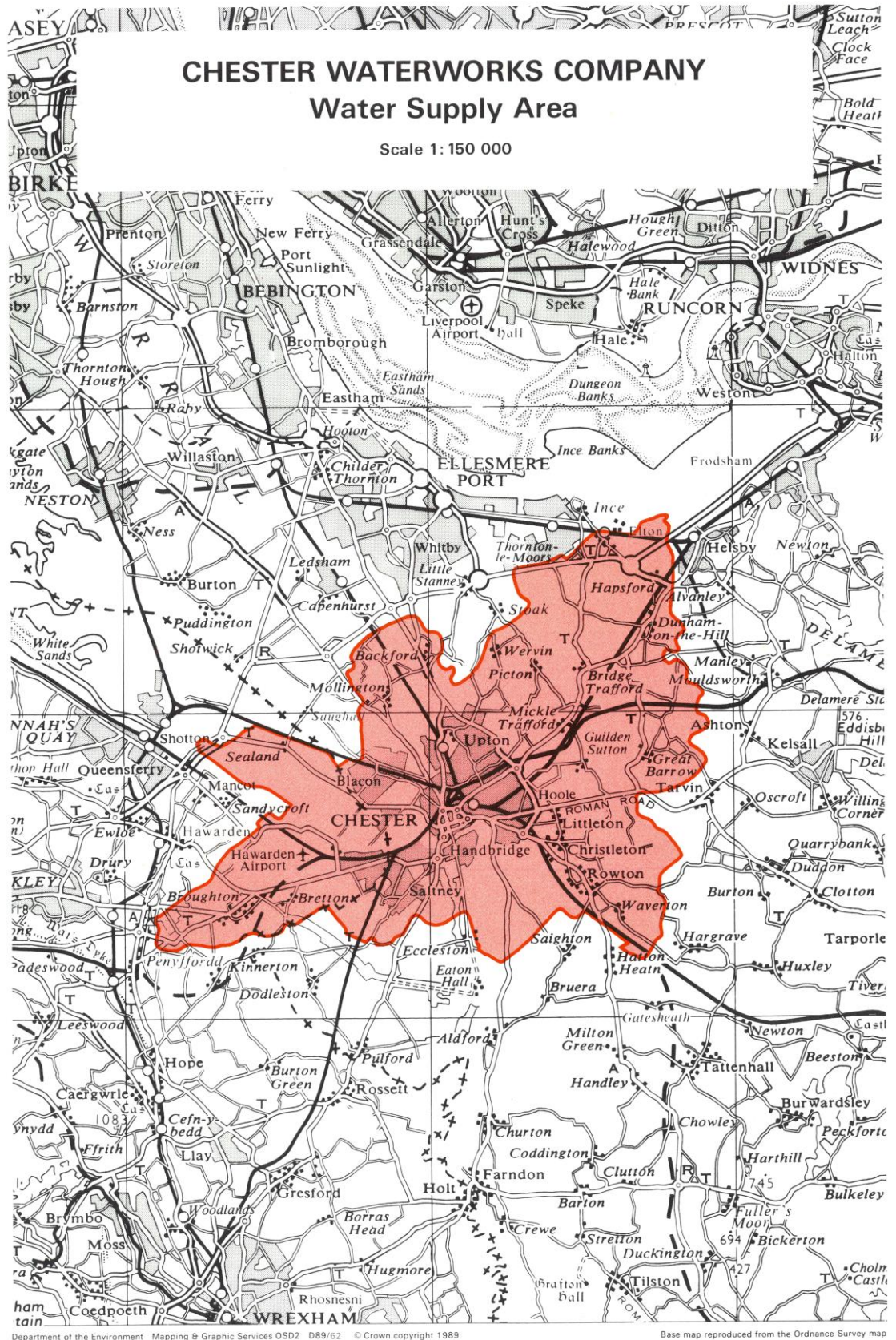
## **Water Supply Area**

[There is included in the Water Supply Area:

- 1 The former Area of Appointment of Wrexham Water Plc (**Map 2**)
- 2 The Powys Site (formerly within the water supply area of Severn Trent)

There is excluded from the Water Supply Area:

- 1 The original Area of Appointment of Chester Waterworks Company (**Map 1**) (Now in the water supply area of Severn Trent)]



**[Appointment as a sewerage undertaker]**

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

**Appointment of **Dee Valley Water Limited** **[Hafren Dyfrdwy Cyfyngedig]** as a Sewerage Undertaker and Variation of the Appointment of Severn Trent Water Limited as a Sewerage Undertaker**

Made on 28 June 2018

Coming into effect on 1 July 2018

1. Dee Valley Water Limited has applied under sections 6(1) and 7(4)(a) of the Water Industry Act 1991 ("the Act") to be appointed as the sewerage undertaker for all of the area in Wales for which Severn Trent Water Limited ("Severn Trent Water") is currently the sewerage undertaker. Severn Trent Water has consented to the appointment.
2. On 27 June 1995, the Secretary of State for the Environment and the Secretary of State for Wales acting jointly and pursuant to sections 6(1) and 7(2) of the Act authorised the Director General of Water Services<sup>1</sup> to make appointments and variations such as those contained in paragraphs 3 and 5 below.
3. Therefore, as provided by sections 6(1) and 7(2) and (4)(a) of the Act, the Water Services Regulation Authority **appoints** Dee Valley Water Limited ("**the Appointee**") to be the sewerage undertaker for the area described in Schedule 1.
4. The appointment made in paragraph 2 ("**the Appointment**") is subject to the conditions set out in Schedule 2.
5. In consequence of the Appointment, the Water Services Regulation Authority **varies** the Appointment of Severn Trent Water as a sewerage undertaker to exclude the area described in Schedule 1.

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

**Aileen Armstrong**  
**Senior Director, Finance and Governance**

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

## **SCHEDULE 1: Sewerage Services Area**

The area for which the Appointee is appointed to be the sewerage undertaker ("**the Sewerage Services Area**") comprises all of the area in Wales for which Severn Trent Water Limited was the sewerage undertaker immediately before the date on which the Appointment was made.



## **SCHEDULE 2: Conditions of the Appointment[s]**

### **Condition A: Interpretation and Construction**

- 1 Unless the contrary intention appears:
  - (1) words and expressions used in these Conditions and references in these Conditions to enactments shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them;
  - (2) references in these Conditions to enactments shall include any statutory modification thereof after the transfer date;
  - (3) words and expressions used in these Conditions shall have the same meaning as in any provision of the Water Industry Act 1991;
  - (4) references in these Conditions to sections and Schedules are references to sections of, and Schedules to, the Water Act 1989; and
  - (5) references in these Conditions to paragraphs are references to paragraphs of the Condition in which the reference appears and references to sub-paragraphs are references to sub-paragraphs of the paragraph in which the reference appears.
  
- 2 In construing these Conditions:
  - (1) the heading or title of any Condition or of any paragraph of any Condition shall be disregarded;
  - (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) the Conditions will so far as is consistent with other statutory duties and powers, be construed in accordance with relevant considerations specific to Wales, including the relevant legislative and regulatory frameworks applicable to Wales; and
  - (4) 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; and

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

3 Unless the context otherwise requires, in these Conditions:

"**the 1937 Act**" means the Public Health (Drainage of Trade Premises) Act 1937;

"**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 or, as the case may be, sewerage undertaker;

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

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

"**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;

"**Corporate Family Rating**" means a credit rating assigned by a Credit Rating Agency to reflect its opinion of the ability of a corporate group to honour all of its financial obligations, as if there was a single class of debt and the corporate group was a single legal entity, where the corporate group is as determined by the relevant Credit Rating Agency;

"**Credit Rating Agency**" means:

- (a) S&P Global Ratings (or any of its affiliates or its successors);
- (b) Moody's Investors Services, Inc (or any of its affiliates or its successors);
- (c) Fitch Ratings, Inc (or any of its affiliates or its successors); or
- (d) any credit rating agency which has been agreed by Ofwat as having comparable standing to S&P Global Ratings, Moody's Investors Services, Inc or Fitch Ratings, Inc;

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

**“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;

**“Financing Subsidiary”** means a subsidiary company of the Appointee:

- (1) (a) which is wholly owned by the Appointee; and  
(b) the sole purpose of which, as reflected in the company’s articles of association, is to raise finance on behalf of the Appointee for the purposes of the Regulated Activities; or
- (2) which Ofwat has agreed in writing will be considered a Financing Subsidiary;

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

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

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

**"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;

**“Infrastructure Charge”** means a Water Infrastructure Charge or a Sewerage Infrastructure Charge;

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

**“Issuer Credit Rating”** means:

- (a) an issuer credit rating assigned to the Appointee or any Associated Company which issues corporate debt on its behalf by a Credit Rating Agency;
- (b) a Corporate Family Rating assigned by a Credit Rating Agency to a corporate group of which the Appointee is a member and which has been approved for this purpose by Ofwat; or
- (c) a rating assigned by a Credit Rating Agency to the Appointee or any Associated Company, for so long as Ofwat has determined in writing that this rating sufficiently reflects the creditworthiness of the Appointee;

**“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;

**“Lowest Investment Grade Rating”** means:

- (a) an Issuer Credit Rating of BBB- by S & P Global Ratings or Fitch Ratings, Inc or an Issuer Credit Rating of Baa3 by Moody’s Investors Services, Inc or such Issuer Credit Rating as may be specified from time to time by any of these credit rating agencies as the lowest Investment Grade Rating; or
- (b) an equivalent rating from any other Credit Rating Agency;

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

**“Natural Resources Wales”** means the Natural Resources Body for Wales;

**“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 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, or, as the case may be, a sewerage undertaker and, for the avoidance of doubt, references to the functions of a water undertaker, or as the case may be, a sewerage undertaker, shall include references to the duties imposed on a water undertaker, or, as the case may be, a sewerage undertaker;

**"Related Company"** means any company in relation to which the Appointee or any Group Company has a participating interest within the meaning of paragraph 11 of Schedule 10 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 or which has such a participating interest in relation to the Appointee or any Group Company and for this purpose references in that paragraph to a "company" shall be deemed to include references to any body corporate;

**“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),
- (a) 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;

**"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 P14; 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;

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

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

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

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

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

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

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

**"the Water Authority"** means the Water Authority of which Severn Trent Water Limited was the successor company for the purposes of the Water Act 1989;



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

- 4 In the definition of "Excluded Charges" and "Standard Charges" in Condition B and in Condition E, references to the Water Authority shall include references to the Water Authority's predecessors in title.
- 5 Any notification required or permitted to be given under any Condition shall be given in writing and cognate expressions shall be construed accordingly.
- 6 Where only one of the Appointments is terminated, so much of the provisions of these Conditions as applies or is relevant exclusively to the Appointment which has been so terminated or to the activities of an undertaker holding an appointment of the kind which has been so terminated shall cease to have effect as from the date on which the termination of that Appointment takes effect.
- 7 The Appointee may refer to Ofwat for determination by it (having considered any representations by the Appointee and any other water undertaker or, as the case may be, sewerage undertaker) any question arising as to whether any area, island, premises or installation is, or, as the case may be, are, comprised within the Area.

## **Condition B: Charges**

### Part I. Explanatory Provisions

#### 1. Introduction

The purposes of this Condition are set out in the following sub-paragraphs.

- 1.1 To empower the Water Services Regulation Authority to make determinations setting controls in respect of the charges to be levied by and/or revenue allowed to the Appointee or to any part of the Appointee's business (having regard to its costs) for the supply of water and sewerage services.
- 1.2 To provide for reviews of the Appointed Business to be carried out by the Water Services Regulation Authority, so that the Water Services Regulation Authority can determine whether one or more Price Controls should be changed. This is dealt with in Part III under the heading "Periodic Reviews".
- 1.3 To enable the Appointee:
  - (1) ...
  - (2) to refer to the Water Services Regulation Authority for determination from time to time the question of changing the Price Control or Price Controls to allow for Notified Items and Relevant Changes of Circumstance;
  - (3) to refer to the Water Services Regulation Authority for determination at any time the question of changing the Price Control or Price Controls where circumstances have a substantial adverse effect on the Appointed Business; and
  - (4) where notice to terminate either or both of the Appointments has been given, to refer to the Water Services Regulation Authority for determination the question what the Price Control or Price Controls should be in the future, on the assumption that the relevant Appointment, or, as the case may be, the Appointments were to continue in force, for

the purpose of facilitating consideration of the terms on which a new appointee could accept transfers of property, rights and liabilities from the Appointee, as provided in section 9(4) of the Water Industry Act 1991.

These matters are dealt with in Part IV under the heading "Interim Determinations".

- 1.4 To provide for the Water Services Regulation Authority to initiate changes to the Price Control or Price Controls to allow for Notified Items and Relevant Changes of Circumstance. This is also dealt with in Part IV.
  - 1.5 To enable the Appointee to require the Water Services Regulation Authority to refer to the Competition and Markets Authority matters arising out of determinations by the Water Services Regulation Authority referred to in sub-paragraphs 1.2 and 1.4 and references referred to in sub-paragraph 1.3. These matters are dealt with in Part V under the heading "References to the Competition and Markets Authority".
  - 1.6 To require the Appointee to give Information to the Water Services Regulation Authority to enable it to make determinations under this Condition. This is dealt with in Part VI under the heading "Provision of Information to the Water Services Regulation Authority".
- 2 Defined terms which apply for the purposes of all Parts of this Condition

In this Condition:

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

"**Bioresources Activities**" means -

- (a) such activities carried out by the Appointee in performance of its functions as a sewerage undertaker in connection with sludge transport,

sludge treatment, sludge disposal and Network+ – Sludge liquor treatment, and such ancillary activities, as may be so designated from time to time (which designation, for the avoidance of doubt, shall be reversible) by the Water Services Regulation Authority;

EXCEPT THAT:

- (b) Bioresources Activities shall not include sewage collection, sewage treatment and sewage disposal;

**"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;

**"Excluded Charges"** unless and until otherwise agreed between the Water Services Regulation Authority and the Appointee, are

- (1) amounts payable in respect of an unmeasured supply of water by means of stand-pipes or water tanks and in respect of the erection or maintenance of stand-pipes or water tanks;
- (2) charges for a supply of water provided by the Appointee under section 59 of the Water Industry Act 1991;
- (2A) in relation to the period from 1 April 2020 to 31 March 2025, amounts payable in relation to the alteration or removal of any relevant pipe (as defined in section 158 of the Water Industry Act 1991) or other apparatus that the Appointee is required to carry out under the New Roads and Streets Works Act 1991 or any other statutory provision except a provision of the Water Industry Act 1991;
- (3) charges for the reception and disposal by the Appointee, or other person specified by the Appointee or, as the case may be, the Water Authority, of matter delivered to the Appointee or such other person by a collection

authority in pursuance of section 14(9) of the Control of Pollution Act 1974;

- (4) charges for unmeasured supplies of water to cattle troughs;
  - (5) charges for unmeasured building water supplies;
  - (6) amounts payable in respect of an unmeasured supply of water by means of bowsers or water tankers;
  - (7) charges for unmeasured supplies of water to farm taps and other agricultural water points; and
- (7A) at any time before (but not including) 1 April 2015, charges in any Charging Year for supplies of water (or for the provision of sewerage services or for the reception, treatment and disposal of trade effluent) to premises where the premises were supplied in the relevant Prior Year with not less than such quantity of water as is specified from time to time under section 7(5)(a) of the Water Industry Act 1991

AND, for the avoidance of doubt, but without prejudice to the meaning of Standard Charges in respect of water supply, sewerage services and the reception, treatment and disposal of trade effluent, shall also include

- (8) at any time before (but not including) 1 April 2015, charges payable for any such connection as is described in section 146(2)(a) of the Water Industry Act 1991;
- (9) charges for a supply of water in bulk to another water undertaker;
- (10) amounts payable under any such agreement as is described in section 20(1)(b) of the Water Resources Act 1991 (including any such agreement entered into by the Water Authority under section 81 of the Water Resources Act 1963 with respect to any of the matters referred to in sections 81(1)(b) and 81(1)(d) of that Act as, by virtue of paragraph

29(1) of Schedule 26, has effect on and after the transfer date as a thing done by the Appointee); and

- (11) charges payable under any agreement for any unmeasured supply of water or unmeasured sewerage services which are calculated by reference to the rateable value of hereditaments, occupied by the person to whom the supply or services are provided, fixed in accordance with section 32, 33 or, as the case may be, 34 of the General Rate Act 1967 or, as the case may be, fixed in accordance with section 54 of the Local Government Finance Act 1988

but so that where this Condition requires reference to be made to Excluded Charges in a Charging Year prior to that starting on 1 April 1990 the expression "Excluded Charges" shall be read and construed as though:

- (a) there were added to sub-paragraph (2) of this definition the words "and charges for a supply of water provided by the Appointee or, as the case may be, the Water Authority under section 37 of Schedule 3 to the 1945 Act"; and
- (b) there were added to sub-paragraph (3) of this definition the words "and charges for the reception and disposal by the Water Authority, or other person specified by the Water Authority, of matter delivered to the Water Authority or such other person by a collection authority in pursuance of section 14(9) of the Control of Pollution Act 1974"; and
- (c) there were added to sub-paragraph (10) of this definition the words "and any agreement entered into by the Appointee, or, as the case may be, the Water Authority under section 81 of the Water Resources Act 1963 with respect to any of the matters referred to in sections 81(1)(b) and 81(1)(d) of that Act";

**"Interim Determination"** means a determination by the Water Services Regulation Authority of the relevant questions pursuant to a reference by the Appointee under paragraph 13 or pursuant to paragraph 14 or, as the case may be, a determination by the Competition and Markets Authority of the relevant

questions or of a disputed determination subject to a reference to it pursuant to paragraph 15 that relates to a reference by the Appointee under paragraph 13 or a determination pursuant to paragraph 14;

**"Network Plus Activities"** means Network Plus Water Activities and Network Plus Wastewater Activities;

**"Network Plus Water Activities"** means all activities carried out by the Appointee in performance of its functions as a water undertaker other than Water Resources Activities and Retail Activities;

**"Network Plus Wastewater Activities"** means all activities carried out by the Appointee in performance of its functions as a sewerage undertaker other than Bioresources Activities and Retail Activities;

**"Price Control"** means a control set by the Water Services Regulation Authority, pursuant to a Periodic Review or Interim Determination, or deemed to be so set by virtue of sub-paragraph 15.2, in respect of the charges to be levied by and/or revenue allowed to an Appointed Business or any part thereof (having regard to its costs) and such matters ancillary to the said control, by way of a determination pursuant to this Condition. The appropriate nature and form of each control for Water Resources Activities, Bioresources Activities and Retail Activities will depend on the circumstances of each case;

**"Retail Activities"** means such activities that constitute the provision of goods or services by the Appointee directly to one or more End-Users, and such activities ancillary to such provision including ownership of meters, and that are so designated from time to time (which designation, for the avoidance of doubt, shall be reversible) by the Water Services Regulation Authority, but for the avoidance of doubt shall not include the following:

- (a) water resources, raw water distribution, water treatment or treated water distribution, sewage collection, sewage treatment, sludge treatment or sludge disposal (as each of those is defined in the Water Services Regulation Authority's Regulatory Accounting Guideline(RAG) 4.06); or

- (b) in so far as the ownership of meters is so designated, the ownership of meters that were installed at, or in order to measure supplies to, End-Users' premises on or before the date of such designation;

**"Standard Charges"** means

- (1) charges fixed under any such charges scheme as is referred to in section 143 of the Water Industry Act 1991;
- (2) charges fixed by the Appointee in respect of its Water Resources Activities, Bioresources Activities and Network Plus Activities;
- (3) charges payable under any such agreement as is referred to in section 142 of the Water Industry Act 1991 (including any such agreement made or entered into by the Water Authority under section 30 of the 1973 Act as, in accordance with a scheme under Schedule 2, is transferred to the Appointee) under or for which all the charges payable are in accordance with standard charges published or fixed by the Appointee or, as the case may be, the Water Authority;
- (4) charges payable where a discharge is made in pursuance of a consent given by the Appointee for the purposes of Chapter III of Part IV of the Water Industry Act 1991 under or for which all the charges payable are in accordance with standard charges published or fixed by the Appointee;
- (5) charges determined by agreement in respect of a supply of water provided by the Appointee for non-domestic purposes where all the charges so determined in respect of that supply are in accordance with standard charges published or fixed by the Appointee;
- (6) charges fixed under any such charges scheme made by the Appointee, or as the case may be, the Water Authority, under section 31 of the 1973 Act as, by virtue of paragraph 16(1) of Schedule 26 of the Water Act



1989, had effect on and after the transfer date as if it were a charges scheme made under section 76 of the Water Act 1989 by the Appointee;

- (7) charges payable under any such consent or agreement under the 1937 Act as, by virtue of paragraph 13 of Schedule 26 of the Water Act 1989, has effect on and after the transfer date as if it were given or entered into by the Appointee under which all the charges payable are in accordance with standard charges published or fixed by the Water Authority or, as the case may be, the Appointee;
- (8) charges in respect of any such supply which the Appointee was under a duty to make under section 27 of the 1945 Act as, by virtue of paragraph 8 of Schedule 26 of the Water Act 1989, is a supply which the Appointee is under a duty to make on and after the transfer date where all charges in respect of such supply are in accordance with standard charges published or fixed by the Water Authority or, as the case may be, the Appointee; and
- (9) charges payable under any agreement made or entered into by the Appointee under any local statutory provision or under any other power conferred on the Appointee otherwise than by virtue of the Act, under which all the charges payable are in accordance with standard charges published or fixed by the Appointee

provided that no part of this definition shall apply to any charge which is for the time being an Excluded Charge by virtue of (7A) of the definition of Excluded Charges;

but so that where this Condition requires reference to be made to Standard Charges in a Charging Year prior to that starting on 1 April 1990 the expression "Standard Charges" shall be read and construed as though:

- (a) there were added to sub-paragraph (6) of this definition the words "and any charges scheme made by the Appointee or by the Water Authority under section 31 of the 1973 Act";

- (b) there were added to sub-paragraph (7) of this definition the words "and any consent or agreement given or entered into by the Water Authority under the 1937 Act under which all the charges payable were in accordance with standard charges published or fixed by the Water Authority";
- (c) there were added to sub-paragraph (8) of this definition the words "and any such supply which the Appointee or, as the case may be, the Water Authority was under a duty to make under section 27 of the 1945 Act, where all the charges in respect of such supply were in accordance with standard charges published or fixed by the Appointee or, as the case may be, the Water Authority"; and
- (d) there were added a further sub-paragraph, (10), as follows: "charges payable under any consent, agreement, scheme or other instrument given, made or entered into by the Water Authority under any enactment or subordinate legislation under which it is empowered to make charges under which all the charges payable were in accordance with standard charges published or fixed by the Water Authority".

In this definition references to standard charges published or fixed by the Appointee or the Water Authority are to such charges, where published or fixed under a charges scheme or otherwise;

**"Termination Notice"** means a notice given in accordance with Condition O;

an **"unmeasured supply"** is one where none of the charges for that supply is based on measured quantities of volume;

**"Water Resources Activities"** means –

- (a) such activities carried out by the Appointee in performance of its functions as a water undertaker in connection with abstraction licences, raw water abstraction, raw water transport and raw water storage, and such ancillary activities, as may be so designated from time to time

(which designation, for the avoidance of doubt, shall be reversible) by Water Services Regulation Authority;

EXCEPT THAT:

- (b) Water Resources Activities shall not include water treatment and treated water distribution.

### 3 **Interpretation**

Where the context so requires, terms used in the definition in this Part of Bioresources Activities and Water Resources Activities shall have the meanings assigned to them in the Water Services Regulation Authority's Regulatory Accounting Guideline (RAG) 4.06.

4 **[Not used]**

5 **[Not used]**

6 **[Not used]**

7 **[Not used]**

## Part III. Periodic Reviews

### 8 Periodic Reviews of the Appointed Business

8.1 The Appointee shall levy charges in a way best calculated to comply with the Price Control or Price Controls determined by the Water Services Regulation Authority pursuant to sub-paragraph 8.3 or sub-paragraph 8.4.

8.1A Sub-paragraph 8.1 does not prevent the Appointee from levying charges to recover a Relevant Shortfall in a Relevant Charging Year, regardless of the controls set in the Price Controls determined under sub-paragraph 8.4. For the purposes of this sub-paragraph:

- (a) "a Relevant Charging Year" means any charging year, and

- (b) “a Relevant Shortfall” means any positive amount calculated for a Relevant Charging Year in relation to one or more specified Price Controls in accordance with any formula

that in both cases the Water Services Regulation Authority has notified to the Appointee by no later than 31 December in the Charging Year before the immediately preceding Review Charging Year.

8.1B Where a notification of a formula is made for the purposes of sub-paragraph 8.1A, that notification shall be treated for the purposes of sub-paragraph 15.1 (regarding references to the Competition and Markets Authority) as part of the relevant determination made under sub-paragraph 8.4.

8.2 The Appointee shall furnish to the Water Services Regulation Authority such Information as the Water Services Regulation Authority may reasonably require to enable it to carry out a Periodic Review pursuant to sub-paragraph 8.3 or sub-paragraph 8.4.

8.3 In respect of the Appointed Business’s Retail Activities, the Water Services Regulation Authority shall determine (having regard to all the circumstances which are relevant in the light of the principles which apply by virtue of Part I of the Water Industry Act 1991 in relation to the Water Services Regulation Authority's determinations, including, without limitation, any change in circumstance which has occurred since the last Periodic Review or which is to occur):

- (1) what is the appropriate nature, form and level of one or more Price Controls in respect of the relevant part or parts of the Appointed Business;
- (2) how the Appointee shall, in respect of each such Price Control applicable to it, demonstrate the compliance referred to in sub-paragraph 8.1; and
- (3) for how long each such Price Control in respect of the Appointee shall last (being a period of consecutive Charging Years).

## 8.4

- (1) In respect of the Appointed Business's Water Resources Activities, Bioresources Activities, Network Plus Water Activities and Network Plus Wastewater Activities except for those activities for which there are Excluded Charges, the Water Services Regulation Authority shall determine separate Price Controls in accordance with this subparagraph (having regard to all the circumstances which are relevant in the light of the principles which apply by virtue of Part I of the Water Industry Act 1991 in relation to the Water Services Regulation Authority's determinations including, without limitation, any change in circumstance which has occurred since the last Periodic Review or which is to occur).
- (2) In relation to Network Plus Activities, the Water Services Regulation Authority shall determine:
  - (a) one single Price Control in respect of the Appointed Business's Network Plus Water Activities and one single Price Control in respect of the Appointed Business's Network Plus Wastewater Activities, each such Price Control consisting of, in each Charging Year:
    - (i) the percentage change (expressed, in the case of an increase, as a positive number, in the case of a decrease, as a negative number, and, in the case of no change, as zero) in the Relevant Index between that published for the month of November in the Prior Year and that published for the immediately preceding November; and
    - (ii) a number, "**K**" which may be a positive number or a negative number or zero

which shall together be expressed as a percentage, and which shall limit the change in the charges to be levied by and/or revenue allowed to the Appointed Business in each Charging Year in respect of the activities concerned; and

(b) how the Appointee shall, in respect of each Network Plus Activities Price Control applicable to it, demonstrate the compliance referred to in sub-paragraph 8.1.

(3) In relation to the Water Resources Activities, the Water Regulation Authority shall determine:

(c) what is the appropriate nature, form and level of the Price Control in respect of Water Resources Activities; and

(d) how the Appointee shall demonstrate the compliance referred to in sub-paragraph 8.1 in respect of Water Resources Activities,

and in making any such determination will include an annual adjustment to reflect any percentage change in the Relevant Index between that published for the month of November in the Prior Year and that published for the immediately preceding November.

(4) In relation to Bioresources Activities, the Water Services Regulation Authority shall determine:

(a) what is the appropriate nature, form and level of the Price Control in respect of Bioresources Activities; and

(b) how the Appointee shall demonstrate the compliance referred to in sub-paragraph 8.1 in respect of Bioresources Activities,

and in making any such determination will include an annual adjustment to reflect any percentage change in the Relevant Index between that published for the month of November in the Prior Year and that published for the immediately preceding November.

8.5 Each Price Control determined under sub-paragraph 8.3 pursuant to a Periodic Review shall be set for a period which shall be a number of Charging Years to be determined by the Water Services Regulation Authority, in conjunction with its determination pursuant to sub-paragraph 8.3, in each case starting on 1

April, with the first such period starting on 1 April 2015, provided that no such period shall exceed five consecutive Charging Years.

8.6 Each Price Control determined under sub-paragraph 8.4 pursuant to a Periodic Review shall be set:

- (1) for the five consecutive Charging Years starting on 1 April 2020; and
- (2) thereafter for each period of five consecutive Charging Years starting on the fifth anniversary of the first day of the period in respect of which the immediately preceding Periodic Review was carried out.

8.7 If, at any time after 1 April 2020, the Water Services Regulation Authority is unable to conduct a Periodic Review by 31 December in the Charging Year before the Review Charging Year, then:

- (1) in respect of Retail Activities, the previous determination pursuant to sub-paragraph 8.3 – in so far as that determination includes the matters decided under sub-paragraphs 8.3(1) and (2) – in respect of the final Charging Year of the period that was set in that previous determination pursuant to sub-paragraph 8.3(3), shall continue to apply for consecutive Charging Years until the next relevant determination under sub-paragraph 8.3 (or equivalent determination by the Competition and Markets Authority pursuant to paragraph 15) or the next relevant Interim Determination becomes effective;
- (2) in respect of Water Resources Activities, Bioresources Activities or Network Plus Activities, the previous determination pursuant to sub-paragraph 8.4 in respect of the final Charging Year of the period that was set in that previous determination shall continue to apply for consecutive Charging Years until the next relevant determination under sub-paragraph 8.4 (or equivalent determination by the Competition and Markets Authority pursuant to paragraph 15) or the next relevant Interim Determination becomes effective;

- (3) the Water Services Regulation Authority shall conduct a Periodic Review as soon as reasonably practicable thereafter, provided that the Appointee has not given a relevant notice under paragraph 15.
- 8.8 Where there is a material change to the basis of compiling the Relevant Index, this Condition, in so far as it relates to that part of the calculation of any Price Control to which the Relevant Index is relevant, shall be modified in such a manner as the Water Services Regulation Authority, after prior consultation with the Appointee, may determine to be appropriate to take account of such change.
- 8.9 The Water Services Regulation Authority may, at its discretion, from time to time (whether pursuant to a Periodic Review in connection with a determination pursuant to sub-paragraph 8.3 or sub-paragraph 8.4, or at other times) designate any activity carried out as part of the Appointed Business as falling within:
- (i) Retail Activities (subject to the definition of "Retail Activities" in paragraph 2);
  - (ii) Water Resources Activities (subject to the definition of "Water Resources Activities" in paragraph 2);
  - (iii) Bioresources Activities (subject to the definition of "Bioresources Activities" in paragraph 2);
  - (iv) Network Plus Water Activities (subject to the definition of "Network Plus Water Activities" in paragraph 2); or
  - (v) Network Plus Wastewater Activities (subject to the definition of "Network Plus Wastewater Activities" in paragraph 2).
- 8.10 Where a designation is made under sub-paragraph 8.9 pursuant to a Periodic Review in conjunction with a determination pursuant to sub-paragraph 8.3 or



sub-paragraph 8.4, that designation shall be treated for the purposes of sub-paragraph 15.1 as part of the determination.

- 8.11 Where a designation is made under sub-paragraph 8.9 otherwise than pursuant to a Periodic Review in conjunction with a determination pursuant to sub-paragraph 8.3 or sub-paragraph 8.4, that designation shall be treated for the purposes of sub-paragraph 15.1 as part of the next following determination in respect of the activity concerned.

## 9 Non Retail Charges Publication

- 9.1 The Appointee may from time to time be required to publish charges fixed for the purposes of demonstrating compliance with the Price Controls determined in respect of its Water Resources Activities, Bioresources Activities and Network Plus Activities. Such requirement shall be made by way of a notice from the Water Services Regulation Authority to the Appointee specifying the information to be provided, the method of publication, the time by which publication is required (being a reasonable period of time) and the period for which the published charges are to be effective. The Appointee shall comply with the said requirement by notice and adhere to the charges accordingly published.

## 10 Periodic Reviews relating to the Appointed Business where a Termination Notice has been given

- 10.1 Where a Termination Notice has been given by the Welsh Ministers to the Appointee, the Appointee may refer to the Water Services Regulation Authority for determination by it the question whether, on the assumption that such a Termination Notice had not been given, (but subject thereto, having regard to all the circumstances which are relevant in the light of the principles which apply by virtue of Part I of the Water Industry Act 1991 in relation to the Water Services Regulation Authority's determination or determinations, including, without limitation any change in circumstance which has occurred since the most recent one or more Periodic Reviews or which is to occur), the Price Controls, and in the case of Retail Activities and Water Resources Activities

and Bioresources Activities, the nature, form and level of one or more Price Controls should be changed (and if so what change should be made to the relevant Price Control or Price Controls and, in the case of Retail Activities and Water Resources Activities and Bioresources Activities, to the nature, form and level of the relevant Price Control or Price Controls) for one or more periods (as decided by the Water Services Regulation Authority) of consecutive Charging Years starting with the Charging Year starting 1 April last before the Termination Notice is to expire.

- 10.2 A reference to the Water Services Regulation Authority under this paragraph 10 shall be made by notice given to the Water Services Regulation Authority not earlier than 1 July and not later than 14 July in the Charging Year next but one before that commencing on the said 1 April.

#### Part 3A Performance Measure Adjustments

- 11.1 This Part 3A applies where the Water Services Regulation Authority has notified the Appointee by 31 December in the Charging Year before the Review Charging Year that a Price Control determined under sub-paragraph 8.3 in respect of the Appointee's Retail Activities or sub-paragraph 8.4 in respect of the Appointee's Water Resources Activities, Bioresources Activities or Network Plus Activities may be adjusted to reflect the Appointee's performance in relation to a specific Performance Commitment.
- 11.2 The Appointee may by notice to the Water Services Regulation Authority refer for a determination under this Part the question set out in sub-paragraph 11.5 or the Water Services Regulation Authority may make a determination under this Part of the question set out in sub-paragraph 11.5 on its own initiative.
- 11.3 Any such reference by the Appointee must be made no later than 15 August in the year before the first Charging Year for which any adjustment to a Price Control is sought.

- 11.4 Any such determination by the Water Services Regulation Authority must be made no later than 15 November in the year before the first Charging Year for which any adjustment to a Price Control would take effect.
- 11.5 Under this Part the Water Services Regulation Authority may determine the question of whether there should be a change to the revenue allowed under, or, as the case may be, the level of, any Price Control determined under sub-paragraph 8.3 in respect of the Appointee's Retail Activities or sub-paragraph 8.4 in respect of its Water Resources Activities, Bioresources Activities or Network Plus Activities for the following and any subsequent Charging Year and, if so, the amount of such change.
- 11.6 The Appointee shall furnish to the Water Services Regulation Authority such Information as the Water Services Regulation Authority may reasonably require for the purpose of making a determination pursuant to this Part.
- 11.7 In making a determination pursuant to this Part, the Water Services Regulation Authority shall:
- (a) consider the Appointee's performance in relation to each relevant Performance Commitment in the period for which performance is being assessed and, in deciding for which Charging Year or Charging Years an adjustment to a Price Control should be made, shall consider both that and the Appointee's expected performance in the current year or one or more future years up to, but not including, the next Review Charging Year; and
  - (b) take account of the adjustments to the relevant Price Control which the Water Services Regulation Authority notified to the Appointee under sub-paragraph 11.1 above in relation to each relevant Performance Commitment in question.
- 11.8 In this Part "**Performance Commitment**" means a target or other measure of the performance of the Appointee in relation to the carrying out of the Regulated Activities that the Water Services Regulation Authority has notified to the Appointee by 31 December in the Charging Year before the Review Charging

Year or which is set by the Competition and Markets Authority following a determination under paragraph 15.

11.9 In this Condition references to a "**Price Control**" include a Price Control that has been changed in accordance with a determination made under this Part.

11.10 Where a notification of a Performance Commitment is made for the purposes of sub-paragraph 11.1, that notification shall be treated for the purposes of sub-paragraph 15.1 (regarding references to the Competition and Markets Authority) as part of the relevant determination made under sub-paragraph 8.3 or sub-paragraph 8.4.

#### Part IV. Interim Determinations

#### 12 Matters of interpretation and construction which apply for the purposes of this Part IV

12.1 In this Part of this Condition:

**"the Appropriate Discount Rate"** means such rate of return upon borrowing as, at the time at which the Appropriate Discount Rate falls to be applied from time to time under this Condition, investors and creditors would reasonably expect of a properly managed company holding the Appointment whose sole business consists of being a water undertaker and, without excluding other considerations which may also be relevant, having its equity share capital listed on The London Stock Exchange , and the same Appropriate Discount Rate shall be applied for all purposes in determining questions the subject of the same reference (including questions determined by the Water Services Regulation Authority under paragraph 14 when it determines questions referred to it by the Appointee under paragraph 13);

**"equity share capital"** has the same meaning as in the Companies Act 2006;

**"making a Relevant Determination"** means, as regards each Price Control to which an Interim Determination relates or is to relate, making one or more determinations pursuant to sub-paragraph 8.3 or sub-paragraph 8.4, pursuant

to a Periodic Review, as to that Price Control, or making any subsequent Interim Determination as to whether the level of that Price Control should be changed (and, if so, what change should be made to the level of the Price Control or Price Controls), and "**Relevant Determination**" shall be construed accordingly;

"**Net Present Value**" means the net present value calculated as at 30 September in the year in which the relevant Reference Notice is given or, where in any year no Reference Notice is given under paragraph 13 but the Water Services Regulation Authority gives a notice to the Appointee under paragraph 14, as at 30 September in the year in which the Water Services Regulation Authority gives the notice, by discounting subsequent cash flows and inflating earlier cash flows at the Appropriate Discount Rate, assuming all cash flows in any Charging Year occur on 30 September in that Charging Year;

a "**Notified Item**" is any item notified by the Water Services Regulation Authority to the Appointee as not having been allowed for (either in full or at all) in making a Relevant Determination; and for the purpose of this definition:

- (a) where any such item was not allowed for in full then it shall only be a Notified Item to the extent that it was not allowed for; and
- (b) where, in determining whether the Relevant Determination should be changed (and if so what change should be made to it), the Water Services Regulation Authority, or, as the case may be, the Competition and Markets Authority, allows for any such item as was previously so notified by the Water Services Regulation Authority then references in this Condition to Notified Items and Relevant Items shall be taken, for the purposes of any subsequent Interim Determination, to exclude such item to the extent that the Water Services Regulation Authority, or, as the case may be, the Competition and Markets Authority, allowed for it as aforesaid;

a "**Relevant Change of Circumstance**" is any of the following:

- (1) (a) the application to the Appointee of any legal requirement; and

- (b) any change to any legal requirement which applies to the Appointee (including any legal requirement ceasing to apply, being withdrawn or not being renewed);
- (2) either of the following circumstances for any Charging Year in respect of which the Secretary of State, or, as the case may be, the Water Services Regulation Authority, notified the Appointee that variations in value received or expected to be received from Relevant Disposals of Land shall constitute a Relevant Change of Circumstance:
  - (a) where for any Charging Year the value received or expected to be received from a Relevant Disposal of any Identified Land is, or is expected to be, different from the value which the Secretary of State, or, as the case may be, the Water Services Regulation Authority, notified the Appointee was the value attributable to a Relevant Disposal of that Identified Land for that Charging Year which had been allowed for in making a Relevant Determination;  
or
  - (b) where for any Charging Year, and to the extent not taken into account under (a) above, the aggregate value received or expected to be received from Relevant Disposals of Non-identified Land is, or is expected to be, different from the value which the Secretary of State, or, as the case may be, the Water Services Regulation Authority, notified the Appointee was the value attributable to Relevant Disposals of Non-identified Land for that Charging Year which had been allowed for in making a Relevant Determination;

and so that any notification by the Water Services Regulation Authority for the purposes of this sub-paragraph (2) shall be relevant for the purposes of this sub-paragraph (2) to the exclusion of any earlier notification by the Secretary of State or the Water Services Regulation Authority for the purposes of this sub-paragraph (2) to the extent that the

first mentioned notification is made in respect of matters in respect of which that earlier notification was made.

For the purposes of this sub-paragraph (2):

- (i) **"Identified Land"** means any piece or parcel of protected land identified in any such notification referred to in (a) above as is relevant for the time being for the purposes of this sub-paragraph (2) as being included in that notification, not being, or being part of, a piece or parcel of land which has previously been the subject of a transfer under paragraph 7 of Condition K;
- (ii) **"land"** includes any interest or right in or over land;
- (iii) **"Non-identified Land"** means any piece or parcel of protected land, not being, or being part of:
  - (A) a piece or parcel of protected land identified in any such notification referred to in (a) above as is relevant for the time being for the purposes of this sub-paragraph (2); or
  - (B) a piece or parcel of protected land which has previously been the subject of a transfer under paragraph 7 of Condition K;
- (iv) **"protected land"** and **"disposal"** have the meanings respectively given to them in section 219 of the Water Industry Act 1991;
- (v) a **"Relevant Disposal"** means and includes any disposal by the Appointee;
- (vi) a **"Relevant Disposal of Land"** means and includes a Relevant Disposal of Identified Land and a Relevant Disposal of Non-identified Land;

- (vii) "**value**" includes value of any kind including, without limitation, cash, the value of real or personal property or any interest in such property, the value of any right or benefit (actual or prospective) and the value of any release, in whole or in part, of any obligation or claim, provided that to the extent that any property, right or benefit shall consist of a right to receive cash or any other asset then no value shall be attributed to that property, right or benefit but the cash or other asset the subject thereof shall be included and treated as value received or expected to be received in the Charging Year in which it is received or expected to be received;
  - (viii) references to "**value received or expected to be received**" shall be construed so as to include receipts by, and grants to, the Appointee, any Associated Company or any other business in which either the Appointee or any Associated Company has a material direct or indirect interest;
  - (ix) in the case of a right or benefit, but subject to the proviso to (vii) above, value shall be deemed to have been received at the time the right is granted or the benefit arises;
- (3) where:
- (i) in making a Relevant Determination, an amount has been allowed for on account of steps taken or to be taken for the purpose of securing or facilitating compliance with a legal requirement (not being one to comply with which the Appointee has determined to make a change to the basis on which it charges customers for water supply services) or achieving a service standard adopted or to be adopted by the Appointee; and
  - (ii) in any such case:
    - (A) the Appointee has not taken (by the date by which it was assumed for the purposes of assessing the amount



allowed for as aforesaid it would take those steps) any or all of those steps which, for the purpose of assessing the amount allowed for as aforesaid, it was assumed it would take; and

(B) as a result, the amount allowed for as aforesaid is substantially greater than the sum of (a) the costs (if any) actually incurred by the Appointee for the relevant purpose specified in (i) above and (b) so much (if any) of that amount as has been otherwise offset by prudent management of the capital programme; and

(C) that purpose has not been otherwise achieved;

a "**Relevant Item**" is any of the following:

- (1) A Relevant Change of Circumstance (other than a Relevant Change of Circumstance falling within sub-paragraph (2) of the definition);
- (2) A Notified Item; and
- (3) A Relevant Disposal of Land

and references to a Relevant Item are to a Relevant Change of Circumstance (other than a Relevant Change of Circumstance falling within sub-paragraph (2) of the definition), a Notified Item or a Relevant Disposal of Land as the context may require.

12.2 In the definition of a "Relevant Change of Circumstance" and for the purpose of that definition:

(1) a "**legal requirement**" is any of the following:

- (a) any enactment or subordinate legislation to the extent that it applies to the Appointee in its capacity as a water undertaker or sewerage undertaker (and for this purpose, but without prejudice

to the generality of the foregoing, "**subordinate legislation**" includes any order made under section 18 of the Water Industry Act 1991, and any authorisation granted, approval given, or prohibition imposed, by the Welsh Ministers under The Water Supply (Water Quality) Regulations 2010);

- (b) any regulation made by the Council or the Commission of the European Union to the extent that it applies to the Appointee in its capacity as a water undertaker or sewerage undertaker, or decision taken by the said Commission which is binding on the Appointee in its capacity as a water undertaker or sewerage undertaker and to the extent that it is so binding;
- (c) any licence, consent or authorisation given or to be given by the Secretary of State, the Welsh Ministers, the Environment Agency, Natural Resources Wales or other body of competent jurisdiction to the Appointee for the purpose of carrying on any of the functions of a water undertaker or sewerage undertaker;
- (d) any undertaking given by the Appointee to, and accepted by, the Welsh Ministers or, as the case may be, the Water Services Regulation Authority for the purposes of section 19(1)(b) of the Water Industry Act 1991;
- (e) other than any such undertaking as is referred to in (d), any undertaking given by the Appointee to any enforcement authority, and accepted by that enforcement authority, to take all such steps:
  - (i) as are specified by that enforcement authority to be necessary or appropriate for the Appointee to take for the purpose of securing or facilitating compliance with any legal requirement in relation to which that enforcement authority is the enforcement authority; or

- (ii) the taking of which is specified by that enforcement authority to be a condition or requirement of granting or renewing any such licence, consent or authorisation as is referred to in (c) or agreeing not to withdraw the same;
- (f) the Conditions of these Appointments; and
- (g) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within (a) to (f) above to have effect in a way;
  - (i) different to that in which it previously had effect; or
  - (ii) different to that in which it was taken to have effect:
    - (A) for the purpose of making a Relevant Determination; or, as the case may be,
    - (B) in determining whether a Relevant Determination should be changed

but so that nothing in sub-paragraphs (a) to (g) above shall apply so as to include:

- (i) any such legal requirement as is referred to in section 41 of the Environment Act 1995 or any such legal requirement that is equivalent to those referred to in section 113 of the Water Act 1989 (as originally enacted), or
- (ii) those sections

to the extent in either case that they require the Appointee to pay fees or charges to the relevant enforcement authority; and

- (2) "**enforcement authority**" means any person or body having jurisdiction to enforce or to take action under or in respect of the relevant legal requirement.

12.3 In paragraph 13 and in the definition of a "**Relevant Change of Circumstance**":

- (1) references to costs include references to expenditure and loss of revenue and references to costs being incurred include references to expenditure being made and loss of revenue being suffered;
- (2) references to receipts include references to receipts, cash or other assets of any sort, whether of a capital or revenue nature and including receipts of grants, contributions, gifts and loans; and
- (3) without prejudice to sub-paragraph (1) above, "Operating Expenditure" in sub-paragraph 13.2(6) includes third party services as defined in pro forma A7 and A8 of the Water Services Regulation Authority's Regulatory Accounting Guideline 3.07. For the avoidance of doubt, depreciation, the write-down/off of assets, the profits/loss on disposal of assets and infrastructure renewals expenditure or charges are excluded.

12.4 (1) For the purposes of sub-paragraph 13.2(1) costs, receipts and savings shall be ascertained at the general price level prevailing, or expected to prevail, on 30 September in the year in which the Appointee gives notice under sub-paragraph 13.1, or the Water Services Regulation Authority gives notice under sub-paragraph 14.1.

- (2) In sub-paragraphs 13.2(8) and 13.2(9) and sub-paragraph (3) below "**at Outturn Prices**", in relation to the amount of any Base Cash Flow or depreciation, means that amount as adjusted to take account of the actual or expected cumulative percentage change in the Relevant Index from that prevailing, or expected to prevail, on 30 September in the year in which the Appointee gives notice under sub-paragraph 13.1, or the Water Services Regulation Authority gives notice under sub-paragraph 14.1, up to and including that prevailing, or expected to prevail, on 30

September in the year in which the Base Cash Flow or depreciation occurred, or is expected to occur.

- (3) In sub-paragraph 13.2(8) "**Current Value**", in relation to any Base Cash Flow or depreciation at Outturn Prices, means that amount, as adjusted to take account of the actual or expected cumulative percentage change in the Relevant Index from 30 September in the year in which that Base Cash Flow or depreciation occurred or is expected to occur, up to and including 30 September in the relevant year.

12.5 For the purpose of section 13(5)(b) of the Water Industry Act 1991, the provisions of this Condition, to the extent that they relate to a Relevant Change of Circumstance falling within sub-paragraph (2) of that definition, are provisions of the Appointments which cannot be modified. This sub-paragraph shall cease to have effect if, but only if, this Condition ceases to contain any provision relating to changes to the Relevant Determination to allow for Notified Items and Relevant Changes of Circumstance.

13 References to the Water Services Regulation Authority relating to Notified Items and Relevant Changes of Circumstance and circumstances having a substantial effect on the Appointed Business

13.1 The Appointee may from time to time refer to the Water Services Regulation Authority for determination by it (having considered the proposals of the Appointee) the questions set out in sub-paragraph 13.2 or, as the case may be, sub-paragraph 13.3. Such reference shall be made by notice given to the Water Services Regulation Authority, which, in the case of the questions set out in sub-paragraph 13.2, shall be given in accordance with sub-paragraph 13.4. For the purposes of sub-paragraph 13.2 a single reference may be made in respect of any number of Notified Items and Relevant Changes of Circumstance and sub-paragraph 13.2 shall be construed accordingly.

13.2 In the case of a Notified Item or where there has been or is to be a Relevant Change of Circumstance all of the following:

- (1) what are, or are likely to be, the costs, receipts and savings reasonably attributable to the Relevant Item and also, in the case of a Relevant Change of Circumstance falling within sub-paragraph (2) of the definition, the costs, receipts and savings reasonably connected with the Relevant Disposal of Land;
- (2) except in the case of a Relevant Change of Circumstance falling within sub-paragraph (2) of the definition, to what extent:
  - (a) are the costs determined under (1) reasonably recoverable through charges for services provided, functions carried out by, and other activities of, the Appointee in its capacity as a water undertaker or sewerage undertaker which are not Standard Charges for water supply, sewerage services and the reception, treatment and disposal of trade effluent (not being Excluded Charges);
  - (b) in the case of receipts and savings, is the Relevant Item relevant to services provided, functions carried out by, and other activities of, the Appointee as a water undertaker or sewerage undertaker which are not water supply, sewerage services and the reception, treatment and disposal of trade effluent in respect of which the Appointee makes Standard Charges (not being Excluded Charges)

and where it is determined that such costs are reasonably recoverable as aforesaid or, as the case may be, that the Relevant Item is relevant as aforesaid, either in full or to an extent, then references hereafter to costs, receipts and savings reasonably attributable to a Relevant Item are to those costs, receipts and savings except to that extent;

- (3) both of the following:
  - (a) what costs reasonably attributable to, or connected with, the Relevant Item as determined under (1) and what timing of

incurring of such costs are appropriate and reasonable for the Appointee in all the circumstances to incur and programme, or, as the case may be, to have incurred and programmed, by reason of the Relevant Item; and

- (b) what receipts and savings reasonably attributable to, or connected with, the Relevant Item as determined under (1) and what timing of such receipts and savings is appropriate and reasonable for the Appointee in all the circumstances to achieve and programme or, as the case may be, to have achieved and programmed, by reason of the Relevant Item

and for the purpose of determining the separate amounts under (a) and (b), but without prejudice to the generality of the foregoing:

- (i) no account shall be taken of:
  - (A) any trivial amounts;
  - (B) any costs, to the extent that they would have been, or would be, avoided by prudent management action taken since the transfer date (and for this purpose what constitutes "prudent management action" shall be assessed by reference to the circumstances which were known or which ought reasonably to have been known to the Appointee at the relevant time);
  - (C) any savings achieved by management action taken since the transfer date over and above those which would have been achieved by prudent management action (and for this purpose what constitutes "prudent management action" shall be assessed by reference to the circumstances at the relevant time);or

- (D) any amounts attributable to matters allowed for in making a Relevant Determination, except to the extent that such amounts otherwise fall to be taken into account as amounts reasonably attributable to, or connected with, the Relevant Item under this sub-paragraph (3) and sub-paragraph (1) by virtue of the definition of a Notified Item and a Relevant Change of Circumstance; and
- (ii) in the case of a Relevant Change of Circumstance falling within sub-paragraph (1) of the definition, regard shall be had to whether either:
  - (a) the Welsh Ministers have notified the Water Services Regulation Authority of any change of policy, concerning any environmental or water-quality standard, which has been made since the last Relevant Determination; or
  - (b) the Appointee has itself given notice to the Water Services Regulation Authority of the application to it of, or any change to, any legal requirement, before referring that legal requirement to the Water Services Regulation Authority under sub-paragraph 13.1;
- (4) having determined under (3) the separate amounts of costs and of receipts and savings in respect of each Relevant Item, what are the annual cash flows thereof (costs being netted off against the amount of receipts and savings for this purpose) over each Charging Year included in the timing determined under (3) (those annual cash flows being hereinafter referred to as "**the Base Cash Flows**");
- (5) what is the annual aggregate of:



- (a) one half of the Base Cash Flows in respect of Relevant Changes of Circumstance falling within sub-paragraph (2) of that definition; and
- (b) the Base Cash Flows in respect of all other Relevant Changes of Circumstance and Notified Items

in both cases the subject of the notice or notices under sub-paragraph 13.4 or sub-paragraph 14.1;

- (6)
  - (a) where any part of an annual aggregate derived under sub-paragraph (5) consists of items to which (b) below does not apply, what is the Net Present Value of that part of the annual aggregate, calculated up to the start of the first of the Charging Years for which the next Periodic Review falls to be carried out;
  - (b) where any part of the annual aggregate derived under sub-paragraph (5) consist of revenue and/or Operating Expenditure, what is the Net Present Value of that part of the annual aggregate, calculated over 15 years; and
  - (c) what is the aggregate of those Net Present Values calculated under (a) and (b) ("**the Materiality Amount**");
- (7) is the Materiality Amount equal to or does it exceed ten per cent of the turnover attributable to the Appointed Business in the latest financial year for which accounting statements have been prepared and delivered to the Water Services Regulation Authority under Condition F, as shown by those accounting statements, and for this purpose where the Materiality Amount is a negative figure it shall be treated as though it were a positive figure;
- (8) if so, for each year, ("**the relevant year**") until the first of the Charging Years for which the next Periodic Review falls to be carried out (having

regard to any Review Notice or Reference Notice which has been given at the time when the reference is made),

- (a) what are the following amounts:
  - (i) all Base Cash Flows at Outturn Prices attributable to the creation or acquisition of depreciable assets ("**Allowable Capital Expenditure**");
  - (ii) all the Base Cash Flows at Outturn Prices (save in respect of Relevant Changes of Circumstance falling within subparagraph (2) of that definition, where one half of the Base Cash Flow at Outturn Prices shall be used) attributable to the creation, acquisition or disposal of non-depreciable assets ("**Allowable Infrastructure Asset Expenditure**");
  - (iii) all other Base Cash Flows at Outturn Prices ("**Other Allowable Expenditure**");
  - (iv) the sum of the Current Value of all Allowable Capital Expenditure occurring up to and including the relevant year, divided by the weighted average expected life of the assets attributable to that Allowable Capital Expenditure at the time those assets were or are expected to be created or acquired ("**Allowable Depreciation**");
  - (v) the sum of the Current Value of all Allowable Capital Expenditure occurring up to and including the relevant year less the sum of the Current Value of all Allowable Depreciation occurring up to and including the relevant year ("**Allowable Net Asset Value**");
  - (vi) the sum of the Current Value of all Allowable Infrastructure Asset Expenditure occurring up to and including the relevant year ("**Allowable Infrastructure Asset Value**");

(vii) the Appropriate Discount Rate, adjusted so as to exclude any allowance for changes in the Relevant Index, multiplied by the sum of:

(A) the Allowable Net Asset Value for the relevant year;  
and

(B) the Allowable Infrastructure Asset Value for the relevant year;

("the **Allowable Return**"); and

(b) what is the sum of:

(i) Other Allowable Expenditure;

(ii) Allowable Depreciation; and

(iii) the Allowable Return;

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

(9) what change to the level of Price Control or Price Controls over the period beginning from the first of the Charging Years referred to in sub-paragraph 13.4(1) (in any case where a Reference Notice has been given in respect of sub paragraph 13.2) or sub-paragraph 14.1(1) (in any other case) until the first of the Charging Years for which the next Periodic Review falls to be carried out (having regard to any Review Notice or Reference Notice which has been given at the time when the reference is made) ("**the Relevant Period**") is most likely to allow, or, as the case may be, require, the Appointee to make such charges over the Relevant Period ("**Adjusted Charges**"), in such a manner as to secure that the increase, or, as the case may be, the decrease, in revenue attributable to the making of Adjusted Charges would, in each year of the Relevant Period, be equal to:

(i) the Annual Allowable Amount for that year,

plus

(ii) where Base Cash Flows at Outturn Prices have occurred prior to the first year of the Relevant Period, the amount, which, calculated as a constant annual amount over the Relevant Period, would result in the sum of the Net Present Values of these amounts equalling the sum of the Net Present Values of the Annual Allowable Amounts for each of the years prior to the Relevant Period,

Provided that -

- (a) where costs have been allowed for in determining the Annual Allowable Amount, it shall be assumed that those costs will be financed other than by the proceeds of an issue of equity share capital and
- (b) the revenue attributable to the making of Adjusted Charges over the Relevant Period shall not result in interest cover which, measured both by its level in any one year and by trends in that level over time, is less than that appropriate to the financial position and performance which investors and creditors would reasonably expect of a properly managed company holding the Appointment, whose sole business consists of being a water undertaker and having its equity share capital listed on the London Stock Exchange.

13.3 All of the following:

- (1) whether any circumstance (other than a Relevant Change of Circumstance) has occurred which has or will have:

- (a) a substantial adverse effect on the Appointed Business or on its assets, liabilities, financial position, or profits or losses, not being one which would have been avoided by prudent management action taken since the transfer date; or
  - (b) a substantial favourable effect on the Appointed Business, or on its assets, liabilities, financial position, or profits or losses, being one which is (i) fortuitous and (ii) not attributable to prudent management action; and
- (2) if so, what change should be made to the level of Price Control or Price Controls.

For this purpose:

- (i) what constitutes "prudent management action" shall be assessed by reference to the circumstances which were known or which ought reasonably to have been known to the Appointee at the relevant time;
- (ii) an effect shall not be regarded as a substantial adverse effect or a substantial favourable effect in any case unless, if the questions set out in sub-paragraph 13.2 were to be asked in relation to the circumstance giving rise to it, the answer to that in 13.2(7) (taking the reference in it to ten per cent as a reference to twenty per cent) would be in the affirmative.

13.4 A Reference Notice given to the Water Services Regulation Authority in respect of sub-paragraph 13.2 shall contain or be accompanied by reasonable details of the Relevant Item in respect of which the Reference Notice is given and, unless the Water Services Regulation Authority otherwise consents, shall be given not later than:

- (1) the fifteenth day of September immediately preceding the first of the Charging Years in respect of which the Appointee wishes the change to the level of Price Control or Price Controls to take effect; or

- (2) if later, where the Water Services Regulation Authority has given a notice to the Appointee under sub-paragraph 14.1 in respect of the same Charging Year, within fourteen days from the receipt by the Appointee of that notice.

14 Changes to the level of a Price Control or Price Controls initiated by the Water Services Regulation Authority relating to Notified Items and Relevant Changes of Circumstance and circumstances within sub-paragraph 13.3(1)(b)

14.1 In the case of a Notified Item or where any Relevant Change of Circumstance has occurred or is to occur, the Water Services Regulation Authority may, having given notice to the Appointee specifying the Notified Item or, as the case may be, the Relevant Change of Circumstance, of its intention so to do not later than:

- (1) the fifteenth day of September immediately preceding the first of the Charging Years in respect of which it proposes the change to the level of a Price Control or Price Controls to take effect; or
- (2) if later, where the Appointee has given a Reference Notice to the Water Services Regulation Authority in respect of sub-paragraph 13.2 and falling within sub-paragraph 13.4(1) in respect of the same Charging Year, within fourteen days from the receipt by the Water Services Regulation Authority of that Reference Notice

determine the questions set out in sub-paragraph 13.2 in respect of that Notified Item or, as the case may be, that Relevant Change of Circumstance. A single notice may be given under this sub-paragraph 14.1 in respect of any number of Notified Items and Relevant Changes of Circumstance and sub-paragraph 13.2 shall be construed accordingly.

14.2 Where sub-paragraph 13.4(2) or 14.1(2) applies, the questions set out in (5) to (9) inclusive of sub-paragraph 13.2 shall be determined in respect of all Notified Items and Relevant Changes of Circumstance in respect of which the Appointee

and the Water Services Regulation Authority have given notice, taken as a whole.

- 14.3 In the case of sub-paragraph 13.3, the Water Services Regulation Authority shall give notice to the Appointee of its intention to determine the questions set out in sub-paragraph 13.3(1)(b) and (2).

Part V. References to the Competition and Markets Authority

15 References to the Competition and Markets Authority

15.1 Where:

- (1) pursuant to paragraph 8 or following a reference under paragraph 10, the Water Services Regulation Authority has not given notice to the Appointee of its determination or determinations within one year from the Review Notice Date(s) or, in the case of a reference under paragraph 10, within one year from the date of the relevant Reference Notice;
- (2) following a reference under paragraph 13, the Water Services Regulation Authority has not given notice to the Appointee of its determinations (including any determinations under paragraph 14 which fall to be taken into account in determining the questions the subject of the reference under paragraph 13) within 3 months from the date of the relevant Reference Notice; or
- (3) the Appointee disputes any determination made by the Water Services Regulation Authority under sub-paragraph 8.3 or sub-paragraph 8.4 or any Interim Determination made by the Water Services Regulation Authority under Part IV of this Condition,

the Appointee may, by notice given to the Water Services Regulation Authority within:

- (a) 13 months from the Review Notice Date or, in the case of a reference under paragraph 10, from the date of the relevant Reference Notice (in the cases referred to in sub-paragraph (1));
- (b) 4 months from the date of the relevant Reference Notice (in the case referred to in sub-paragraph (2)); or
- (c) 2 months from the date on which the Water Services Regulation Authority gives notice of its determination or determinations to the Appointee (in the case referred to in sub-paragraph (3))

require the Water Services Regulation Authority to refer to the Competition and Markets Authority for determination (such determination to be effective as if made by the Water Services Regulation Authority) by it:

- (i) in any case referred to in sub-paragraph (1) or (2), the relevant question or questions (including, where relevant, the questions in respect of any Notified Item or Relevant Change of Circumstance the subject of a notice under paragraph 14); or
- (ii) in any case referred to in sub-paragraph (3), the disputed determination.

15.2 Where the Appointee requires the Water Services Regulation Authority to make a reference to the Competition and Markets Authority under sub-paragraph 15.1 in the case referred to in section (3) of that sub-paragraph, the Appointee shall levy charges in a way best calculated to comply with the Price Control or Price Controls determined by the Water Services Regulation Authority as if a reference had not been made until the Competition and Markets Authority makes its determination following such reference. The determination made by the Competition and Markets Authority shall then take effect as if it had been made by the Water Services Regulation Authority.

15.3 Where after 1 April 2019 the Appointee requests the Water Services Regulation Authority to make a reference to the Competition and Markets Authority in respect of any determination under sub-paragraph 8.3 concerning Retail



Activities, or under sub-paragraph 8.4 concerning Water Resources Activities, Bioresources Activities or Network Plus Activities, such reference must comprise all such determinations made under sub-paragraphs 8.3 or 8.4 at the same time relating to the Appointee.

16 **[Not used]**

Part VI. Provision of Information to the Water Services Regulation Authority

17

17.1 The Appointee shall furnish to the Water Services Regulation Authority:

- (1) ...
- (2) not later than 30 September immediately following the date of the Reference Notice (in the case of a reference under paragraph 10);
- (3) at the time when it gives the relevant Reference Notice to the Water Services Regulation Authority (in the case of a reference under paragraph 13 falling within sub-paragraph 13.4(1));
- (4) as soon as reasonably practicable and in any event not later than the expiry of one month from the date of the Water Services Regulation Authority's notice to the Appointee under paragraph 14 (in the case of such a notice, including the case of a reference under paragraph 13 falling within sub-paragraph 13.4(2))

such Information as the Appointee reasonably believes is necessary or, as the case may be, as the Water Services Regulation Authority may reasonably require in its said notice, to enable the Water Services Regulation Authority to make its determination. The Appointee shall also furnish to the Water Services Regulation Authority as soon as reasonably practicable such further Information as the Water Services Regulation Authority may from time to time by notice to the Appointee reasonably require to make its determination.

- 17.2 The Appointee shall also furnish to the Water Services Regulation Authority from time to time when so requested by the Water Services Regulation Authority such Information as the Water Services Regulation Authority may reasonably require to decide whether or not to make determinations under paragraph 14.
- 17.3 Any Information furnished to the Water Services Regulation Authority under this paragraph 17 or under paragraph 8 shall, if the Water Services Regulation Authority so requires to make its determination, be reported on by a person appointed by the Appointee and approved by the Water Services Regulation Authority (such approval not to be unreasonably withheld) ("**the Reporter**").
- 17.4 The Appointee shall enter into a written contract of engagement with the Reporter which shall:
- (1) where such a report is required by the Water Services Regulation Authority under sub-paragraph 17.3, require the Reporter to prepare and furnish to the Water Services Regulation Authority, and separately to the Appointee, a written report addressed jointly to the Water Services Regulation Authority and the Appointee in form and substance such as may be specified by, or consistent with any guidelines specified by, the Water Services Regulation Authority at the time when it requires the report to be furnished, the matters so specified being reasonably appropriate to enable the Water Services Regulation Authority to make its determination (to the extent that the Information in respect of which that report is required to be prepared and furnished is relevant to that determination); and
  - (2) include a term that the Reporter will provide such further explanation or clarification of his report as the Water Services Regulation Authority may reasonably require and such further Information in respect of, or verification of, the matters which are the subject of his report as the Water Services Regulation Authority may reasonably require.

The contract of engagement may also include provisions requiring the Reporter, his employees and agents to keep confidential and not to disclose, except to the Water Services Regulation Authority or as required by law, any information which the Reporter obtains in the course of preparing his report.

17.5 The Appointee shall co-operate fully with the Reporter to enable him to prepare his report, including without limitation, so far as is necessary for that purpose:

- (1) subject to reasonable prior notice to the Appointee, giving to the Reporter access at reasonable hours to any Relevant Plant and to any premises occupied by the Appointee in relation to the Appointed Business; and
- (2) subject to reasonable prior notice to the Appointee, allowing the Reporter at reasonable hours:
  - (a) to inspect and make photocopies of, and take extracts from, any books and records of the Appointee maintained in relation to the Appointed Business;
  - (b) to carry out inspections, measurements and tests on or in relation to any such premises or Relevant Plant; and
  - (c) to take on to such premises or on to or in to any Relevant Plant such other persons and such equipment as may be necessary for the purposes of preparing and completing his report.

17.6 Nothing in sub-paragraph 17.5 shall require the Appointee:

- (1) to do anything which is outside its reasonable control; or
- (2) to do, or to allow the Reporter to do, anything which would materially disrupt the Appointee's business (unless it is essential that that thing be done to enable the Reporter to prepare his report).

17.7 In sub-paragraphs 17.4 and 17.5:

- (1) references to the Reporter include references to his employees and agents; and
- (2) "**Relevant Plant**" means any plant used by the Appointee for the purpose of carrying out the Regulated Activities including, without limitation, water mains, sewers and other pipes and their accessories.

Part VII. Developing the Price Controls

18

18.1 The Appointee will use all reasonable endeavours to work with the Water Services Regulation Authority, subject to the Appointee's legal duties and obligations, in a constructive and cooperative manner on the development of the Price Controls so that they might be appropriately targeted or operated more effectively in respect of specific activities undertaken as part of the Appointed Business.

Part VIII. Price Controls in effect before 1 April 2020

19

19.1 The provisions of Condition B of this instrument in the form that had effect immediately prior to 15 April 2017 shall continue to have effect in respect of the Price Controls set for a period ending before 1 April 2020 and in respect of the making of any Interim Determinations to set any such Price Controls.

19.2 In the event that the Water Services Regulation Authority is, in respect of the Appointed Business, unable to determine Price Controls, for the period or periods starting on 1 April 2020, under sub-paragraph 8.3 and sub-paragraph 8.4 of this Condition B by 31 December 2019, the provisions of Condition B in the form that had effect immediately prior to 15 April 2017 shall continue to have effect in respect of the Price Controls until such time as a determination under sub-paragraph 8.3 and sub-paragraph 8.4 of the current Condition B is made and takes effect.

19.3 In relation to the determination of a Price Control in respect of the Appointed Business's Network Plus Water Activities and a Price Control in respect of the Appointed Business's Network Plus Wastewater Activities for the period starting on 1 April 2020, sub-paragraph 8.4(2)(a) of this Condition B shall, for the avoidance of doubt, have effect as if it allowed the determination of a Price Control that includes an amount in relation to the Charging Year starting on 1 April 2020 that has effect as if it was the revenue allowed to the Appointed Business in respect of the activities concerned for the Charging Year starting on 1 April 2019.

20 [Not used]

#### Part IX Changes to the Revenue Forecasting Incentive formula

21 The formula notified to the Appointee for the purposes of sub-paragraph 8.1A of this Condition in relation to the Charging Years beginning on 1 April 2021, 1 April 2022, 1 April 2023 and 1 April 2024 shall have effect as if the definition of TBYA (the blind year adjustment to be announced by Ofwat) provided that the adjustment will be based on the items listed in the definition and the difference between the Appointee's forecast and actual performance for the Charging Year beginning on 1 April 2019 in relation to the revenue adjustments arising from the totex menu model applied in relation to Price Controls for the five consecutive Charging Years beginning on 1 April 2015.

#### Part X Changes to Price Controls for the period from 1 April 2020 to 31 March 2025

22 The determination made by the Water Services Regulation Authority under sub-paragraph 8.4 of the Price Control for Bioresources Activities for the five consecutive Charging Years starting on 1 April 2020 shall have effect from 1 August 2022 as if the table entitled "Table 5: Price Control for Bioresources Activities numbers" was the following table:

Charging year beginning 1 April	2020	2021	2022	2023	2024	Total for all five charging years
Unadjusted revenue, <b>UR<sub>t</sub></b> (£ million, 2017-18 FYA CPIH deflated prices)	0.754	0.761	0.769	0.776	0.784	3.843
Forecast volume of sludge, <b>FTDS<sub>t</sub></b> (TDS)	784	1079	1090	1137	1152	5242
Variable revenue, <b>VR</b> (£/TDS, 2017-18 FYA CPIH deflated prices)	N/A	N/A	N/A	N/A	N/A	823.912

## **Condition C: Infrastructure Charges**

### 1 Interpretation

In this Condition:

- 1.1 "**Infrastructure Charge**" means a Water Infrastructure Charge or a Sewerage Infrastructure Charge;
- 1.2 "**House**" means any building or part of a building which is occupied as a private dwelling house or which, if unoccupied, is likely to be so occupied and, accordingly, includes a flat;
- 1.3 "**Common Billing Agreement**" means an agreement between the Appointee and any other person under which that person has undertaken to pay, on terms agreed between them, charges for water supply or sewerage services, or both, in respect of two or more Houses which have a common Supply Pipe and which, in any case where that agreement relates to one of those services only, are also subject to a similar agreement for common billing between that person and the undertaker providing the other service;
- 1.4 "**Relevant Multiplier**" means a number (which may be one or more or less than one) calculated in the manner set out in the Appendix to this Condition;
- 1.5 "**Standard Amount**", in relation to any Infrastructure Charge, means the amount of that charge specified in sub-paragraph 2.1.3, as adjusted pursuant to sub-paragraph 2.2 (in respect of any Charging Year starting on or after 1 April 1996);
- 1.6 "**Supply Pipe**" means any part of a service pipe which a water undertaker could not be, or have been required to lay under section 46 of the Water Industry Act 1991; and
- 1.7 references to a connection are to such a connection as is mentioned in section 146(2)(a) of the Water Industry Act 1991.

### 2 Level of Infrastructure Charges

- 2.1 Subject to the following provisions of this Condition, in respect of each Charging Year starting on or after 1 April 1995, the amount of any Infrastructure Charge shall be -

- 2.1.1 in the case of a House subject to a Common Billing Agreement, the Standard Amount multiplied by the Relevant Multiplier for that house;
- 2.1.2 in the case of premises which do not consist in a House or Houses and to which water is provided by a Supply Pipe with an internal diameter larger than the standard size for the time being adopted by the Appointee for new connections of Houses, the Standard Amount multiplied by the Relevant Multiplier for those premises; and
- 2.1.3 in the case of any other premises -

Water Infrastructure Charge £200

Sewerage Infrastructure Charge £200

- 2.2 In respect of each Charging Year starting on or after 1 April 1996 -
  - 2.2.1 the amounts specified in sub-paragraph 2.1.3 shall be adjusted by the percentage of any change in the Retail Prices Index between that published for the month of November in the Prior Year and that published for November 1994; and
  - 2.2.2 where there is a material change to the basis of compiling the Retail Prices Index this Condition, in so far as it relates to that part of the calculation of the Standard Amount to which the Retail Prices Index is relevant, shall be modified in such manner as the Water Services Regulation Authority, after prior consultation with the Appointee, may determine to be appropriate to take account of such change.

### 3

- 3.1 Subject to sub-paragraph 3.2, where an amount has been paid or agreed to be paid to the Appointee on account of works which have been allowed for in determining the limits on Infrastructure Charges under the Appointment, that amount shall, to the extent that it is actually paid and is referable to a connection, count towards the level of charge for that connection under paragraph 2.
- 3.2 Where any such amount referable to a connection is greater than the level of charge for that connection under paragraph 2, nothing in this Condition shall preclude the Appointee from retaining or recovering the greater amount.



4 Where, prior to 1 April 1990 the Appointee has entered into an agreement under which a person has agreed to pay an amount in respect of works referable to a connection and that amount is greater than the amount which would otherwise be charged pursuant to paragraph 2, nothing in this Condition shall preclude the Appointee from recovering the greater amount.

5

5.1 Subject to sub-paragraph 5.2, where a site is developed or redeveloped (including by means of conversion of a building or buildings on it) the total amount of Water Infrastructure Charges or, as the case may be, Sewerage Infrastructure Charges which may be recovered in respect of Houses and other premises on the site resulting from the development or redevelopment shall not exceed the Standard Amount multiplied by X, where X equals -

- (1) the aggregate of the Relevant Multipliers for all those premises less
- (2) the maximum number of premises with water or, as the case may be, sewerage connections on the site at any time in the period of 5 years before the development or redevelopment began.

5.2 For the purpose of calculating the amount of the limit imposed by this paragraph -

- (a) each premises to which sub-paragraph 2.1.3 applies shall be deemed to have a Relevant Multiplier of 1; and
- (b) where, by virtue of paragraph 3 or 4 of this Condition, the Appointee would be permitted to charge more in respect of any premises resulting from the development or redevelopment than the level otherwise applying under paragraph 2, the limit shall be increased by the amount of the excess.

6

6.1 Subject to sub-paragraph 6.2, where -

- (a) a person who has received a demand, or undertaken, to pay Infrastructure Charges in respect of 2 or more Houses subject to a Common Billing Agreement

fails to pay them, or any part of them, within 14 days of the date of connection;  
or

- (b) a Common Billing Agreement is terminated otherwise than in accordance with its terms by the person who has undertaken to pay charges under it,

nothing in this Condition shall preclude the Appointee from recovering, whether from that person or from the occupier of each House subject to the agreement, Infrastructure Charges in respect of that House at the Standard Amount.

- 6.2 Whenever it takes advantage of sub-paragraph 6.1, the Appointee shall give credit for any amount already paid by way of Infrastructure Charges in respect of that House for the connection concerned.

- 7 Paragraph 2 does not apply to the interest element of any Instalment Amount payable in accordance with Condition D.

8

- 8.1 Nothing in this Condition precludes the Appointee from charging less in any particular case than the level of Infrastructure Charge applying under paragraph 2.

- 8.2 Nothing in this Condition restricts the recovery or amount of any expenses or charges recoverable otherwise than under section 146 of the Water Industry Act 1991 or (except if and to the extent that sub-paragraph 3.1 applies to the amount) restricts the recovery or level of any Infrastructure Charge by reference to any such amount.

9 Notification to Sewerage Undertakers

Where the Appointee makes a connection or connections to premises in respect of water supply services, it shall as soon as reasonably practicable inform any sewerage undertaker which provides services to those premises of the number of premises connected, the date or dates of connection, the address(es) of the premises, the name and address of the person(s) responsible for payment of charges for the supply of water to the premises and (if different) of the person(s) responsible for payment of Infrastructure Charges in respect of the premises and (where appropriate) the Relevant Multiplier(s) for the premises.

10 Arbitration

If, in any case to which a Relevant Multiplier applies, there is any dispute between the Appointee and the person on whom any Infrastructure Charge has been levied about the calculation of the Relevant Multiplier, or the number or type of fittings on which that calculation is based, it may be referred by either party for determination by the Water Services Regulation Authority.

11 Periodic Review of Level of Infrastructure Charges

11.1 Where a Periodic Review is to be carried out under paragraph 8 of Condition B, the Appointee may, by notice given to the Water Services Regulation Authority in relation to water or sewerage connections or both, refer to the Water Services Regulation Authority, for determination by it, the question whether any (and if so, what) change to the Standard Amount or the manner of calculation of any Relevant Multiplier should be made for the period or periods to which that review relates.

11.2 Where a Periodic Review is to be carried out under paragraph 8 of Condition B, the Water Services Regulation Authority may, after giving notice to the Appointee in relation to water or sewerage connections or both, determine the question specified in sub-paragraph 11.1.

11.3 Notice under sub-paragraph 11.1 or 11.2 shall be given not later than 30 days after the Review Notice Date for the Periodic Review concerned.

12 Interim Review of Level of Infrastructure Charges

12.1 The Appointee may, by notice given to the Water Services Regulation Authority in relation to water or sewerage connections or both, refer to the Water Services Regulation Authority, for determination by it, the question whether any (and if so, what) change to the Standard Amount or the manner of calculation of any Relevant Multiplier should be made, in respect of the Subsequent Period, in order to ensure that

(a) in each Charging Year in that period, the aggregate number of water, or as the case may be, sewerage connections made by the Appointee bears the same proportion to its aggregate revenue from Water Infrastructure Charges or, as the case may be, Sewerage Infrastructure Charges as the aggregate number of such

connections assumed by the Secretary of State for that year in setting the initial level of those charges under this Condition bears to the aggregate revenue so assumed by him; and

- (b) over the Subsequent Period any shortfall in (or excess of) revenue from Infrastructure Charges in any Charging Year in the Prior Period, compared with the revenue so assumed for that year, is recovered (or, as the case may be, carried forward as a credit) to the extent attributable to any difference in those proportions in respect of that year.

12.2 In sub-paragraph 12.1 "the Subsequent Period" means the period from 1 April immediately following the Charging Year in which the reference is made until 31 March 1995 (or, if there is no Periodic Review at the first 5-yearly interval, 31 March 2000) and "the Prior Period" means the period from 1 April 1991 until the end of the Charging Year in which the reference is made.

12.3 The Water Services Regulation Authority may, after giving notice to the Appointee in relation to water or sewerage connections or both, determine the question specified in sub-paragraph 12.1.

12.4 Notice under sub-paragraph 12.1 or 12.3 may be given not more than once in any Charging Year and not later than 31 December.

### 13 Information

13.1 The Appointee shall furnish to the Water Services Regulation Authority, at the time when it gives notice to it under sub-paragraph 11.1 or 12.1, such Information as the Appointee reasonably believes is necessary to enable the Water Services Regulation Authority to make its determination. The Appointee shall also furnish to the Water Services Regulation Authority, after receipt by it of notice given under sub-paragraph 11.2 or 12.3 or this sub-paragraph, such further Information, specified in the notice, as the Water Services Regulation Authority may reasonably require to make its determination.

- 13.2 The Appointee shall also furnish to the Water Services Regulation Authority from time to time, when so requested by it, such Information as it may reasonably require, to decide whether or not to give notice under sub-paragraph 11.2 or 12.3.
- 13.3 Any Information furnished to the Water Services Regulation Authority under this paragraph shall, if the Water Services Regulation Authority so requires to make its determination, be reported on by a person ("**the Reporter**") appointed by the Appointee and approved by the Water Services Regulation Authority (such approval not to be unreasonably withheld). The provisions of sub-paragraphs 17.4, 17.5(2), 17.6 and 17.7(1) of Condition B shall apply to the engagement and terms of reference of each Reporter appointed pursuant to this Condition as they apply to those of each Reporter appointed pursuant to that Condition, save that the reference in sub-paragraph 17.4(1) to sub-paragraph 17.3 of that Condition shall be taken as a reference to this sub-paragraph.

14 References to the Competition and Markets Authority

Where -

- (1) following the giving of notice under sub-paragraph 11.1 or 11.2, the Water Services Regulation Authority has not notified the Appointee of its determination within 1 year from the Review Notice Date; or
- (2) following the giving of notice under sub-paragraph 12.1 or 12.3, the Water Services Regulation Authority has not notified the Appointee of its determination within 1 month from the date on which the notice under that sub-paragraph is given; or
- (3) the Appointee disputes any determination made by the Water Services Regulation Authority under this Condition

the Appointee may, by notice given to the Water Services Regulation Authority within

-

- (a) 13 months from the Review Notice Date (in the cases referred to in (1) above);  
or

- (b) 2 months from the date on which the notice under sub-paragraph 12.1 or 12.3 is given (in the cases referred to in (2) above); or
- (c) 2 months from the date on which the Water Services Regulation Authority gives notice of its determination to the Appointee (in the cases referred to in (3) above)

require the Water Services Regulation Authority to refer to the Competition and Markets Authority, for determination by it -

- (i) in any case referred to in (1) or (2) above, the relevant question; or
- (ii) in the case referred to in (3) above, the disputed determination.

## 15 Modification of this Condition

- 15.1 This Condition shall be modified by the change (if any) to the Standard Amount or the manner of calculation of any Relevant Multiplier, necessary to give effect to any determination made by the Water Services Regulation Authority or the Competition and Markets Authority under, or, as the case may be, following a reference under, this Condition.
- 15.2 Where the Appointee requires the Water Services Regulation Authority to make a reference to the Competition and Markets Authority under paragraph 14, this Condition shall be modified by the change (if any) to the Standard Amount or the manner of calculation of any Relevant Multiplier, necessary to give effect to the Water Services Regulation Authority's determination, but so that sub-paragraph 15.1 shall then apply to the determination made by the Competition and Markets Authority following that reference.
- 15.3 In this paragraph "this Condition" includes the Appendix to it.

## **APPENDIX: CALCULATION OF RELEVANT MULTIPLIER**

- 1 To calculate the Relevant Multiplier for a House to which sub-paragraph 2.1.1 of Condition C applies:
  - 1.1 ascertain in respect of all the Houses subject to the Common Billing Agreement in question (eg all the flats in a block to which such an agreement applies) and all communal facilities shared by all or any of them, the total number of water fittings in all the categories specified in column 1 of the table below;
  - 1.2 calculate by reference to column 2 of the Table the aggregate loading units attributable to that total number of water fittings (and increase the aggregate, where necessary, to take account of the minimum for domestic appliances);
  - 1.3 divide that number of loading units by 24 and divide the resulting figure by the number of Houses subject to the Common Billing Agreement;
  - 1.4 the resulting number, will be the Relevant Multiplier.
- 2 To calculate the Relevant Multiplier for premises to which sub-paragraph 2.1.2 of Condition C applies, ascertain in respect of the premises the total number of water fittings in all the categories specified in column 1 of the Table below; calculate by reference to column 2 of the Table the aggregate loading units attributable to that total number of water fittings; divide the aggregate loading units by 24; and the resulting number will be the Relevant Multiplier, provided that if the resulting number is less than 1, the Relevant Multiplier will be 1.

**TABLE**

<b>Column 1</b>	<b>Column 2</b>
<b>Water Fitting (note 1)</b>	<b>Loading Units</b>
WC flushing cistern	2
Wash basin in a House	1.5
Wash basin elsewhere	3
Bath (tap nominal size 3/4 in/20 mm) (note 2)	10
Bath (tap nominal size larger than 3/4 in/20 mm) (note 2)	22
Shower	3
Sink (tap nominal size 1/2 in/15 mm)	3
Sink (tap nominal size larger than 1/2 in/15 mm)	5
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Spray tap	0.5
Bidet	1.5
Domestic appliance (subject to a minimum of 6 L.U.s per House - notes 3 and 4)	3
Communal or commercial appliance (note 3)	10
Any other water fitting or outlet (including a tap but excluding a urinal or water softener)	3

Notes to be read with the Table:

- 1 Reference to any fitting includes reference to any plumbing, outlet, dedicated space or planning or other provision for that fitting;
- 2 "Bath" includes a whirlpool bath and a jacuzzi;
- 3 "Domestic appliance" means an appliance (including a dishwasher, a washing machine and waste disposal unit) in a House and "communal or commercial appliance" means an appliance (including a dishwasher, a washing machine and a waste disposal unit) elsewhere than in a House (including in communal facilities);
- 4 In any calculation under paragraph 1, a minimum of six loading units shall be included, in respect of each House, for domestic appliances (whether or not the House has any such appliances) except, in the case of any House, where neither a washing machine nor a dishwasher can be provided (and there is no plumbing, outlet, dedicated space or planning or other provision for either appliance) in the House;
- 5 In the case of any premises with a sewerage only connection and no water fittings, the Relevant Multiplier will be one.



## **Condition D: Charges Schemes**

1 In this Condition:

**"the Instalment Amount"** means the aggregate amount which would fall to be paid in the relevant year by way of payments of interest and repayments of capital if an amount equal to the Water Infrastructure Charge, or, as the case may be, the Sewerage Infrastructure Charge payable for the relevant connection had been borrowed by the Appointee on terms:

- (1) requiring interest to be paid and capital to be repaid in twelve equal annual instalments; and
- (2) providing for the amount of the interest to be calculated at such rate, and in accordance with such other provision, as may have been determined either by the Appointee with the approval of the Water Services Regulation Authority or, in default of such a determination, by the Water Services Regulation Authority.

2 **[Not used]**

2.1 It shall be the duty of the Appointee to ensure that at all times on and after the relevant date specified in sub-paragraph 2.2 there is in effect a charges scheme in accordance with section 143 of the Water Industry Act 1991 by which:

- (1) it fixes the charges to be paid for supplies of water for domestic purposes and for the drainage of domestic purposes of premises except where such charges are determined by or in accordance with such an agreement as is referred to in section 142 of the Water Industry Act 1991 (including any such agreement made or entered into by the Water Authority under section 30 of the 1973 Act as, in accordance with a scheme under Schedule 2, is transferred to the Appointee); and
- (2) it fixes the charges to be paid for such connections as are described in section 146(2) of the Water Industry Act 1991.

2.2 The relevant date for the purpose of sub-paragraph 2.1(1) is the transfer date and for the purpose of sub-paragraph 2.1(2) is 1<sup>st</sup> April 1990.

- 3 For the purposes of paragraph 2 so much of any such charges scheme made by the Appointee under section 31 of the 1973 Act as by virtue of paragraph 16(1) of Schedule 26 has effect on and after the transfer date as if it were a scheme made under section 143 of the Water Industry Act 1991 by the Appointee shall be treated as a charges scheme in accordance with section 143 of the Water Industry Act 1991.
- 4 Any such charges scheme as is required to be in effect by virtue of sub-paragraph 2.1(2) shall provide that in the case of a connection to a water supply or, as the case may be, to a public sewer, of a building or part of a building which is occupied as a dwelling house immediately before the connection is made:
- (1) the relevant charges shall be paid in full, within a reasonable period specified by the Appointee after the connection in respect of which those charges are payable is made; or, at the option of the person liable to pay the relevant charges
  - (2) an amount equal to the Instalment Amount shall be paid in each of the twelve years following the relevant connection being made, subject only to that person giving such undertakings to that effect as the Appointee may reasonably require.
- 5 The Appointee shall:
- (1) inform persons who enquire about charges for such connections as are described in section 146(2)(a) of the Water Industry Act 1991 that it is required to have in effect a charges scheme in respect of such charges and of the provisions required to be included in that charges scheme by virtue of paragraph 4;
  - (2) make a copy of any such charges scheme as is required to be in effect by virtue of paragraph 2 in its latest form available for inspection at each Relevant Premises;
  - (3) send a copy of any such scheme in its latest form free of charge to any person requesting it.
- 6 Nothing in this Condition shall prevent the Appointee from entering into such an agreement as is referred to in section 142 of the Water Industry Act 1991.

## **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.

**Condition E1: Prohibition on undue discrimination and undue preference and restrictions on the use of information in relation to the provision of certain services**

Undue preference and undue discrimination

1. The Appointee shall, when carrying out the Regulated Activities, not show undue preference towards (including towards itself), or undue discrimination against, any person in the doing of such things as relate to the provision by itself or by other relevant undertakers, water supply and/or sewerage licensees or any other person of the following services:
  - (1) the provision, management and/or development of water resources;
  - (2) activities connected with the promotion of the efficient use of water and the reduction of demand for water (Demand Management);
  - (3) activities connected with the discovery and repair of unplanned or unintended leaks of water from pipes (Leakage Services);
  - (4) the laying of lateral drains, service pipes, sewers and/or water mains that are intended to be connected to the Appointee's supply system (as defined in section 219(4A) of the Water Industry Act 1991) or its sewerage system (as defined in section 17BA(7) of the Water Industry Act 1991) or the alteration or removal of a pipe or other apparatus that is for the time being kept installed by the Appointee on, under or over any land;
  - (5) the provision of supplies of water or, as the case may be, sewerage services to premises by a relevant undertaker; and
  - (6) activities connected with the transport, treatment and disposal of sludge produced by sewage disposal works (Bioresources).

Restrictions on the use of information

2. The Appointee shall not disclose the information referred to in paragraph 3 below, or otherwise use, distribute or disseminate such information within the Appointed Business, otherwise than for the purpose or purposes for which that information was furnished by the relevant person, except -

- (1) where required or permitted by law;
  - (2) where necessary to protect public health or to prevent the contamination, waste, undue consumption or misuse of water supplied by the Appointee;
  - (3) where necessary to investigate or prosecute criminal offences; or
  - (4) where otherwise agreed with the person furnishing the information.
3. The information referred to in paragraph 2 above is information disclosed to the Appointee by any person when:
- (1) submitting, or providing information in relation to, a bid to the Appointee for the provision, management and/or development of -
    - (a) water resources,
    - (b) activities connected with the promotion of the efficient use of water and the reduction of demand for water (Demand Management),
    - (c) activities connected with the discovery and repair of unplanned or unintended leaks of water from pipes (Leakage Services), and/or
    - (d) activities connected with the transport, treatment and disposal of sludge produced by sewage disposal works (Bioresources); or
  - (2) making an enquiry about, or entering into, an agreement under section 51A (Agreements to adopt water main or service pipe at future date) or section 104 (Agreements to adopt sewer, drain or sewage disposal works, at future date) of the Water Industry Act 1991.
4. For the avoidance of doubt, paragraph 2 above does not restrict the disclosure, use, distribution or dissemination of information that is in the public domain or that has been disclosed to the Appointee in circumstances that do not fall within paragraph 3 above.

## **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.

## **Condition G: Principles for Customer Care**

### **Introduction**

This Condition requires the Appointee to adopt high standards of customer service and appropriate support for the full diversity of its customers' needs. It requires the Appointee to deliver the principles for customer care set out at paragraph G3.

Nothing in this Condition has the effect of removing or affecting the functions of the Consumer Council for Water in relation to the investigation of individual customer complaints.

### **Interpretation and application**

G1 In this condition:

G1.1 an 'incident' means an event or situation which causes or may cause damage, disruption, distress or inconvenience to the Appointee's customers in their capacity as such which is not trivial.

G1.2 References to customers in principles G3.1 to G3.6 means the Appointee's customers in their capacity as occupants of Household Premises.

G1.3 References to customers in principles G3.1 to G3.5 means the Appointee's customers

### **Principles for customer care**

G2 The Appointee must:

G2.1 develop or have in place policies and approaches to meet the principles for customer care set out in paragraph G3, consulting with the Consumer Council for Water where appropriate;

G2.2 implement or continue to follow those policies and approaches in a way that meets the principles for customer care set out in paragraph G3; and

G2.3 explain in a manner that is effective, accessible and clear how it is meeting the principles set out in paragraph G3.

G3 The principles for customer care are:

G3.1 The Appointee is proactive in its communications so that its customers receive the right information at the right time, including during incidents.

G3.2 The Appointee makes it easy for its customers to contact it and provides easy to access contact information.

G3.3 The Appointee provides appropriate support for its customers when things go wrong and helps to put things right.

- G3.4 The Appointee learns from its own past experiences, and shares these with relevant stakeholders. The Appointee also learns from relevant stakeholders' experiences and demonstrates continual improvement to prevent foreseeable harm to its customers.
- G3.5 The Appointee understands the needs of its customers and provides appropriate support, including appropriate support for customers in vulnerable circumstances, and including during and following incidents.
- G3.6 As part of meeting principle G3.5 above, the Appointee provides support for its customers who are struggling to pay, and for customers in debt.

## **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.

**Condition I: [not used]**



**Condition J: [not used]**

## **Condition K: Disposals of Land**

### 1 Introduction

The purpose of this Condition is to ensure:

that the best price is received from disposals of land to which this Condition applies so as to secure benefits to customers through the application of the proceeds of such disposals to reduce charges as provided in, and subject to the provisions of, Condition B.

### 2 Interpretation and Construction

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

a "**Disposal Certificate**" means a certificate signed by all the directors of the Appointee for the time being or approved by a duly convened meeting of the board of directors of the Appointee for the time being and signed by a director or the secretary of the Appointee confirming that it has been so approved and having attached to it a certified copy of an extract of the minutes of the relevant meeting containing the resolution to approve the certificate;

"**formal tender**" means a tender, acceptance of which creates a binding obligation to purchase;

"**land**" includes any interest or right in or over any land;

"**the Materiality Amount**" for the purpose of any disposal of land

is £1 million

or such greater amount as may from time to time be determined by the Water Services Regulation Authority so as to allow for movements in the Relevant Index or as may from time to time otherwise be determined by the Water Services Regulation Authority and approved by the Welsh Ministers;

"**nominee**" of any person includes any person acting at the direction of, or in concert with, that first-mentioned person or pursuant to any agreement or understanding with that first mentioned person;

a "**proposed disposal**" is any such disposal to which paragraphs 4, 5 or 6 applies;

"**protected land**" and "**disposal**" have the meanings respectively given to them in section 219 of the Water Industry Act 1991 and cognate expressions shall be construed accordingly;

"**Short term Disposal**" means a disposal which consists of the creation of any interest or right in or over protected land which the Appointee has an unconditional right to terminate without penalty at any time and from time to time by not more than thirty months' notice or which expires or otherwise ceases in accordance with its terms within thirty months of the date of its creation without any other interest or right arising on such expiry or cessation;

"**the Transfer Threshold**" for the purpose of any disposal of land to an Associated Company is

£500,000

or such greater amount as may from time to time be determined by the Water Services Regulation Authority so as to allow for movements in the Relevant Index or as may from time to time otherwise be determined by the Water Services Regulation Authority and approved by the Welsh Ministers;

"**value**" includes value of any kind including, without limitation, cash, the value of real or personal property or any interest in such property and the value of any right or benefit, actual or prospective, and the value of any release, in whole or in part, of any obligation or claim.

2.2 For the purpose of calculating "best price":

(1) for the purpose of any valuer's certificate required to be furnished under subparagraph 4.6(1)(a)(i), or 5.1(1)(b);

(a) no reduction shall be made on account of the method, terms and timing of the proposed disposal (if relevant) in respect of which the relevant certificate is required to be furnished, but "best price" shall be calculated on the basis of a disposal of the land in question, the method, terms and

timing of which are most likely to secure that the best price is obtained;  
and

(b) where the proposed disposal or, as the case may be, the change of use is related to, or connected or interdependent with, any other proposed disposal, then, subject to sub-paragraph (a), no account shall be taken of that fact; and

(2) for any purpose under this Condition, "best price" shall include value of any kind as "value" is defined in sub-paragraph 2.1.

3 Disposals of protected land other than disposals by auction or formal tender or to Associated Companies

3.1 Subject to sub-paragraph 3.2, the Appointee shall not make any disposal of any protected land, unless the Appointee shall have complied with the provision of sub-paragraph 3.3.

3.2 Sub-paragraph 3.1 shall not apply:

(1) to any Short-term Disposal;

(2) to any disposal of any protected land the value of which, when aggregated with:

(a) the value of any other protected land which affects or might affect the value of such protected land or the value of which is or might be affected by such protected land; and

(b) to the extent not taken into account under (a), the value of any other protected land the subject of any other disposal which has taken place, is proposed or contemplated and which in the honestly held and reasonable opinion of the Appointee is or might be related to, or connected or interdependent with, the first mentioned disposal

does not exceed the Materiality Amount;

(3) to any such disposal of protected land as is referred to in paragraphs 5 and 6;

- (4) to any disposal of any protected land made in accordance with any such provision as is referred to in section 156(4)(a) of the Water Industry Act 1991 to the relevant person referred to in that section; or
- (5) to any disposal of any protected land made pursuant to any obligation entered into by the Water Authority prior to the transfer date.

3.3 Subject to sub-paragraph 3.6, the Appointee shall:

- (1) not less than 10 working days prior to the Appointee entering into an obligation (whether unconditional or subject to conditions) which requires or might require it to make the proposed disposal, furnish to the Water Services Regulation Authority a Disposal Certificate which:
  - (a) identifies the protected land the subject of the proposed disposal both by written description and by a plan showing:
    - (i) such protected land; and
    - (ii) all other land contiguous or adjacent to such protected land in or over which the Appointee or, to the best of the knowledge, information and belief of the Appointee, having made due and careful enquiry, any Associated Company has any interest or right and which affects or might affect the value of such protected land or the value of which is or might be affected by such protected land;
  - (b) describes the interest or right in or over the protected land to be disposed of;
  - (c) sets out the terms of the proposed disposal;
  - (d) describes:
    - (i) the consideration to be received or expected to be received; and

- (ii) separately, any other value which, in the reasonable opinion of the Appointee, is to be received or derived, or expected to be received or derived

in each case from or in connection with the proposed disposal by the Appointee and the timing of the receipt or derivation thereof;

- (e) sets out details as required by (a) to (d) inclusive above in respect of any other disposal of protected land which has taken place, is proposed or contemplated and which in the honestly held and reasonable opinion of the Appointee is or might be related to, or connected with or interdependent with, the proposed disposal or, if none, a statement to that effect;
- (f) confirms that the protected land the subject of the proposed disposal is, or at the time the Appointee is required to give vacant possession will be, no longer required for carrying out the Regulated Activities and will not be so required in the foreseeable future;
- (g) confirms:
  - (i) that the proposed disposal is an arms length transaction;
  - (ii) that the consideration and other value (if any) certified under (d) above to be received or derived, or expected to be received or derived, by the Appointee from or in connection therewith is the total value to be received or derived, or expected to be received or derived, from the proposed disposal, whether by the Appointee or any other person;
  - (iii) except where a certificate is furnished under sub-paragraph 4.5, that in the honestly held and reasonable opinion of the Appointee, taking account of proper professional advice obtained by the Appointee for that purpose, the consideration certified under (ii) is the best price that could reasonably be obtained for the protected land in question, having regard to all

the circumstances at the time when the certificate is given (including, but without limitation, any reasonable prospect of planning permissions being obtained); and

(iv) that neither the Appointee nor, to the best of the knowledge, information and belief of the Appointee, having made due and careful enquiry, any Associated Company or any company or business in which the Appointee, or, to the best of the knowledge, information and belief of the Appointee, having made due and careful enquiry, any Associated Company, has a material direct or indirect interest, shall, following the proposed disposal or any other transaction, a continuing interest whether direct or indirect in the protected land the subject of the proposed disposal or in any development involving or connected with that protected land; and

(2) prior to entering into the relevant obligation, furnish to the Water Services Regulation Authority in writing such further Information regarding the proposed disposal which the Water Services Regulation Authority may reasonably request.

3.4 For the purpose of sub-paragraph 3.3(1)(g)(iv), "interest" includes an entitlement to a share of profits or participation in assets, rights or benefits but excludes any interest which consists solely of an entitlement to receive instalments of consideration which as to amount and timing are certain or variable only by reference to the grant of planning permissions.

3.5 The Appointee may, instead of giving the confirmation required by sub-paragraph 3.3(1)(g)(iii), furnish to the Water Services Regulation Authority a certificate by a valuer appointed by the Appointee ("**the Valuer**") addressed to the Water Services Regulation Authority which states that in the opinion of the Valuer the consideration certified under sub-paragraph 3.3(1)(g)(iii) is the best price that could reasonably be obtained for the protected land in question, having regard to all the circumstances at the time when the certificate is given (including, but without limitation, any reasonable prospect of planning permissions being obtained).

3.6 Where the Appointee proposes to make any such disposal as is mentioned in sub-paragraph 3.1 and the terms or circumstances of the proposed disposal are such that a Disposal Certificate giving the full confirmation required by (f) or (g) of sub-paragraph 3.3(1) (including, where relevant, such a certificate as is referred to in sub-paragraph 3.5) cannot properly be given, the Appointee shall not enter into any obligation (whether unconditional or subject to conditions) which requires or might require it to make that proposed disposal unless:

(1) in any case where the full confirmation required by (g) of sub-paragraph 3.3(1) (including, where relevant, such a certificate as is referred to in sub-paragraph 3.5) cannot properly be given:

(a) either:

(i) not less than 10 working days prior to the Appointee entering into the relevant obligation, the Appointee has furnished to the Water Services Regulation Authority a Disposal Certificate as required by sub-paragraph 3.3 including such of the matters specified in (g) as can properly be certified and a certificate by a valuer appointed by the Appointee and approved by the Water Services Regulation Authority for the purpose of this sub-paragraph ("**the Valuer**") addressed to the Water Services Regulation Authority which states:

(A) that in the opinion of the Valuer the consideration to be received by the Appointee from the proposed disposal is the best price likely to be obtained from the land in question, having regard to all the circumstances at the time when the certificate is given (including, but without limitation, any reasonable prospect of planning permissions being obtained); and

(B) the amount of the consideration to be received or expected to be received by the Appointee from the proposed disposal, expressed in cash according to when



that consideration is to be, or is expected to be, received;  
or

- (ii) the Water Services Regulation Authority gives its prior written consent to the proposed disposal, such consent not to be unreasonably withheld or delayed; and
- (b) prior to entering into the relevant obligation, the Appointee shall have furnished to the Water Services Regulation Authority in writing such further Information regarding the proposed disposal which the Water Services Regulation Authority may reasonably request; and
- (2) in any case where the full confirmation required by (f) of sub-paragraph 3.3(1) cannot properly be given, the prior written consent of the Water Services Regulation Authority to the proposed disposal has been obtained, such consent not to be unreasonably withheld or delayed.

#### 4 Disposals of protected land by auction or formal tender

4.1 Where the Appointee proposes to dispose by auction or formal tender of any protected land, the value of which (when aggregated with the value of any other such protected land as is described in sub-paragraphs 3.2(2) (a) and (b)), exceeds the Materiality Amount, it shall:

- (1) not less than 10 working days prior to the date of the auction or the invitation to tender:
  - (a) furnish to the Water Services Regulation Authority a Disposal Certificate which:
    - (i) contains the information and confirmations required to be contained in a Disposal Certificate furnished under sub-paragraph 3.3(1) under items (a), (b), (c), (e), (f) and (g)(iv) of that sub-paragraph (but so that for this purpose references in the said item (e) to items (a) to (d) inclusive shall be taken to be references to items (a) to (c) inclusive);

- (ii) sets out the reserve price (if any); and
    - (iii) confirms that the auction will be conducted on the basis that bids will be accepted only on condition that they are not made by an Associated Company or any nominee of any Associated Company or, as the case may be, that, it will be a term of the invitation to tender that it is not capable of acceptance by an Associated Company or any nominee of any Associated Company;
  - (b) furnish to the Water Services Regulation Authority a certificate by a valuer appointed by the Appointee ("**the Valuer**") addressed to the Water Services Regulation Authority which states that in the opinion of the Valuer the disposal of the protected land by auction or, as the case may be, formal tender and the timing of the proposed disposal are respectively the method and timing of disposal most likely to secure that the best price is obtained for the land in question;
- (2) prior to the date of the auction or the invitation to tender, furnish to the Water Services Regulation Authority in writing such further Information regarding the proposed disposal which the Water Services Regulation Authority may reasonably request.
- 4.2 In any case where the full confirmation required by sub-paragraph 4.1(1)(a)(i) or (iii) cannot properly be given, the Appointee shall not proceed with the proposed disposal without the prior written consent of the Water Services Regulation Authority.

## 5 Disposals of Protected Land to Associated Companies

5.1 Subject to sub-paragraph 5.2, the Appointee shall not make any disposal, other than a Short Term Disposal, of any protected land to any Associated Company, unless it has complied with the provisions of sub-paragraph 5.3.

5.2 Sub-paragraph 5.1 shall not apply:

to any disposal of any protected land the value of which, when aggregated with:

- (a) the value of any other protected land which affects or might affect the value of such protected land or the value of which is or might be affected by such protected land; and
- (b) to the extent not taken into account under (a), the value of any other protected land the subject of any other disposal which has taken place, is proposed or contemplated and which in the honestly held and reasonable opinion of the Appointee is or might be related to, or connected or interdependent with, the first mentioned disposal

does not exceed the Transfer Threshold.

5.3 Subject to sub-paragraph 5.4, the Appointee shall:

- (1) not later than 10 working days (or such other period to be agreed in advance between the Appointee and the Water Services Regulation Authority) prior to the Appointee entering into any obligation (whether unconditional or subject to conditions) which requires or might require it to make that disposal (a "**relevant obligation**"), furnish to the Water Services Regulation Authority:
  - (i) a Disposal Certificate, which contains the information and confirmations required to be contained in a Disposal Certificate furnished under sub-paragraph 5.3(1), including such of the matters specified in (g) as can properly be certified; and
  - (ii) a certificate by a valuer appointed by the Appointee and approved by the Water Services Regulation Authority for the purpose of this sub-paragraph ("**the Valuer**") addressed to the Water Services Regulation Authority which states:
    - (A) that in the opinion of the Valuer the consideration to be received by the Appointee from the proposed disposal is the best price likely to be obtained from a disposal of the land in question to an unconnected third party, having regard to all the circumstances at the time when the certificate is given (including, but without

limitation, any reasonable prospect of planning permissions being obtained); and

- (B) the amount of the consideration to be received or expected to be received by the Appointee from the proposed disposal, expressed in cash according to when that consideration is to be, or is expected to be, received; and
  - (2) shall furnish to the Water Services Regulation Authority in writing such further information regarding the proposed disposal which the Water Services Regulation Authority may reasonably request; and
  - (3) ensure that the terms on which the proposed disposal is made are in accordance with any terms which may have been specified by the Water Services Regulation Authority, either in relation to disposals of protected land to Associated Companies generally or in relation to the particular proposed disposal, being such terms as the Water Services Regulation Authority considers appropriate to secure that the Appointee receives such share of any value to be derived or expected to be derived by the Associated Company from the land in question as the Water Services Regulation Authority considers appropriate, having regard to the duty imposed on the Water Services Regulation Authority under section 2(3)(c) of the Water Industry Act 1991.
- 5.4 In any case where the full confirmation required by (f) of sub-paragraph 3.3(1) cannot properly be given, the Appointee shall not enter into a relevant obligation unless the prior written consent of the Water Services Regulation Authority to the proposed disposal has been obtained, such consent not to be unreasonably withheld or delayed.

## 7. Disclosure of Information to Valuers

The Appointee shall disclose to the Valuer appointed for the purpose of any provision of this Condition all Information which, in the reasonable opinion of the Appointee, has or is likely to have a material bearing on the Valuer's certificate to be given under that provision and such other Information as the Valuer may reasonably require to enable him to give his certificate.

## **Condition L: Underground Asset Management Plans**

### **1 Interpretation and Construction**

In this Condition:

**"the Appointment Obligations"** means the Appointee's obligations under the Appointments and for this purpose and for this purpose only the Appointee shall be deemed to be subject to an obligation under the Appointments to achieve any Service Target or Revised Service Target notified to the Water Services Regulation Authority by the Appointee under Condition J;

**"Network Assets"** means

- (1) in respect of a water undertaker;
  - a. water mains and trunk mains (other than any pumps, valves and hydrants);
  - b. resource mains and discharge pipes; and
  - c. so much of any service pipe as is vested in the Appointee;
- (2) in respect of a sewerage undertaker;
  - a. public sewers (other than any pumps);
  - b. any outfall pipe or other pipe for the conveyance of effluent from any sewage disposal works of the sewerage undertaker; and
  - c. any pipe vested in the sewerage undertaker and used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilage

but excluding any pipe which discharges directly into the sea or coastal waters;

**"Network Expenditure"** means expenditure in relation to any Network Assets (whether, having regard to the respective purposes referred to in sub-paragraph 2.1, such expenditure is to be made or incurred in or in relation to creating, acquiring, renewing, repairing, maintaining or improving any Network Assets or executing works or procuring the execution of works by other persons in relation to any Network Assets or otherwise);

**"the Plan Period"** means such period as the Appointee shall specify, being a period of not less than fifteen years commencing on:

- (1) in the case of the Underground Asset Management Plan required to be furnished under sub-paragraph 2.1, 1<sup>st</sup> April 1990;
- (2) in the case of any revised Underground Asset Management Plan required to be furnished under sub-paragraph 2.4, the date of such revised Underground Asset Management Plan or, in the case of a revised Underground Asset Management Plan prepared for the purposes of a Periodic Review, the start of the relevant Review Charging Year;

a "**Review Date**" means the first date specified in the relevant paragraphs of Condition B by which the Appointee is required to furnish Information to the Water Services Regulation Authority for the purpose of any Periodic Review.

## **2 Duty to furnish information**

2.1 The Appointee shall prepare and furnish to the Water Services Regulation Authority an underground asset management plan (an "**Underground Asset Management Plan**") showing separately:

- (1) an estimate and other Information in respect of Network Expenditure required to be made or incurred by the Appointee in each year during the Plan Period for the purposes of ensuring:
  - (a) that Network Assets used by the Appointee as at the transfer date (or, in the case of a revised Underground Asset Management Plan, as at the date of that revised Underground Asset Management Plan) are, and will throughout the Plan Period be, maintained in such a state or condition as is necessary for the purposes described in sub-paragraph 2.2 ("**the Relevant Purposes**"), in so far as Network Assets are necessary for, or relevant to, the Relevant Purposes; and
  - (b) that the capacity of the system of water supply or, as the case may be, of public sewers comprising solely those Network Assets (but not including any other part of the Appointee's system of water supply or, as the case may be, of public sewers) is maintained

and the estimate and other Information shall show expenditure to be capitalised and, separately, expenditure to be expensed; and

- (2) an estimate and other Information in respect of Network Expenditure required to be made or incurred by the Appointee in each year during the Plan Period for the purpose of ensuring that, taking into account the expenditure to be made or incurred for the purposes referred to in sub-paragraph 2.1(1):
  - (a) the Appointee will at all times and from time to time have available to it for use all Network Assets (and in such a state or condition) as are necessary for the Relevant Purposes, in so far as Network Assets are necessary for, or relevant to, the Relevant Purposes; and
  - (b) that the capacity of the system of water supply or, as the case may be, of public sewers comprising solely those Network Assets (but not including any other part of the Appointee's system of water supply or, as the case may be, of public sewers) is and will be such as is necessary for the Relevant Purposes.

2.2 The Relevant Purposes referred to in sub-paragraph 2.1 are:

- (1) to enable the Appointee to carry out the Regulated Activities in respect of the whole of the Area in accordance with the provisions of the Water Industry Act 1991 and of any other enactment or subordinate legislation relating to the Regulated Activities and in accordance with any service objectives which the Appointee has set itself in preparing the Underground Asset Management Plan and to carry out the Regulated Activities in such manner economically and efficiently; and
- (2) to enable the Appointee to perform the Appointment Obligations in respect of the whole of the Area (or, in the case of a Service Target or a Revised Service Target which applies only to part of the Area, then in respect of that part)

but so that, unless the context otherwise requires, references in this Condition to the Relevant Purposes shall be read and construed subject to any assumptions as may be specified by the Appointee in the Underground Asset Management Plan as to the nature

and scope of the Regulated Activities or, as the case may be, the Appointment Obligations and as to the effect of any provision of the Water Industry Act 1991 or any other enactment or subordinate legislation relating to the Regulated Activities.

- 2.3 Where the Appointee has specified any such assumptions as are referred to in sub-paragraph 2.2, the Appointee shall also furnish an estimate and other Information as described in sub-paragraphs 2.1(1) and (2) on the basis of such other assumptions as to the matters referred to in sub-paragraph 2.2 as may be specified by the Water Services Regulation Authority.
- 2.4 The Appointee shall keep the Underground Asset Management Plan prepared under sub-paragraph 2.1 under review and shall prepare a revised Underground Asset Management Plan in respect of the Plan Period from time to time and in any event by each Review Date, to the extent that such revision is necessary having regard to the Relevant Purposes, this Condition and Condition B and shall furnish to the Water Services Regulation Authority any such revised Underground Asset Management Plan. Sub-paragraph 2.3 shall apply to any such revised Underground Asset Management Plan and references in this Condition to a revised Underground Asset Management Plan shall include references to any estimate and other Information which the Appointee is required to furnish under sub-paragraph 2.3 in respect of that revised Underground Asset Management Plan.
- 2.5 For the purposes of sub-paragraphs 2.1 and 2.4:
- (1) due allowance shall be made for Network Assets ceasing to be required for the Relevant Purposes during the Plan Period;
  - (2) the Appointee shall include in any Underground Asset Management Plan furnished to Water Services Regulation Authority under sub-paragraph 2.4 a description of any agreement or arrangement under which the Appointee uses Network Assets which are owned by, or used in conjunction with, another water undertaker or sewerage undertaker (including, without limitation, a description of any arrangements, as between the Appointee and the other undertaker, for the repair, renewal, maintenance and improvement of any such Network Assets) and an estimate and other Information in respect of any expenditure required to



be made or incurred by the Appointee during the Plan Period in respect of such Network Assets for the Relevant Purposes; and

- (3) there shall be taken into account any changes in the nature of the Regulated Activities and the Appointment Obligations which the Appointee knows have occurred or will occur or which the Appointee reasonably believes will, or are likely to, occur (including, without limitation, any change in demand for the provision by the Appointee of any services provided by it in the course of carrying out the Regulated Activities).

### **3 Information Systems**

3.1 The Appointee shall establish and maintain methods and procedures for the purposes of:

- (1) keeping under review, collecting Information in respect of, and carrying out surveys of, the state, condition, capacity and performance of Network Assets; and
- (2) preparing, keeping under review and revising from time to time the Underground Asset Management Plan for the purposes of:
  - (a) providing Information to the Water Services Regulation Authority in accordance with Condition B to enable it to carry out Periodic Reviews; and
  - (b) providing Information to the Water Services Regulation Authority in accordance with paragraph 17 of Condition B.

3.2 The Appointee shall furnish to the Water Services Regulation Authority a written description of such methods and procedures. The Appointee shall keep under review and shall revise such methods and procedures from time to time to the extent necessary having regard to the purposes for which such systems and procedures are intended to be used, this Condition and Condition B and shall furnish to the Water Services Regulation Authority a written description of any revision of such methods and procedures.

## 4 Reports

4.1 Any revised Underground Asset Management Plan and any revision of the methods and procedures referred to in paragraph 3 (which in the reasonable opinion of the Water Services Regulation Authority is material having regard to the purposes for which the Underground Asset Management Plan and such methods and procedures are intended, to this Condition and to Condition B) shall, if so required by the Water Services Regulation Authority be reported on by a person appointed by the Appointee and approved by the Water Services Regulation Authority (such approval not to be unreasonably withheld) ("**the Assessor**").

4.2 The Appointee shall enter into a written contract of engagement with the Assessor which shall:

(1) where such a report is required by the Water Services Regulation Authority under sub-paragraph 4.1, require the Assessor to prepare and furnish to the Water Services Regulation Authority and separately to the Appointee, a written report addressed jointly to the Water Services Regulation Authority and Appointee:

(a) in the case of a revised Underground Asset Management Plan, stating whether, in his opinion, the estimate included in the revised Underground Asset Management Plan has been prepared in accordance with the methods and procedures established and maintained by the Appointee under sub-paragraph 3.1 at the date at which the revised Underground Asset Management Plan has been prepared and if the action to be taken as described in the other Information included in the Underground Asset Management Plan were taken it would be sufficient for the Relevant Purposes, in so far as Network Assets are necessary for, or relevant to, the Relevant Purposes, (both on the basis of any assumptions specified by the Appointee and on the basis of any assumptions specified by the Water Services Regulation Authority and, if not, what other action would need to be taken; and

(b) in the case of a revision of the methods and procedures referred to in paragraph 3, stating whether, in his opinion, the methods and procedures

(as so revised) are sufficient for the purposes described in sub-paragraph 3.1 and if not, what changes would need to be made to those methods and procedures so that they were sufficient for those purposes; and

- (2) include a term that the Assessor will provide such further explanation or clarification of his report as the Water Services Regulation Authority may reasonably require and that where, by reason of anything in the Assessor's report, it appears to the Water Services Regulation Authority;
  - (a) that the state or condition or capacity of Network Assets is such that they are or may be materially inadequate for the Relevant Purposes, in so far as Network Assets are necessary for, or relevant to, the Relevant Purposes, (either on the basis of the assumptions specified by the Appointee or on the basis of the assumptions specified by the Water Services Regulation Authority, if any); or
  - (b) that the methods and procedures are insufficient for the purposes described in sub-paragraph 3.1 and that as a result information as to the state, condition, capacity or performance of Network Assets is or may be materially inaccurate or incomplete

the Assessor will provide such further Information in respect of, or verification of, the matters which are the subject of his report as the Water Services Regulation Authority may reasonably require.

The contract of engagement may also include provisions requiring the Assessor, his employees and agents to keep confidential and not to disclose, except to the Water Services Regulation Authority or as required by law, any Information which the Assessor obtains in the course of preparing his report.

4.3 The Appointee shall co-operate fully with the Assessor to enable him to prepare his report, including without limitation, so far as is necessary for that purpose:

- (1) subject to reasonable prior notice to the Appointee, giving to the Assessor access at reasonable hours to any Network Assets used by the Appointee and to any

premises occupied by the Appointee in relation to the carrying out of the Regulated Activities; and

- (2) subject to reasonable prior notice to the Appointee, allowing the Assessor at reasonable hours:
  - (a) to inspect and make photocopies of, and take extracts from, any books and records of the Appointee maintained in relation to the carrying out of the Regulated Activities;
  - (b) to carry out inspections, measurements and tests on or in relation to any such premises or Network Assets; and
  - (c) to take on to such premises or on to or in to any Network Assets such other persons and such equipment as may be necessary for the purposes of preparing and completing his report.

4.4 Nothing in sub-paragraph 4.3 shall require the Appointee:

- (1) to do anything which is outside its reasonable control; or
- (2) to do, or to allow the Assessor to do, anything which would materially disrupt the Appointee's business (unless it is essential that that thing be done to enable the Assessor to prepare his report).

4.5 In sub-paragraphs 4.3 and 4.4 references to the Assessor include references to his employees and agents.

## **5 General**

5.1 The provision by the Water Services Regulation Authority to the Secretary of State of the estimate and other information enclosed with the letter entitled “Underground Asset Management Plan” dated 11th August 1989 and the description in the Underground Asset Management Plan of the Appointee's relevant methods and procedures to be furnished to the Water Services Regulation Authority by the Appointee under sub-paragraphs 2.1 and 3.2 and to satisfy the obligations of the Appointee under those sub-paragraphs (insofar as sub-paragraph 3.2 requires the Appointee to furnish a written description of the methods and procedures established by it).

- 5.2 Any other Information required to be furnished by the Appointee to the Water Services Regulation Authority under this Condition shall be furnished within three months of the revision which gives rise to the requirement to furnish Information.
- 5.3 The Appointee shall deliver to the Water Services Regulation Authority at the same time as it delivers to it accounting statements in respect of a financial year prepared under Condition F, a statement of the expenditure made or incurred in relation to Network Assets during that financial year, distinguishing between amounts which have been expensed and amounts which have been capitalised, together with the details necessary to explain any difference between that expenditure and the expenditure which the Appointee had informed the Secretary of State or, as the case may be, the Water Services Regulation Authority under this Condition it intended to make or incur in relation to Network Assets during that financial year.

## **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 Welsh Ministers 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.

## **Condition M1: Information Remedies**

1. For the purposes of this Condition:

“**Bioresources**” means activities connected with the transport, treatment and disposal of sludge produced by sewage disposal works.

“**Demand Management**” means activities connected with the promotion of the efficient use of water and the reduction of demand for water.

“**Direction**” includes any material revision thereof.

“**Leakage Services**” means activities connected with the discovery and repair of unplanned or unintended leaks of water from pipes.

2. Subject to paragraphs 3 to 6 below, the Water Services Regulation Authority may make a Direction to the Appointee

- (a) to provide specified Information about the Appointed Business –

- (i) to the Water Services Regulation Authority;

- (ii) to such person or class of persons as the Water Services Regulation Authority may specify in the Direction; or

- (b) to publish specified Information about the Appointed Business,

and the Appointee shall comply with the Direction and shall permit reasonable re-use of such Information by any recipient.

3. The purpose for which any Direction under paragraph 2 may be given shall be to support the development and operation of a market in one or more of the provision, management and development of water resources, Demand Management or, as the case may be, Leakage Services, or, as the case may be, Bioresources, through the promotion of effective competition or monitoring the progress or development of such markets.
4. Any Direction under paragraph 2 may only be given where the Water Services Regulation Authority –



- (a) considers it to be reasonable and appropriate for the purpose referred to in paragraph 3 above;
  - (b) has consulted with the Appointee; and
  - (c) reasonably considers that the Direction would not –
    - (i) be contrary to the interests of national security; or
    - (ii) seriously and prejudicially affect the interests of any person.
5. The Appointee may within one month of the date of any such Direction require the Water Services Regulation Authority to refer to the Competition and Markets Authority for determination by it the question whether the Direction is reasonable and appropriate for the purpose referred to in paragraph 3.
6. Where the Appointee requires the Water Services Regulation Authority to make a reference to the Competition and Markets Authority under paragraph 5 the Direction which is the subject of that reference shall not apply to the Appointee unless and until the Competition and Markets Authority determines that it shall apply.

## **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 Welsh Ministers 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 Fee and any Special Fee in each Charging Year must not exceed an amount calculated as  $S \times A$  where:

N13.1  $S$  is, subject to paragraph N14, the amount of the income limit set by the Treasury for Ofwat for the Charging Year when Ofwat determines the amount of the Annual General Fee or any Special Fee; and

N13.2  $A$  is the Appointee's Turnover Share for the Charging Year.

N14 If when Ofwat determines the amount of the Annual General Fee or any Special Fee the Treasury has not set an income limit for Ofwat for the Charging Year then  $S$  shall be the amount calculated in accordance with paragraph N15.

N15 Where this paragraph applies,  $S$  shall be the amount of the final income limit for the last Charging Year for which the Treasury set an income limit, as increased from the November immediately before that Charging Year to the November immediately before the Charging Year in which the Annual Fee or any Special Fee is payable using the Relevant Index.

## **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 Welsh Ministers have 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.

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

### **Introduction**

This condition requires the Appointee to ensure that it maintains sufficient financial and management resources to enable it to carry out its functions in a sustainable manner, and protects the Appointee from the activities of other group entities. It also requires the Appointee to meet the Board Leadership, Transparency and Governance objectives and procure undertakings from its Ultimate Controller(s).

### **Conduct of the Appointed Business**

P1 The Appointee must, at all times, conduct the Appointed Business as if the Appointed Business were:

P1.1 substantially the Appointee's sole business; and

P1.2 a public limited company separate from any other business carried out by the Appointee.

P2 The Appointee must:

P2.1 meet the objectives on board leadership, transparency and governance set out in paragraph P3, and

P2.2 explain in a manner that is effective, accessible and clear how it is meeting the objectives set out in paragraph P3.

P3 The objectives are:

P3.1 The Board of the Appointee establishes the company's purpose, strategy and values, and is satisfied that these and its culture reflect the needs of all those it serves.

P3.2 The Appointee has an effective Board with full responsibility for all aspects of the Appointee's business for the long term.

P3.3 The Board of the Appointee's leadership and approach to transparency and governance engenders trust in the Appointee and ensures accountability for their actions.

P3.4 The Board of the Appointee and its committees are competent, well run, and have sufficient independent membership, ensuring they can make high quality decisions that address diverse customer and stakeholder needs.

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

P4 The Appointee must ensure that, at all times:

P4.1 there is an undertaking in place which is given by the Ultimate Controller of the Appointee in favour of the Appointee; and

P4.2 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.

P5 The Appointee must ensure that any undertaking given pursuant to paragraph P4 provides that the person giving the undertaking must, and must procure that each of its subsidiaries other than the Appointee and its subsidiaries:

P5.1 provides 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; and

P5.2 does 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.

P6 In the circumstances set out in P7, the Appointee may only enter into any new contract or arrangement with a person who is required to give an undertaking under paragraph P4 or the subsidiaries of such a person other than subsidiaries of the Appointee, with the prior written approval of Ofwat.



- P7 The circumstances referred to in P6 are:
- P7.1 where an undertaking required to be given by a person in accordance with paragraph P4 is not in place; or
  - P7.2 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.
- P8 The Appointee must provide to Ofwat such certified copies of any undertaking given pursuant to paragraph P4 as are requested by Ofwat.
- P9 The Appointee must immediately inform Ofwat in writing if the Appointee becomes aware that:
- P9.1 an undertaking given by a person pursuant to paragraph P4 has ceased to be legally enforceable; or
  - P9.2 there has been a breach of the terms of such an undertaking by the person that gave it.
- P10 The Appointee must inform Ofwat as soon as reasonably practicable if the Appointee becomes aware that:
- P10.1 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
  - P10.2 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
  - P10.3 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.
- P11 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 P4.

## **Assets, rights and resources**

- P12 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:
- P12.1 financial resources and facilities;
  - P12.2 management resources; and
  - P12.3 systems of planning and internal control,
- P13 The requirements set out in paragraph P12 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.
- P14 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.
- P15 For the purposes of paragraph P14, 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.
- P16 Where rights and resources which are required to be made available pursuant to paragraph P14 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 P14.

## **Listing of financial instruments**

- P17 If the Ultimate Controller of the Appointee is not listed on the London Stock Exchange or on another exchange that Ofwat agrees is of similar standing the Appointee must comply with paragraph P18.
- P18 Unless Ofwat, following an application by the Appointee, determines that market conditions are such that it would be inappropriate for the Appointee to maintain the listing of such a financial instrument, the Appointee must use all reasonable endeavours to maintain the listing of a financial instrument whose market price should reflect the financial position of the Appointed Business on:
- P18.1 the London Stock Exchange; or
- P18.2 with prior agreement of Ofwat, another exchange of similar standing.

### **Transfer pricing and Cross-Default Obligations**

- P19 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:
- P19.1 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
- P19.2 the Appointed Business neither gives nor receives any cross-subsidy from any other business or activity of the Appointee.
- P20 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.
- P21 The Appointee must not, without the prior approval of Ofwat:
- P21.1 give a guarantee in relation to any liability of an Associated Company;
- P21.2 make a loan to an Associated Company; or

- P21.3 enter into an agreement or other legal instrument incorporating a Cross-Default Obligation.
- P22 The Appointee must not continue or permit to remain in effect an agreement or other legal instrument incorporating a Cross-Default Obligation unless:
- P22.1 prior approval has been given by Ofwat; or
- P22.2 the Cross-Default Obligation would only arise on a default by a subsidiary of the Appointee and the Appointee ensures that:
- P22.2.1 the period for which the Cross-Default Obligation is in effect is not extended;
- P22.2.2 liability under the Cross-Default Obligation is not increased; and
- P22.2.3 no change is made to the circumstances in which liability under the Cross-Default Obligation may arise.
- P23 The Appointee must not, without the consent of Ofwat, transfer to any Associated Company any right or asset to which paragraph P14 applies.
- P24 In giving consent under paragraph P23, 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.

### **Credit Ratings and "Cash Lock-Up"**

- P25 The Appointee must demonstrate its ability to service its debt obligations by complying with paragraph P26 other than where Ofwat agrees that the Appointee does not need to comply with paragraph P26, whereupon it must comply with paragraph P27.
- P26 The Appointee must ensure that it or any Associated Company which issues corporate debt on its behalf maintains, at all times, maintains, at all times, two Issuer Credit Ratings which are Investment Grade Ratings from two different

Credit Rating Agencies, other than where Ofwat provides its written agreement for the Appointee to maintain only one Issuer Credit Rating which is an Investment Grade Rating.

P27 The Appointee must inform Ofwat as soon as reasonably practicable when the Appointee changes or becomes aware of a change in any of its Issuer Credit Ratings including reasons for the change in rating. A notification must be provided within a maximum of five working days of:

P27.1 a change in Issuer Credit Rating grade or outlook;

P27.2 a new Issuer Credit Rating being obtained; or

P27.3 the withdrawal of an Issuer Credit Rating.

P28 Where Ofwat has agreed that the Appointee is not required to comply with paragraph P26, the Appointee must no later than the date on which the Appointee is required to deliver to Ofwat a copy of each set of accounting statements prepared under Condition F submit to Ofwat a certificate which:

P28.1 states that in the opinion of the Board of the Appointee, the Appointee would be able to maintain an Issuer Credit Rating which is an Investment Grade Rating; and

P28.2 includes a statement of the main factors, including financial ratios and other information, which the Board has taken into account in giving its opinion for the certificate.

P29 The “Cash Lock-Up” provisions set out in paragraph P30 apply in any circumstances:

P29.1 where neither the Appointee or any Associated Company which issues corporate debt on its behalf holds an Issuer Credit Rating which is an Investment Grade Rating; or

P29.2 where the Appointee or any Associated Company which issues corporate debt on its behalf:

- P29.2.1 holds one or more Issuer Credit Ratings and one or more such Issuer Credit Ratings is not an Investment Grade Rating; or
  - P29.2.2 holds an Issuer Credit Rating which is the Lowest Investment Grade Rating and:
    - P29.2.2.1 the rating is on review for possible downgrade or is on “Credit Watch” or “Rating Watch” with a negative designation; or
    - P29.2.2.2 otherwise where the rating outlook of the Lowest Investment Grade Rating has been changed from stable or positive to negative.
- P30 Where paragraph P29 applies, the Appointee must not, without the prior approval of Ofwat, transfer, lease, licence or lend any sum, asset, right or benefit to any Associated Company, other than where:
- P30.1 the Appointee makes a payment to an Associated Company which is:
    - P30.1.1 pursuant to an agreement entered into prior to the circumstances referred to in paragraph P29 arising, which provides for goods, services or assets to be provided on an arm’s length basis and on normal commercial terms; and
    - P30.1.2 properly due in respect of the relevant goods, services or assets;
  - P30.2 the Appointee transfers, leases, licenses or lends any sum, asset, right or benefit to any Associated Company (excluding a dividend payment, a distribution out of distributable reserves or a repayment of capital), where:

P30.2.1 the transaction is on an arm's length basis on normal commercial terms; and

P30.2.2 the value due in respect of the transaction is payable wholly in cash and is paid in full when the transaction is entered into;

P30.3 the Appointee makes a repayment of, a payment of interest on or payments in respect of fees, costs or other amounts incurred in respect of:

P30.3.1 a loan made from a Financing Subsidiary to the Appointee, provided that the Financing Subsidiary continues to be an Associated Company of the Appointee; or

P30.3.2 a loan made prior to the circumstances referred to in paragraph P29 arising which is otherwise in accordance with these Conditions, provided that payment in respect of such a loan is not made earlier than provided for in accordance with its terms;

or

P30.4 the Appointee makes a payment 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 payment is not made before the date on which the amounts of tax subject to the relief would have become due.

P31 Where Ofwat has agreed that the Appointee is not required to comply with paragraph P26, the "Cash Lock-Up" provisions set out in paragraph P30 apply in any circumstances where the Appointee has not complied with paragraph P28 (and in those circumstances the references in paragraph P26 to paragraph P29 have effect as if they were references to this paragraph) and do not apply in any other circumstances.

## **Dividend policy**

P32 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:

P32.1 the that dividends declared or paid will not impair the ability of the Appointee to finance the Appointed Business, taking account of current and future investment needs and financial resilience over the longer term; and

P32.2 that dividends declared or paid take account of service delivery for customers and the environment over time, including performance levels, and other obligations; and

P32.3 that dividends declared or paid reward efficiency and the management of risks to the Appointed Business.

For the purpose of this licence condition, dividends refers to any distributions declared or paid in respect of any ordinary shares or preference shares.

## **Ring-fencing Certificate and statement**

P33 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.

P34 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:

P34.1 inform Ofwat; and

P34.2 within fourteen days of becoming aware of the activity, submit a new Ring-fencing Certificate to Ofwat.



- P35 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.
- P36 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.
- P37 A Ring-fencing Certificate must be:
- P37.1 signed by all directors of the Appointee on the date of submission; or
- P37.2 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:
- P37.2.1 be signed by a director of the Appointee or the Appointee's company secretary; and
- P37.2.2 have appended to it a certified copy of the minutes of the approval.
- P38 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 sub-paragraph 6.1 of Condition F 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**

- P39 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.



## **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.

## **Condition R: Provision of combined and wholesale water supplies**

1 [Not used]

2 [Not used]

3 [Not used]

4 [Not used]

### Anti-competitive behaviour

5 (1) If and for so long as the Appointee is related to any Licensee it shall ensure that every transaction between the Appointed Business and that Licensee is at arm's length.

(2) For the purpose of this paragraph the Appointee is related to a Licensee if their enterprises are under common ownership or common control (within the meaning those expressions have in section 26(1) of the Enterprise Act 2002).

(3) The Appointee shall by notice inform the Authority if at any time it becomes, or ceases to be, related to a Licensee.

(4) This paragraph is without prejudice to anything contained in paragraph 6 of Condition P (Transfer Pricing and Cross-Default Obligations).

6 The Appointee shall ensure that its Appointed Business does not show undue preference towards, or undue discrimination against -

(a) customers or potential customers (or classes of customers) of a Licensee, as compared with either the Appointee's own customers or potential customers (or classes of customers) or the customers or potential customers (or classes of customers) of any other Licensee; or

(b) a Licensee, as compared with any other Licensee or the Appointee itself.

### Obligations about information

7 (1) Whenever the Appointee is -

(a) negotiating with a Licensee the period for which and terms and conditions on which it might discharge any of its duties under sections 66A to 66C, 117A and 117B; or

(b) discharging any of those duties,

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

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

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

(b) where required or permitted by law; or

(c) where otherwise agreed with the Licensee.

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

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

(b) Compliance Guidance means guidance -

- (i) in relation to the matters specified in this paragraph; in relation to the Appointee's compliance with its obligations under this paragraph and under paragraph 5(1) above; and generally in relation to any obligation of confidentiality on the Appointee in relation to information provided to or by it under or for the purposes of this Condition or Condition S, and its compliance with those obligations; and
- (ii) for the time being issued by the Authority where -
  - a. before issuing such guidance, the Authority has consulted such persons as it considers appropriate; and
  - b. the Authority has published such guidance in such a manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (c) Subject to sub-paragraph (d) below, the Appointee -
  - (i) shall review its Compliance Code annually not later than the anniversary of the date upon which Compliance Guidance is first issued by the Authority; and
  - (ii) may at any time revise it.
- (d) If the Authority revises its Compliance Guidance, the Appointee shall revise its Compliance Code to conform to such revised guidance, within the timescales set out by the Authority, provided that the Authority has –
  - (i) consulted such persons as it considers appropriate before revising that Compliance Guidance; and
  - (ii) published that Compliance Guidance in such a manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

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



- (b) For the purpose of sub-paragraph (a) above, a special consumer is a person or a member of a class of persons who -
  - (i) the Appointee and the relevant Licensee agree; or
  - (ii) the Authority specifically or generally determines by relevant notice,  
  
regularly requires water urgently on medical or other grounds.

(7) Under sub-paragraph (6) -

- (a) a determination shall not have effect unless, before making the determination, the Authority has consulted such persons as it considers appropriate; and
- (b) a "relevant notice" is a notice published in such manner as the Authority considers appropriate and served on the Appointee.

(8) (a) The Appointee shall immediately inform each Licensee which is supplying water to premises in its Water Supply Area of every actual or potential incident which affects adversely, or is likely to affect adversely -

- (i) water quality;
- (ii) water pressure;
- (iii) continuity of supply; or
- (iv) any other matter related to the Appointee's supply system as defined in section 17B(5);

but the foregoing obligation applies only if and to the extent that the supply or supplies being made by such Licensee to premises in the Appointee's Water Supply Area is or are, or is or are likely to be, affected by any such actual or potential incident; and

- (b) information provided by the Appointee under sub-paragraph (a) above shall be as detailed as the information which the Appointee uses or intends to use or would use, when dealing with complaints from its own customers arising out of the same matters.
  - (9) For the purposes of sub-paragraph (8), an incident includes regulatory infringements which may put the Appointee or relevant Licensee at risk of supplying water which is unwholesome as determined under section 67 (standards of wholesomeness) or unfit for human consumption within the meaning of section 70 (offence of supplying water unfit for human consumption).
- 9 In so far as the provision of information to the Appointee is not provided for by or under any enactment, the Appointee shall not seek -
- (a) from a Licensee; or
  - (b) from a person supplied or seeking to be supplied by a Licensee;
- more information than the Appointee reasonably requires -
- (i) for the purposes of carrying out its functions;
  - (ii) to ascertain whether the Licensee has sufficient product and public liability insurance for the activities authorised by its water supply licence;
  - (iii) to comply with any condition of the Appointee's appointment;
  - (iv) in relation to national security or civil emergencies; or
  - (v) to comply with any reasonable request for information made by the **Environment Agency** [Natural Resources Body for Wales or the **Environment Agency**].

### General

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

- (2) Unless the contrary intention appears, references in this Condition to sections are references to sections of the Water Industry Act 1991.

**Condition R1 [Not used]**

**Condition R2 [Not used]**

### **Condition R3 - MAC condition**

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

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

#### **Modification of the Market Arrangements Code**

- (2) The Market Arrangements Code shall contain procedures for its own modification (including procedures for the modification of the modification procedures themselves) which shall ensure that:
  - (a) change proposals for the modification of the Market Arrangements Code may be made by any member of the Panel constituted under the Market Arrangements Code pursuant to paragraph 3(d) of this condition (“**the Panel**”), by the Authority and by such other persons or bodies as may be set out in the Market Arrangements Code;

- (b) every change proposal is brought to the attention of all parties mentioned in or pursuant to paragraph (a) above;
- (c) any and all representations made in respect of a change proposal are able to be properly considered by the relevant decision makers;
- (d) the question of whether any change proposal better facilitates the achievement of the MAC Principles is able to be properly evaluated by the parties to the Market Arrangements Code;
- (e) change proposals require Authority approval;
- (f) change proposals made by any of the parties stated in paragraph (a) which the Authority reasonably considers are necessary to comply with or implement any Applicable Law are:
  - (i) to be accepted into the Market Arrangements Code modification procedures by the Panel;
  - (ii) where they are raised by a person other than the Authority, not to be withdrawn without the Authority's prior consent; and
  - (iii) to proceed in accordance with any timetable(s) directed by the Authority in relation to the raising of a change proposal, the completion of relevant procedural steps and the implementation of the change proposal.
- (g) a final report is prepared including:
  - (i) a proposed implementation date either:
    - A. in accordance with any direction(s) issued by the Authority under paragraph (2)(h); or

- B. where no direction has been issued by the Authority under paragraph (2)(h), that would enable any proposed modification to take effect, as soon as reasonably practicable after the decision to implement it has been reached, taking into account the complexity, importance, and urgency of that modification and the most efficient timing for implementing the modification; and
- (ii) a summary of and copies of all submissions made in respect of the change proposal;
  - (iii) an assessment of the extent to which the change proposal would better facilitate achieving the MAC Principles and a detailed explanation of the reasons for that assessment; and
  - (iv) an assessment of any potential impact on, or consequential amendment to, any other Retail Market Code.
- (h) the proposed implementation date may be altered with the consent of or as directed by the Authority;
- (i) parties to the Market Arrangements Code are able to consider and comment upon the change proposal report prepared in accordance with paragraph (g) and in particular whether the change would, as compared with the existing provisions of the Market Arrangements Code, better facilitate the achievement of the MAC Principles;
- (j) the Panel, having regard to whether the change would, as compared with the existing provisions of the Market Arrangements Code, better facilitate the achievement of the MAC Principles, makes a recommendation to the Authority to approve or reject the proposed modification;
- (k) completion of each of the procedural steps outlined in this paragraph (2) to the extent that they are relevant, is in accordance with any timetable(s) directed by the Authority;

- (l) the change proposal report prepared in accordance with paragraph (g) (and submitted to the Authority pursuant to the procedures described in paragraph (g)) can be revised and resubmitted upon, and in accordance with, a direction issued to the Panel by the Authority where the Authority determines that it cannot properly form an opinion on the approval of the change proposal;
- (m) any proposals to modify the Market Arrangements Code must be designed to better facilitate the achievement of the MAC Principles; and
- (n) no modification of the Market Arrangements Code may be made unless the Authority, having had regard to the MAC Principles, directs the Appointee, in conjunction with every other Appointee and Licensee, to modify the Market Arrangements Code in such manner as is stated in that direction.

#### Contents of the Market Arrangements Code

- (3) The Market Arrangements Code shall make express provision in relation to the following matters:
  - (a) the creation of an agreement, to which the Appointee, every other Appointee, and every Licensee shall be a party, and which binds the Appointee to comply with the terms of the Market Arrangements Code (the “**MAC Framework Agreement**”);
  - (b) the referral for determination by the Authority of any dispute arising as to whether a person seeking to be admitted as a party to the MAC Framework Agreement has fulfilled such trading conditions as are set out in the MAC Framework Agreement;
  - (c) terms that provide for the Appointee and such other parties to the MAC Framework Agreement to be contractually bound by some or all of the provisions of the Market Arrangements Code;



- (d) arrangements for establishing and maintaining a Panel which is to be responsible, by way of such proceedings as may be set out in the Market Arrangements Code, for the governance and administration of the Market Arrangements Code and whose members are to be required as a condition of their appointment or election to act independently and not as delegates;
- (e) arrangements for the establishment and funding at all times of a body to perform the role of Market Operator fulfilling the functions set out in the Market Arrangements Code; and
- (f) a process by which the Panel can make recommendations to the Authority in relation to modifications of any code issued pursuant to section 66DA of the Act and/or section 117F of the Act.

## **Condition R4 - Stapling condition**

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

#### **Interpretation**

In this Condition:

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

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

“**Retail Business**” means those activities that constitute the provision of goods or services by the Appointee directly to one or more customers, and such activities ancillary to such provision including ownership of meters, and that are so designated from time to time (which designation, for the avoidance of doubt, shall be reversible) by the Water Services Regulation Authority or by such person or persons as may be nominated by the Water Services Regulation Authority to do so, but for the avoidance of doubt shall not include the following:

- (a) water resources, raw water distribution, water treatment, treated water distribution, sewage collection, sewage treatment, sludge treatment or sludge disposal (as each of those is defined in the Water Services Regulation Authority’s Regulatory Accounting Guideline 4.04); or
- (b) in so far as the ownership of meters is so designated, the ownership of meters that were installed at, or in order to measure supplies to customers’ premises on or before the date of such designation

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

## Arrangements between Appointee's Wholesale Business and NHH Retail Business

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

1. subject to the provisions of these Conditions in particular conditions F and R, undertake any such activities between its Wholesale Business and its NHH Retail Business as if:
  - (a) the Appointee's Wholesale Business and its NHH Retail Business were, in fact, carried out by separate legal entities, and the NHH Retail Business held a water supply licence and/or sewerage licence; and
  - (b) there were an agreement pursuant to s66D and/or s117E of the Act (regardless of whether any such agreement exists or not) between the Appointee's Wholesale Business and its NHH Retail Business.
2. put in place written arrangements in relation to any such activities between its Wholesale Business and its NHH Retail Business which are as far as is reasonably practicable consistent with the terms of paragraph 1 of this Condition;
3. provide the Authority upon request with evidence of the written arrangements put in place pursuant to paragraph 2 of this Condition; and
4. as far as is reasonably practicable, and in order to ensure that it does not show any undue preference towards its NHH Retail Business or any undue discrimination against any Licensee in its Area of Appointment, apply to the written arrangements put in place pursuant to paragraph 2 of this Condition any code or codes issued by the Authority from time to time pursuant to s66DA and/or s117F of the Act, provided that:
  - (a) said code or codes shall be read and construed in accordance with Schedule 8 to the Market Arrangements Code, and

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

**Condition R5 - Customer protection condition**

- (1) When dealing with customers in Eligible Premises, the Appointee must comply with the Customer Protection Code of Practice in respect of those customers.
- (2) The Customer Protection Code of Practice shall contain the procedure for its own modification.

## **Condition S: Introductions of water under the water supply licensing regime**

### Introduction

- 1 For purposes of this Condition:
  - (a) “Licensee” means a water supply licensee;
  - (b) “Primary Water Undertaker” is a water undertaker whose supply system is or will be used for the purposes of enabling the Licensee to provide water supplies to premises in accordance with the Licensee’s retail or restricted retail authorisation;
  - (c) the “Protocol” means the "**Customer Transfer Protocol**" -
    - (i) complying with the requirements of paragraphs 8 to 11 below;
    - (ii) served by the Authority on the Appointee on or after the date on which this condition comes into force; and
    - (iii) as subsequently amended from time to time in accordance with this Condition;
  - (c) “Secondary Water Undertaker” is a water undertaker which, at the request of a Licensee, provides or will provide a supply of water to be introduced into the Primary Water Undertaker’s supply system, with the consent of the Primary Water Undertaker, to enable the Licensee to provide water supplies to premises in accordance with the Licensee’s retail or restricted retail authorisation; and
  - (d) “Statutory Guidance” means any code or guidance issued by the Authority under the Act that makes provision about the terms and conditions of an agreement for the performance of duties under sections 66A, 66B or 66C of the Water Industry Act 1991 in relation to the introduction of water by a Licensee in accordance with its water supply licence.
- 2 (1) This Condition applies to, and makes provision about, circumstances where Licensee with a wholesale or supplementary authorisation:

- (a) requests permission to introduce water into the Primary Water Undertaker's supply system in order to supply premises in accordance with the Licensee's retail or restricted retail authorisation; or
- (b) requests a Secondary Water Undertaker to provide a supply of water to be introduced into the Primary Water Undertaker's supply system (with the consent of that undertaker) in order to provide water supplies to premises in accordance with the Licensee's retail or restricted retail authorisation.

### The Access Code

- 3 (1) The Appointee shall have an Access Code which complies with paragraphs 4 to 6 of this condition.
  - (2) The Appointee shall comply with its Access Code.
- 4 (1) The Access Code shall -
  - (a) conform to any Statutory Guidance; and
  - (b) set out -
    - (i) the Appointee's procedure (including timetables) for dealing with a request to which this Condition applies, including requests under sections 66B or 66C of the Water Industry Act 1991, made to it by a Licensee (which procedure shall itself conform to any relevant guidance);
    - (ii) the types of feasibility studies which the Appointee may undertake in response to any of those possible applications, including the method of calculation of any costs associated with any such study with a view to recovering them from any such applicant (all of which feasibility studies and the method of calculation shall themselves conform to any relevant guidance);

- (iii) the terms (including the basis for calculating charges) upon which the Appointee will offer to perform each relevant duty under sections 66A, 66B and 66C of the Water Industry Act 1991 and indicative charges for performing each such duty (which indicative charges shall themselves be calculated in accordance with any relevant guidance).
  - (2) In this paragraph and in paragraph 5 below, "relevant guidance" means guidance
    - (a) in relation to the matters specified in sub-paragraph (1)(b) above;
    - (b) for the time being issued by the Authority where -
      - (i) before issuing such guidance, the Authority has consulted such persons as it considers appropriate; and
      - (ii) the Authority has published such guidance in such a manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- 5
- (1) Subject to sub-paragraph (2), the Appointee -
    - (a) shall review its Access Code, and make any revisions to its Access Code consequent upon that review, annually not later than 15 October in each year; and
    - (b) may also at any other time revise it.
  - (2) If the Authority revises Statutory Guidance, the Appointee shall revise its Access Code to conform to the revised Statutory Guidance within the timescales set out by the Authority.
  - (3) If the Authority revises any relevant guidance, the Appointee shall revise its Access Code to conform to such revised relevant guidance, within the timescales set out by the Authority, provided that the Authority has -
    - (a) consulted such persons as it considers appropriate before revising that relevant guidance; and



- (b) published that revised relevant guidance in such a manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- 6 (1) The Appointee shall -
  - (a) include the text of its Access Code, as revised from time to time, on any Internet website which it may maintain; and
  - (b) in response to any request, provide a copy of it free of charge.
- (2) The Appointee shall provide to the Authority -
  - (a) free of charge a copy of its Access Code; and
  - (b) within seven days of making them, written particulars of any modifications of it.

Customer transfer protocol

- 7 The Appointee shall comply with the Protocol.
- 8 In relation to circumstances where a Licensee proposes to introduce water in pursuance of its licence, or the cessation of such an introduction is proposed, the Protocol shall provide a clear, simple and standardised process for the timely and efficient transfer of supplies to premises of customers:
  - (a) between any water undertaker and any Licensee; and
  - (b) between any two Licensees.
- 9 The Protocol shall -
  - (a) make the same provision for all of the transfers referred to in paragraph 8 above; and
  - (b) include provisions for its amendment which shall -

- (i) allow the Authority and such other persons as the Protocol shall specify to propose amendments;
- (ii) subject to (iii) below, require the agreement of the Authority and such majorities, as the Protocol shall specify, of water undertakers and of Licensees with wholesale or supplementary authorisations, before any amendment can be made; and
- (iii) in the case of such disagreements as the Protocol shall specify, about any amendment to the Protocol which has been proposed other than by the Authority, allow the Authority to determine whether that amendment shall be made.

10 The Protocol shall include provisions to the effect that, where -

- (a) any water undertaker or Licensee ("the Old Supplier") is supplying water to the premises of a customer;
- (b) that customer has failed to pay outstanding charges due to the Old Supplier in respect of that supply;
- (c) those charges have been demanded by notice served on the customer; and
- (d) they have remained unpaid for 30 days or more after the date of that notice,

the old supplier may suspend the transfer of the supply of water to those premises of that customer until satisfactory provision has been made for the outstanding debt to be paid to the old supplier.

11 Where the Authority so determines, the Protocol shall provide for such matters as are specified or are of a type specified in the Protocol to be referred to and determined by the Authority.

## **Consolidation Note - Does not form part of the Appointment**

This document is a consolidated working copy of the Appointment, prepared using the original Appointment and modifications and variations which have been made to the Appointment. It does not include any explanatory notes or guidance documents (which do not form part of the Appointment). It is not a formal document and should not be relied on.

Where there are references contained in the Appointment which have been highlighted in yellow, these references are out of date. These references include, for example, references to legislation which has been repealed and references to names which have been changed.

This document contains updated references alongside the reference which is out of date. These have been highlighted in blue and placed in square brackets. These updates are not additions to the Appointment which have been made following a modification, but represent Ofwat's view as to the correct updated reference.

This licence has been consolidated to incorporate the following modifications and/or variations:

- 1 Modification to Condition C (coming into effect on 1 April 1991)
- 2 Modification to Condition F (coming into effect on 3 September 1991)
- 3 Modification to Condition K (coming into effect on 1 February 1992)
- 4 Modification to Condition F (coming into effect on 4 March 1993)
- 5 Modification to Condition N (coming into effect on 1 April 1993)
- 6 Modification to Condition B (coming into effect on 1 April 1994)
- 7 Modification to Condition C (coming into effect on 22 February 1996)
- 8 Modification to Condition K (coming into effect on 1 April 1996)
- 9 Modification inserting Condition Q (coming into effect on 19 April 1997)
- 10 Modification to Condition F (coming into effect on 8 May 1997)
- 11 Variation to the Area of Appointment and Modification to Conditions B & E - incorporating the takeover of Wrexham Water Plc's Area of Appointment (coming into effect on 1 April 1998)

- 12 Modification to Condition B (coming into effect on 1 April 2000) - Undertaker specific
- 13 Modification to Condition B (coming into effect on 1 April 2000) - To all Undertakers
- 14 Modification to Condition N (coming into effect on 1 April 2000)
- 15 Modification to Condition B (coming into effect on 23 January 2001)
- 16 Modification to Condition B (coming into effect on 8 February 2002)
- 17 Modification to Condition B (coming into effect on 24 July 2002)
- 18 Modification to Condition O (coming into effect on 15 October 2002)
- 19 Modification to Condition F and inserting Condition P (20 October 2003)
- 20 Modification to Condition N (coming into effect on 24 November 2004)
- 21 Modification to Conditions B & H (coming into effect on 1 April 2005)
- 22 Modification inserting Conditions R & S (coming into effect 15 September 2005)
- 23 Modification to Condition N (coming into effect on 1 October 2005)
- 24 Modification to Condition R (coming into effect on 1 September 2006)
- 25 Modification to Condition R (coming into effect on 1 September 2007)
- 26 Modification to Conditions A, B and C (coming into effect on 22 July 2013)
- 27 Modification to Condition N (coming into effect on 1 March 2014)
- 28 Modification to Condition A (coming into effect on 1 April 2014)
- 29 Modification to Condition R (coming into effect 19 May 2016)
- 30 Modification to Conditions A, Q & R and inserting conditions R3, R4 & R5 (coming into effect on 1 April 2017 )
- 31 Modification to Conditions R & S (coming into effect on 1 April 2017)
- 32 Modification to Conditions A, B and K and inserting Condition M1 (coming into effect on 15 April 2017)

- 33** Modification to Conditions A, B, F, K and P (coming into effect on 1 July 2018)
- 34** Variation of its area (coming into effect on 1 July 2018)
- 35** Insertion of Condition E1 (made on 2 November 2019 and coming into effect on 1 April 2019)
- 36** Modification to Conditions A, C, D, E, G, H, I, J, M, O, Q and deletion of Conditions R1 and R2 (coming into effect on 1 January 2019)
- 37** Modification of Conditions F and N (coming into effect on 1 March 2019)
- 38** Modification of Condition P (coming into effect on 1 August 2019)
- 39** Modification of Condition B (coming into effect on 10 November 2019)
- 40** Modification of Condition B (coming into effect on 15 November 2019)
- 41** Modification of Conditions A and P (coming into effect on 13 July 2020)
- 42** Modification of Condition B (coming into effect on 11 November 2020).
- 43** Modification of Condition B (coming into effect on 1 August 2022)
- 44** Modification of Conditions A and N (coming into effect on 1 January 2023)
- 45** Modification of Condition P (coming into effect 17 May 2023)
- 46** Modification of Conditions G and J (coming into effect on 12 February 2024)