

Instrument of Appointment for ESP Water Limited

July 2022

Consolidated working copies of Appointments are not formal documents and for some purposes you may need to consider the formal appointments and variations to appointments rather than this consolidated working copy. A list of all variations made to these appointments is contained in a consolidation note at the back of this working copy.

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THE APPOINTMENT

WATER SERVICES REGULATION AUTHORITY

WATER INDUSTRY ACT 1991, SECTIONS 6 TO 9 AND 11

Appointment of ESP Water Limited as a Water and Sewerage Undertaker and Variation of Appointment of United Utilities Water Limited as a Water and Sewerage Undertaker

Made on 26 July 2022

Coming into effect on 27 July 2022

1. ESP Water Limited (“ESP Water”) has applied under section 6(1) and 7(4)(b) of the Water Industry Act 1991 (“the Act”) to be appointed as the water and sewerage undertaker for a site at Merchant's Wharf, in Salford, that is currently in the Water Supply Area and Sewerage Services Area of United Utilities Water Limited (“United Utilities”)¹.
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 Services² to make variations such as those contained in paragraphs 3 and 5 below. After public consultation, as required by section 8 of the Act, the Water Services Regulation Authority has decided that it should grant ESP Water's application.
3. Therefore, as provided by sections 6(1) and 7(2) and 4(b) of the Act, the Water Services Regulation Authority **appoints** ESP Water (**“the Appointee”**) to be the water and sewerage undertaker for the Water Supply Area and Sewerage Services Area described in Schedule 1.
4. The Appointment made in paragraph 3 (**“the Appointments”**) is subject to the conditions set out in Schedule 2.
5. In consequence of the Appointments, the Water Services Regulation Authority **varies** the appointment of United Utilities as a Water and Sewerage Undertaker, so the area described in Schedule 1 is excluded from United Utilities' Water Supply Area and Sewerage Services Area.

Signed for and on behalf of the Water Services Regulation Authority

¹ United Utilities' original appointment as a water and sewerage undertaker was made by the Secretary of State for the Environment under sections 11 and 14 of the Water Act 1989, now replaced by sections 6 and 11 of the Water Industry Act 1991.

² 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.

A handwritten signature in black ink, appearing to read 'E. Kelso', is enclosed within a light grey rectangular box.

Emma Kelso

Senior Director Markets, Enforcement and Customer Policy

SCHEDULE 1: Areas for which the Appointments are made

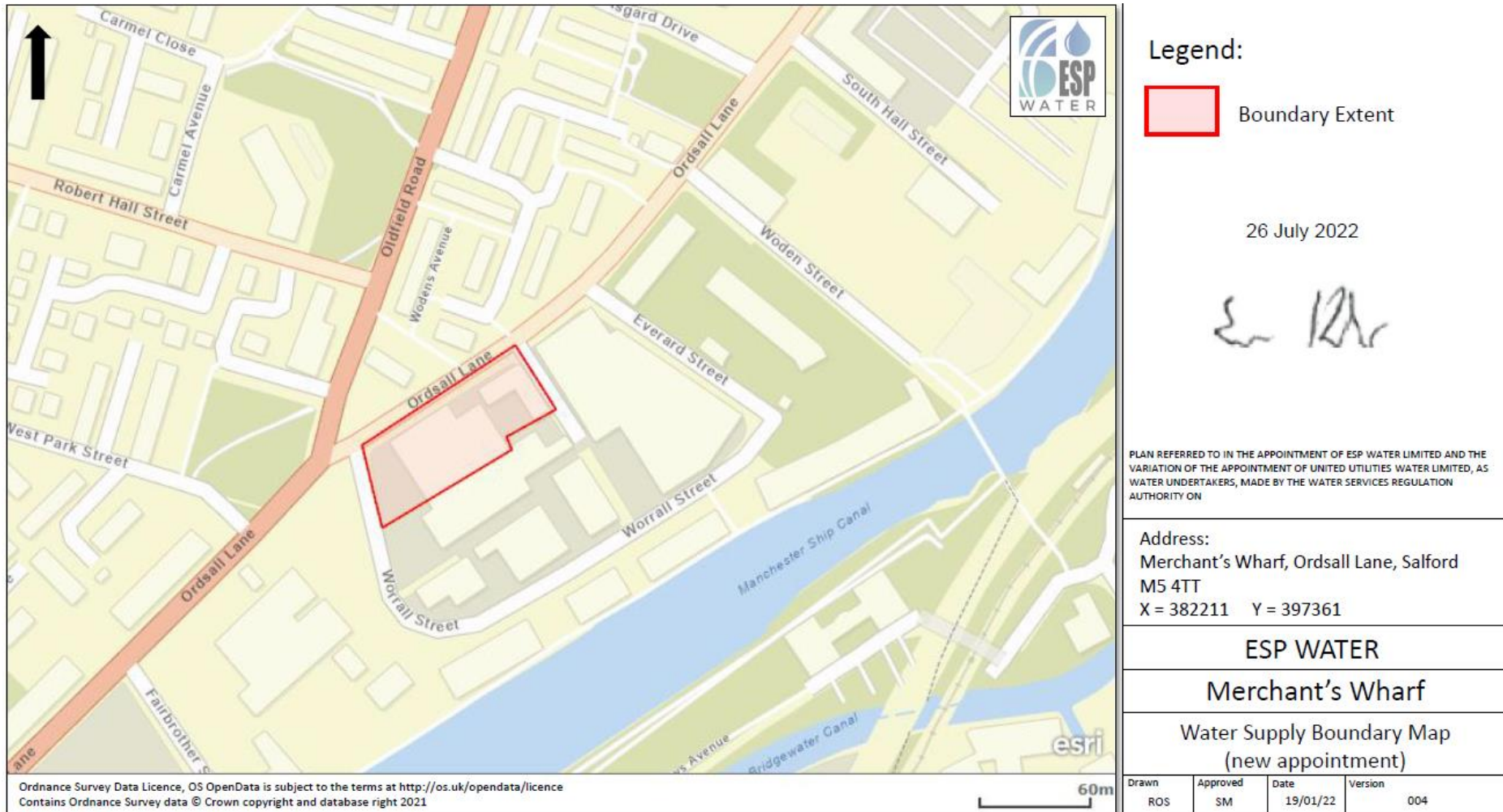
The Water Supply Area

The area for which the Appointee is appointed to be the water undertaker (**“the Water Supply Area”**) comprises the area the boundaries of which are more particularly delineated by the line shaded red in the **Water Supply Area Map** which forms part of this instrument.

The Sewerage Services Area

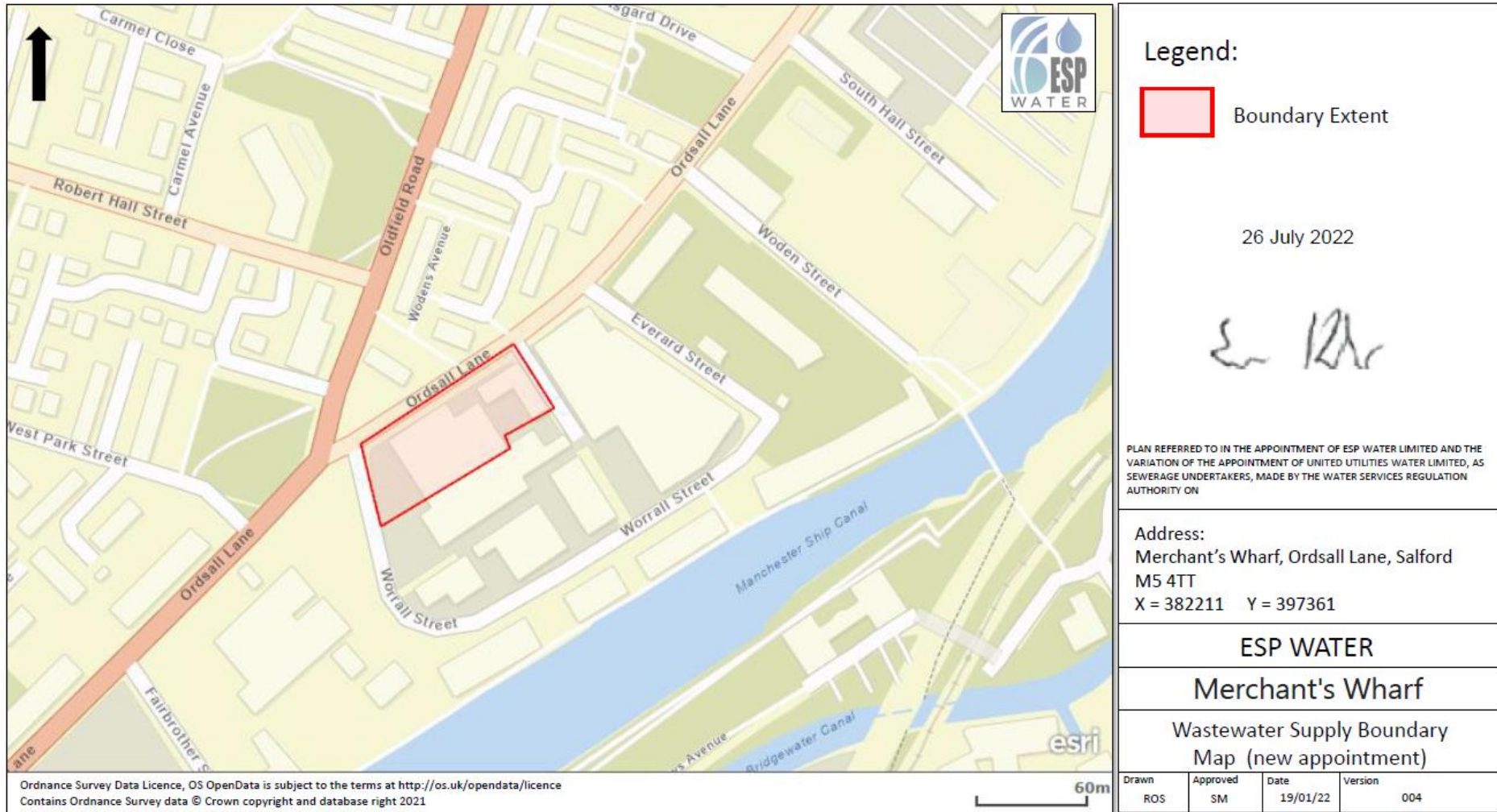
The area for which the Appointee is appointed to be the sewerage undertaker (**“the Sewerage Services Area”**) comprises the area the boundaries of which are more particularly delineated by the line shaded red in the **Sewerage Services Area Map** which forms part of this instrument.

Water Supply Area Map



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Sewerage Services Area Map



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SCHEDULE 2: Conditions of the Appointment

Condition A: Interpretation and Construction

1. Unless the contrary intention appears:
 - (1) words and expressions used in these Conditions and references in these Conditions to enactments shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them;
 - (2) references in these Conditions to enactments shall include any statutory modification thereof after the date on which the Appointment is made;
 - (3) references to a liability shall be taken to include the creation of any mortgage, charge, pledge, lien or other form of security or encumbrance, the making of a loan and the taking on of a debt;
 - (4) references to a loan shall be taken to include the transfer or lending, by any means, of any sum of money or rights in respect of that sum;
 - (5) words and expressions used in these Conditions shall have the same meaning as in any provision of the Water Industry Act 1991;
 - (6) references in these Conditions to sections and Schedules are references to sections of, and Schedules to, the Water Industry Act 1991; and
 - (7) references in these Conditions to paragraphs are references to paragraphs of the Condition in which the reference appears and references to sub-paragraphs are references to sub-paragraphs of the paragraph in which the reference appears.
2. In construing these Conditions:

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- (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) 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 of a debt;
- (4) references to a loan shall be taken to include the transfer or lending, by any means, of any sum of money or rights in respect of such sum;
- (5) references to a transfer of any asset or liability includes a part transfer of an asset or liability and, without limitation, there is a part transfer of an asset where an interest or right in or over the asset is created.

3. Unless the context otherwise requires, in these Conditions:

“the 2014 Act” means the Water Act 2014;

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

“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;

"**Area**" means the area for which for the time being the Appointee holds the appointment as a water undertaker or sewerage undertaker, as the case may be;

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

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

"**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 1st April;

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

"**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;

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

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

"**Domestic Customer**" means the occupier of Domestic Premises;

"Domestic Premises" means any premises used wholly or partly as a dwelling or intended for such use;

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

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

"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;

"Holding Company" has the meaning set out in section 1159 of the Companies Act 2006;

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

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

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

"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;

“Licensee” means the holder of a water supply licence and/or a sewerage licence granted by Ofwat under section 17A or under section 17BA of the Water Industry Act 1991;

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

“Ofwat” means the Water Services Regulation Authority;

“Periodic Review” means a review of the Appointed Business carried out under paragraph 9 or 11 of Condition B, but so that references in Part IV of Condition B to a Periodic Review shall exclude any review carried out under paragraph 11 of that Condition and shall include the determination by the Competition and Markets Authority of the relevant questions or, as the case may be, the disputed determination referred to it under paragraph 16 of Condition B following the giving of Information to Ofwat in accordance with paragraph 9;

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

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

“Principles of Good Governance and Code of Best Practice” means the document of that title incorporated into the Listing Rules of the Financial Services Authority, or any document published to be the successor of the document, which has similar purpose and content;

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

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

(a) the period from 1 April 2015 to 31 March 2020; or

- (b) the subsequent period of five consecutive Charging Years starting on the relevant five year anniversary of 1 April 2015;

“Relevant Index” means –

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

“Reference Notice” means a notice given to Ofwat under paragraph 11 or 14 of Condition B;

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

“Related Company” means any body corporate in which the Appointee or any Group Company has a participating interest within the meaning of paragraph 11 of Schedule 10 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) or which has such a participating interest in the Appointee or any Group Company;

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

“Retail Prices Index” means the Retail Prices Index published by the Office for

National Statistics each month in respect of all items or, if the said index for the month of November is not published by 31st December next following, such index for such month as Ofwat may not later than 7th January next following determine to be appropriate in the circumstances, after such consultation with the Appointee as is reasonably practicable, and in such a case references to the Retail Prices Index shall be construed for the purpose of all subsequent calculations for which the value of the Retail Prices Index for that year is relevant as references to that other index;

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

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

"Ring-fencing Certificate" means a certificate, submitted to 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 on the Regulated Activities, for at least the twelve month period following the date on which the certificate is submitted;
- (b) the Appointee will have available to it sufficient management resources and systems of planning and internal control to enable it to carry on the Regulated Activities, for at least the twelve month period following the date on which the certificate is submitted; and
- (c) all contracts entered into between the Appointee and any Associated Company include the necessary provisions and requirements in respect of the standard of service to be supplied to the Appointee, to ensure that it is able to carry on the Regulated Activities;

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

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

“subsidiary” has the meaning set out in section 1159 of the Companies Act 2006;³

“Ultimate Controller” means any person which, whether alone or jointly and whether directly or indirectly is, in the reasonable opinion 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;

“UK Corporate Governance Code” means the document of that title incorporated into the Listing Rules of the Financial Conduct Authority, or any document published to be the successor of the document, which has similar purpose and content;

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

“Water Infrastructure Charge” means a charge as is described in section 146(2)(a); and

“Wholesale-Retail Code” means the code issued by Ofwat pursuant to sections 66DA and 117F.

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

3 s.1159 of the Companies Act 2006:

Meaning of “subsidiary”

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

representations by the Appointee and any other sewerage undertaker) any question arising as to whether any area, island, premises or installation is, or, as the case may be, are, comprised within the Area.

6. The Appointee will use all reasonable endeavours to work with Ofwat, in a constructive and cooperative manner to improve these Conditions of Appointment.

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 limit increases in standard charges made by the Appointee for the supply of water, the provision of sewerage services and the reception, treatment and disposal of trade effluent. The weighted average increase is limited to the sum of the movement in the Retail Prices Index and an Adjustment Factor, called K.

Changes in metered charges are calculated by reference to actual consumption in a Weighting Year (a financial year of the Appointee).

Changes in unmetered charges are calculated by reference to changes in average revenue per chargeable supply calculated on the customer base as at the preceding 1st December. Changes are weighted in proportion to the contribution which each type of charge makes to total revenue in the Weighting Year.

These matters are dealt within Part II under the heading "Restriction of Standard Charges for Basket Items."

- 1.2 To provide for a review of the Appointed Business to be carried out by the Water Services Regulation Authority at five-yearly intervals, so that the Water Services Regulation Authority can determine whether the Adjustment Factor should be changed. Except where expressly provided in this Condition all reviews will cover periods of five consecutive years. This is dealt with in Part III under the heading "Periodic Reviews".

1.3 To enable the Appointee:

- (1) Not used;
- (2) to refer to the Water Services Regulation Authority for determination from time to time the question of changing the Adjustment Factor 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 Adjustment Factor 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 Adjustment Factor 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 Adjustment Factor 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 and Modification of this Condition."

- 1.6 To require the appointee to give Information to the Water Services Regulation Authority to enable it to make determinations under this Condition. This is dealt with in Part VI under the heading "Provision of Information to the Water Services Regulation Authority."

1A. Application and transitional provisions

- 1A.1 Paragraphs 3 to 17 of this Condition shall not apply until the Water Services Regulation Authority has given notice to the Appointee of their application.
- 1A.2 Before the Water Services Regulation Authority gives notice under subparagraph 1A.1, it may determine the question of what the Adjustment Factor should be for such number of consecutive Charging Years (not exceeding five) as the Water Services Regulation Authority considers appropriate, starting with the Charging Year starting on 1st April immediately after it has given notice under subparagraph 1A.1. The Water Services Regulation Authority shall give notice to the Appointee of its determination not later than the thirty-first day of December immediately preceding the first of the Charging Years in respect of which it is setting the Adjustment Factor.
- 1A.3 Subject to sub-paragraph 1A.5, until the Water Services Regulation Authority has given notice under subparagraph 1A.1, the Appointee shall

not make or fix the amount of any Relevant Charge at an amount that is greater than the amount set out in sub-paragraph 1A.4.

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

- a) subject to sub-paragraph 1A.5, for Eligible Customers, where the Incumbent's area is a retail exit area, a charge fixed in the most recent Scheme of Terms and Conditions published by the Relevant Licensee for Transferred Premises, that would have been applicable to each Eligible Customer had that customer occupied Transferred Premises and been a customer of the Relevant Licensee;
- b) for all other charges, a Relevant Charge fixed by the Incumbent for the same charging year that would, but for the Appointments or any subsequent variation, have applied to any particular part of the Area.

1A.5 Sub-paragraphs 1A.3 and 1A.4 do not apply to Eligible Customers who employ more than 250 employees and who became customers of the Appointee after 1 April 2018. For these customers, the Appointee's charges must be reasonable and must comply with Condition E.

1A.6 Sub-paragraphs 1A.3 and 1A.4 do not place an obligation on the Appointee to change its Relevant Charges more than once with respect to any Charging Year.

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

"Relevant Charge" means, for any supply of water provided, or provision of sewerage services made, or reception, treatment and disposal of trade

effluent which takes place, a charge fixed under any such charges scheme as is referred to in section 143 of the Water Industry Act 1991;

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

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

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

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

2 **Defined Terms which apply for the purpose 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;

"**Average Charge per Chargeable Supply**" means, in respect of a specified Unmeasured Basket Item for a specified year, the amount $\frac{R}{N}$ where:

R is the annual revenue (exclusive of VAT) which would accrue to the Appointee in respect of the specified Unmeasured Basket Item if all Standard Charges (other than Excluded Charges) made or to be made in respect of that Unmeasured Basket Item in the specified year were applied to all Chargeable Supplies of the Appointee which would have been subject to those Standard Charges as at 1st December preceding the specified year; and

N is the number of Chargeable Supplies as at such 1st December for which the Appointee would have been entitled to make those Standard Charges, provided that, where the specified year is a Prior Year,

- (a) there shall be included in N the number of any additional Chargeable Supplies which the Appointee would have made as at such 1st December if the Standard Charges to be made in respect of the Unmeasured Basket Item in the relevant Charging Year had applied; and
- (b) there shall be excluded from N the number of any Chargeable Supplies which the Appointee would not have been entitled to make as at such 1st December if the Standard Charges to be made in respect of the Unmeasured Basket Item in the relevant Charging Year had applied.

"Basket Items" are

- (1) unmeasured water supply,
- (2) unmeasured sewerage services,
- (3) measured water supply,
- (4) measured sewerage services, and
- (5) reception, treatment and disposal of trade effluent

Where

- (a) a measured supply or service is one where all or some of the charges for that supply or service are based on measured quantities of volume and an unmeasured supply or service is any other; and
- (b) sewerage services includes sewage treatment and disposal and excludes reception, treatment and disposal of trade effluent;

"Chargeable Supply" means any supply of water or any provision of sewerage services for which charges are payable;

"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;
- (3) charges for the reception and disposal by the Appointee, or other person specified by the Appointee of matter delivered to the Appointee or such other person by a collection authority in pursuance of section 14(9) of the Control of Pollution Act 1974;
- (4) 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) 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 Weighting Year with not less than such quantity of water as is specified from time to time under section 7(5)(a)

AND, for the avoidance of doubt, but without prejudice to the meaning of Standard Charges in respect of Basket Items, shall also include

- (8) charges payable for any such connection as is described in section 146(2) of the Water Industry Act 1991;
- (9) charges for a supply of water in bulk to another water undertaker;
and
- (10) amounts payable under any such agreement as is described in section 20(1)(b) of the Water Industry Act 1991.

"Measured Basket Items" means items (3), (4) and (5) in the definition of Basket Items:

"Non-volumetric Charge" is a charge which is not based on measured quantities of volume;

"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 payable under any such agreement as is referred to in section 142 of the Water Industry Act 1991;
- (3) charges payable where a discharge is made in pursuance of a consent given by the Appointee for the purposes of the 1937 Act

under or for which all the charges payable are in accordance with standard charges published or fixed by the Appointee;

- (4) 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;

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

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

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

"Unmeasured Basket Items" means items (1) and (2) in the definition of Basket Items;

"Weighted Average Charges Increase" means the sum calculated as follows:

$$W_t = \sum_i \left(\frac{A_t(i)}{A_{t-1}(i)} \cdot r(i) \right) + \sum_j \left(\frac{B_t(j)}{B_{t-1}(j)} \cdot r(j) \right) - 1$$

Where

W_t is the Weighted Average Charges Increase for the Charging Year

i is an index identifying the two Unmeasured Basket Items

j is an index identifying the three Measured Basket Items

\sum_i requires summation over the two Unmeasured Basket Items i

\sum_j requires summation over the three Measured Basket Items j

$A_t(i)$ is the Average Charge Per Chargeable Supply in respect of Unmeasured Basket Item i for the Charging Year

$A_{t-1}(i)$ is the Average Charge Per Chargeable Supply in respect of Unmeasured Basket Item i for the Prior Year

$B_t(j)$ is the Weighting Year Revenue in respect of Measured Basket Item j for the Charging Year

$B_{t-1}(j)$ is the Weighting Year Revenue in respect of Measured Basket Item j for the Prior Year

$r(i)$ or $r(j)$ is the revenue (exclusive of VAT) which accrued to the Appointee in the Weighting Year from all Standard Charges other than Excluded Charges (including, in the case of Measured Basket Items, any Non-volumetric Charge) in respect of Unmeasured Basket Item i or Measured Basket Item j (as the case may be), divided by the aggregate of such revenues for all five Basket Items;

"Weighting Year" means the financial year of the Appointee ended last before 7th October in the Prior Year;

"Weighting Year Revenue" means:

- (i) the revenue (exclusive of VAT) which would have accrued to the Appointee in the Weighting Year in respect of the specified Measured Basket Item, if all Standard Charges other than Excluded Charges (including any Non-volumetric Charge) made or to be made

in respect of that Measured Basket Item in the Charging Year or, as the case may be, the Prior Year had applied, or

- (ii) if the Weighting Year precedes the first Charging Year, the revenue (exclusive of VAT) which would have accrued to the Appointee in respect of the specified Measured Basket Item, if all Standard Charges other than Excluded Charges (including any Non-volumetric Charge) made in respect of that Measured Basket Item in the Charging Year or, as the case may be, Prior Year, had applied in the first Charging Year.

3 **[Not used]**

Part II. Restriction of Standard Charges for Basket Items

4 **The Charges Limit**

4.1 The Appointee shall ensure that the Weighted Average Charges Increase in any Charging Year (beginning with the Charging Year starting on 1st April immediately after the Water Services Regulation Authority has given notice under sub-paragraph 1A.1) when expressed as a percentage does not exceed the Charges Limit.

4.2 The Charges Limit is the percentage calculated as $RPI + K$, where

RPI is the percentage change (expressed, in the case of an increase, as a positive number, in the case of a decrease, as a negative number and, in the case of no change, as zero) in the Retail Prices Index between that published for the month of November in the Prior Year and that published for the immediately preceding November.

K is the Adjustment Factor.

4.3 The Adjustment Factor shall be:

- (1) for each of the Charging Years referred to in sub-paragraph 1A.2 the number so determined by the Water Services Regulation Authority (or such other number as shall from time to time be determined under this Condition) or, if none, zero;
- (2) for each subsequent Charging Year, such number as shall from time to time have been determined under this Condition or, if none, zero

and the Adjustment Factor may be a different number for any Charging Year and may be a positive or negative number or zero.

- 4.4 If the Weighted Average Charges Increase in any Charging Year is less than the Charges Limit then the Charges Limit for the following Charging Year shall be increased by the amount of such deficiency.
- 4.5 The Charges Limit for any Charging Year shall only be increased by virtue of sub-paragraph 4.4 to the extent that such deficiency is not attributable to any Charging Year ended three or more years previously.

5 **Matters affecting the Charges Limit and the calculation of the Weighted Average Charges Increase**

- 5.1 Where the Appointee determines:
 - (1) to make a material change (other than one which relates solely to the amount of a charge) to the basis on which it makes or calculates any Standard Charge, or Standard Charges taken as a whole, (other than Excluded Charges) for the supply of water or the provision of sewerage services or the reception, treatment and disposal of trade effluent;
 - (2) to make a material change to the scope of any such scheme, agreement or consent as is referred to in the definition of

"Standard Charges" (insofar as such change relates to charges, other than Excluded Charges, for the supply of water or the provision of sewerage services or the reception, treatment and disposal of trade effluent); or

- (3) to change the basis on which the Appointee treats supplies of water or provisions of sewerage services as separate supplies or provisions for the purpose of making Standard Charges (other than Excluded Charges) which affects the calculation of Average Charge Per Chargeable Supply

it shall:

- (a) notify the Water Services Regulation Authority; and
- (b) furnish to the Water Services Regulation Authority such explanations and Information relating to such change as the Water Services Regulation Authority considers requisite or expedient having regard to the purposes of this Condition.

5.2 Where there is a material change to the basis of compiling the Retail Prices Index this Condition, insofar as it relates to that part of the calculation of the Charges Limit 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.

6 **Verification of Compliance with the Charges Limit**

6.1 Statements

The Appointee shall deliver to the Water Services Regulation Authority the following statements:

- (1) not later than two months before the start of each Charging Year a statement in writing (a "**Principal Statement**") of:
 - (a) the revenue which accrued in the Weighting Year from all Standard Charges (including, in the case of Measured Basket Items, any Non-volumetric Charge), other than Excluded Charges, in respect of each Unmeasured Basket Item i and each Measured Basket Item j;
 - (b) the aggregate revenue which accrued in the Weighting Year from all such Standard Charges; and
 - (c) the amount of each and every type or category of charge for the supply of water, the provision of sewerage services or the reception, treatment or disposal of trade effluent which the Appointee proposes to make of a kind specified in the definition of "Standard Charges" as at the commencement of that Charging Year which are not Excluded Charges (and for this purpose where the Appointee proposes to charge different prices per cubic metre of water supplied depending upon the volume of water supplied or the time of supply or the category of customer or any other variable factor then each such price shall be treated as a different type or category of charge);
- (2) not later than two months, or such later date as the Water Services Regulation Authority may allow, before the date during any Charging Year as from which the Appointee proposes to make or fix a new Standard Charge (which is not an Excluded Charge) for the supply of water or the provision of sewerage services or the reception, treatment or disposal of trade effluent or to increase or decrease the amount of any such charge a statement in writing (a

"**Supplemental Statement**") of the new charge or the amount by which the Appointee proposes to increase or decrease the amount of that charge.

Any Principal Statement or Supplemental Statement shall be accompanied by the information necessary to calculate $A_t(i)$ and $A_{t-1}(i)$ and $B_t(j)$ and $B_{t-1}(j)$ in the definition of Weighted Average Charges Increase and a written statement of those calculations.

6.2 Auditors' Report

Any Principal Statement shall be accompanied by a report by the Auditors as to whether, in their opinion, the information included in that Principal Statement under sub-paragraphs 6.1(1)(a) and (b) has been properly extracted from the relevant accounting statements prepared and delivered by the Appointee under paragraph 4 of Condition F and from the Appointee's accounting records and such other records of the Appointee as the Auditors consider relevant for the purpose of making their report and as to whether, in their opinion, the calculations delivered by the Appointee with that Principal Statement are in accordance with this Condition and with the Appointee's accounting and such other relevant records.

7 **[Not used]**

Part III. Periodic Reviews

8 **[Not used]**

9 **Periodic Reviews of the Appointed Business at Regular Five-yearly Intervals**

9.1 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 for the purpose of determining the question whether (having regard to all the circumstances which are relevant in the light of the principles which apply by virtue of Part I of the Act in relation to the Water Services Regulation Authority's determination, including, without limitation, any change in circumstance which has occurred since the last Periodic Review or which is to occur) the Adjustment Factor should be changed (and if so, what change should be made to it) for:

- (1) the five consecutive Charging Years subsequent to the Charging Years referred to in sub-paragraph 1A.1, and
- (2) each period of five consecutive Charging Years starting on the fifth anniversary of the first day of the period in respect of which the immediately preceding Periodic Review was carried out.

9.2 The Appointee shall furnish to the Water Services Regulation Authority such Information (including further detail about or explanation of Information previously supplied, whether or not under this sub-paragraph 9.2) as the Water Services Regulation Authority may by notice reasonably require to enable it to carry out the Periodic Review.

10 **[Not used]**

11 **Periodic Reviews of the Appointed Business where a Termination Notice has been given**

11.1 Where a Termination Notice has been given by the Secretary of State to the Appointee, the Appointee may refer to the Water Services Regulation Authority for determination by it the question whether, on the assumption that such a Termination Notice had not been given, (but subject thereto, having regard to all the circumstances which are relevant in the light of the principles which apply by virtue of Part I of the Act in relation to the

Water Services Regulation Authority's determination, including, without limitation, any change in circumstance which has occurred since the Adjustment Factor was set or, as the case may be, the last Periodic Review or which is to occur) the Adjustment Factor should be changed (and if so what change should be made to the Adjustment Factor) for the five consecutive Charging Years starting with the Charging Year starting 1st April last before the Termination Notice is to expire.

11.2 A reference to the Water Services Regulation Authority under this paragraph 11 shall be made by notice given to the Water Services Regulation Authority not earlier than 1st July and not later than 14th July in the Charging Year next but one before that commencing on the said 1st April.

12 **Effect of Termination of the Appointments (or either of them) on Periodic Reviews**

Subject to paragraph 11, if the Secretary of State shall have served a Termination Notice on the Appointee then this Condition shall have effect as though, in the case of the Appointment in respect of which the Termination Notice has been given, references to a Periodic Review being carried out in respect of a period of five consecutive Charging Years were references to a Periodic Review being carried out in respect of the relevant Appointment in respect of a period of that number of consecutive Charging Years which is the lesser of:

- (1) five; and
- (2) the number of consecutive Charging Years (including that in which the day on which the Termination Notice is to take effect falls) in the period starting on the first day of the first of the Charging Years

in respect of which that Periodic Review is to be carried out and ending on the day on which the Termination Notice is to expire.

Part IV. Interim Determinations

13 **Matters of Interpretation and Construction which apply for the purposes of this Part IV**

13.1 In this Part of this Condition:

"the Appropriate Discount Rate" means such rate of return as, at the time at which the Appropriate Discount Rate falls to be applied from time to time under this Condition, investors and creditors would reasonably expect of a properly managed company holding the Appointments whose sole business consists of being a water undertaker and a sewerage undertaker and, without excluding other considerations which may also be relevant, having its equity share capital listed on the London Stock Exchange plc, and the same Appropriate Discount Rate shall be applied for all purposes in determining questions the subject of the same reference (including questions determined by the Water Services Regulation Authority under paragraph 15 when it determines questions referred to it by the Appointee under paragraph 14);

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

"Interim Determination" means the determination by the Water Services Regulation Authority of the relevant questions the subject of a reference by the Appointee under paragraph 14 or pursuant to paragraph 15 or, as the case may be, the determination by the Competition and Markets Authority of the relevant questions or of the disputed determinations the subject of a reference to it pursuant to sub-paragraph 16(2) or 16(3),

which relates to a reference by the Appointee under paragraph 14 or a determination pursuant to paragraph 15;

"making a Relevant Determination" means determining the Adjustment Factor initially or determining, in carrying out the most recent Periodic Review, or making any subsequent Interim Determination (or, where there has been no Periodic Review, in making any Interim Determination) whether the adjustment factor should be changed (and if so, what change should be made to the Adjustment Factor), and **"Relevant Determination"** shall be construed accordingly;

"Net Present Value" means the net present value calculated as at 30th September in the year in which the relevant Reference Notice is given or, where in any year no Reference Notice is given under paragraph 14 but the Water Services Regulation Authority gives a notice to the Appointee under paragraph 15, as at 30th 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 30th 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 Adjustment Factor should be changed (and if so what change should be made to the Adjustment Factor), 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) Not used.
- (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 or sewerage 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;
- (2) a Notified Item; and

and references to a Relevant Item are to a Relevant Change of Circumstance or a Notified Item as the context may require.

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

- (1) a "**legal requirement**" is any of the following:
 - (a) any enactment or subordinate legislation to the extent that it applies to the Appointee in its capacity as a 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 and any

authorisation granted, approval given, or prohibition imposed, by the Secretary of State under the Water Supply (Water Quality) Regulations 2016);

- (b) any regulation made by the Council or the Commission of the European Union to the extent that it applies to the Appointee in its capacity as a water undertaker or sewerage undertaker, or decision taken by the said Commission which is binding on the Appointee in its capacity as a water undertaker or sewerage undertaker and to the extent that it is so binding;
- (c) any licence, consent or authorisation given or to be given by the Secretary of State, the Environment Agency or other body of competent jurisdiction to the Appointee for the purpose of carrying on any of the functions of a water undertaker or sewerage undertaker;
- (d) any undertaking given by the Appointee to, and accepted by, the Secretary of State or, as the case may be, the Water Services Regulation Authority for the purposes of section 19(1)(b);
- (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 determining the Adjustment Factor; or, as the case may be,
 - (B) in determining whether the Adjustment Factor should be changed (and if so what change should be made to the Adjustment Factor)

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 99 of the 1991 Act or section 41 of the Environment Act 1995, or
- (ii) those sections

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

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

13.3 In paragraph 14 and in the definition of a "Relevant Change of Circumstance":

- (1) references to costs include references to expenditure and loss of revenue and references to costs being incurred include references to expenditure being made and loss of revenue being suffered;
- (2) references to receipts include references to receipts, cash or other assets of any sort, whether of a capital or revenue nature and including receipts of grants, contributions, gifts and loans; and
- (3) without prejudice to sub-paragraph (1) above, "Operating Expenditure" in sub-paragraph 14.2(6) includes those items currently so identified in Regulatory Accounting Guidelines 3 and 4 and in the July Return 1999 Reporting Requirement, line 22 in table 21 and line 23 in table 22. For the avoidance of doubt, depreciation, the write-down/off of assets, the profits/loss on disposal of assets and infrastructure renewals expenditure or charges are excluded.

13.4 (1) For the purposes of sub-paragraph 14.2(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 14.1, or the Water Services Regulation Authority gives notice under paragraph 15.

- (2) In sub-paragraphs 14.2(8) and 14.2(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 Retail Prices Index from that prevailing, or expected to prevail, on 30 September in the year in which the Appointee gives notice under sub-paragraph 14.1, or the Water Services Regulation Authority gives notice under sub-paragraph 15.1(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 14.2(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 Retail Prices 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.

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

- 14.1 The Appointee may from time to time refer to the Water Services Regulation Authority for determination by it (having considered the proposals of the Appointee) the questions set out in sub-paragraph 14.2 or, as the case may be, sub-paragraph 14.3. Such reference shall be made by notice given to the Water Services Regulation Authority, which, in the case of questions set out in sub-paragraph 14.2, shall be given in accordance with sub-paragraph 14.4. For the purposes of sub-paragraph 14.2 a single reference

may be made in respect of any number of Notified Items and Relevant Changes of Circumstance and sub-paragraph 14.2 shall be construed accordingly.

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

- (1) what are, or are likely to be, the costs, receipts and savings reasonably attributable to the Relevant Item,
- (2) to what extent:
 - (a) are the costs determined under (1) reasonably recoverable through charges for services provided, functions carried out by, and other activities of, the Appointee in its capacity as a water undertaker or sewerage undertaker which are not Standard Charges for Basket Items (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 Basket Items 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 effective 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 effective date over and above those which

would have been achieved by prudent management action (and for this purpose what constitutes "prudent management action" shall be assessed by reference to the circumstances at the relevant time); or

- D. any amounts attributable to matters allowed for in making a Relevant Determination, except to the extent that such amounts otherwise fall to be taken into account as amounts reasonably attributable to, or connected with, the Relevant Item under this sub-paragraph (3) and sub-paragraph (1) by virtue of the definition of a Notified Item and a Relevant Change of Circumstance; and
- (ii) in the case of a Relevant Change of Circumstance falling within sub-paragraph (1) of the definition, regard shall be had to whether either:
 - (a) the Secretary of State has notified the Water Services Regulation Authority of any change of policy, concerning any environmental or water-quality standard, which has been made since the Adjustment Factor was last determined; or
 - (b) the Appointee has itself given notice to the Water Services Regulation Authority of the application to it of, or any change to, any legal requirement, before referring that legal requirement to the Water Services Regulation Authority under sub-paragraph 14.1;
- (4) having determined under (3) the separate amounts of costs and of receipts and savings in respect of each Relevant Item, what are

the annual cash flows thereof (costs being netted off against the amount of receipts and savings for this purpose) over each Charging Year included in the timing determined under (3) (those annual cash flows being hereinafter referred to as "**the Base Cash Flows**");

- (5) what is the annual aggregate of all Relevant Changes of Circumstance and Notified Items the subject of the notice or notices under sub-paragraph 14.4 or sub-paragraph 15.1;
- (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) consists of revenue and/or Operating Expenditure, what is the Net Present Value of that part of the annual aggregate, calculated over 15 years; and
 - (c) what is the aggregate of the Net Present Values calculated under (a) and (b) ("**the Materiality Amount**");
- (7) is the Materiality Amount equal to or does it exceed ten per cent of the turnover attributable to the Appointed Business in the latest financial year for which accounting statements have been prepared and delivered to the Water Services Regulation Authority under Condition F, as shown by those accounting statements, and for this purpose where the Materiality Amount is a negative figure it shall be treated as though it were a positive figure;

- (8) if so, for each year ("**the relevant year**") until the first of the Charging Years for which the next Periodic Review falls to be carried out (having regard to any Review Notice or Reference Notice which has been given at the time when the reference is made),
- (a) what are the following amounts:
- (i) all Base Cash Flows at Outturn Prices attributable to the creation or acquisition of depreciable assets ("**Allowable Capital Expenditure**");
 - (ii) all the Base Cash Flows at Outturn Prices 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 Retail Prices Index, multiplied by the sum of:
 - A. the Allowable Net Asset Value for the relevant year; and
 - B. the Allowable Infrastructure Asset Value for the relevant year;(the "**Allowable Return**"); and
- (b) what is the sum of:
 - (i) Other Allowable Expenditure;
 - (ii) Allowable Depreciation; and
 - (iii) the Allowable Return;(the "**Annual Allowable Amount**");
- (9) what change to the Adjustment Factor over the period from the beginning of the first of the Charging Years referred to in sub-paragraph 14.4(1) (in any case where a Reference Notice has been given in respect of sub-paragraph 14.2) or sub-paragraph 15.1(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, 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.

14.3 All of the following:

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

(a) a substantial adverse effect on the Appointed Business or on its assets, liabilities, financial position, or profits or losses, not being one which would have been avoided by prudent management action taken since the effective 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 Adjustment Factor.

For this purpose:

- (i) what constitutes "prudent management action" shall be assessed by reference to the circumstances which were known or which ought reasonably to have been known to the Appointee at the relevant time;
- (ii) an effect shall not be regarded as a substantial adverse effect or a substantial favourable effect in any case unless, if the questions set out in sub-paragraph 14.2 were to be asked in relation to the circumstance giving rise to it, the answer to that in 14.2(7) (taking the reference in it to ten per cent as a reference to twenty per cent) would be in the affirmative.

14.4 A Reference Notice given to the Water Services Regulation Authority in respect of sub-paragraph 14.2 shall contain or be accompanied by reasonable details of the Relevant Item in respect of which the Reference Notice is given and, unless the Water Services Regulation Authority otherwise consents, shall be given not later than:

- (1) the fifteenth day of September immediately preceding the first of the Charging Years in respect of which the Appointee wishes the change to the Adjustment Factor to take effect; or
- (2) if later, where the Water Services Regulation Authority has given a notice to the Appointee under paragraph 15.1 in respect of the same Charging Year, within fourteen days from the receipt by the Appointee of that notice.

15 Changes to the Adjustment Factor initiated by the Water Services Regulation Authority relating to Notified Items and Relevant Changes of Circumstance

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

- (1) the fifteenth day of September immediately preceding the first of the Charging Years in respect of which it proposes the change to the Adjustment Factor 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 14.2 and falling within sub-paragraph 14.4(1) in respect of the same Charging Year, within fourteen days from the receipt by the Water Services Regulation Authority of that Reference Notice

determine the questions set out in sub-paragraph 14.2 in respect of that Notified Item or, as the case may be, that Relevant Change of Circumstance. A single notice may be given under this sub-paragraph 15.1 in respect of any number of Notified Items and Relevant Changes of Circumstance and sub-paragraph 14.2 shall be construed accordingly.

15.2 Where sub-paragraph 14.4(2) or 15.1(2) applies, the questions set out in (5) to (9) inclusive of sub-paragraph 14.2 shall be determined in respect of all Notified Items and Relevant Changes of Circumstance in respect of which the Appointee and the Water Services Regulation Authority have given notice, taken as a whole.

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

Part V: References to the Competition and Markets Authority and Modification of this Condition

16 References to the Competition and Markets Authority

Where:

- (A1) the Water Services Regulation Authority has given notice under sub-paragraph 1A.1 without having given notice to the Appointee of a determination under sub-paragraph 1A.2;
- (1) pursuant to paragraph 9 or following a reference under paragraph 11, the Water Services Regulation Authority has not given notice to the Appointee of its determination within one year from the Review Notice Date or, in the case of a reference under paragraph 11, within one year from the date of the relevant Reference Notice;
- (2) following a reference under paragraph 14, the Water Services Regulation Authority has not given notice to the Appointee of its determinations (including any determinations under paragraph 15 which fall to be taken into account in determining the questions the subject of the reference under paragraph 14) within 3 months from the date of the relevant Reference Notice; or
- (3) the Appointee disputes any determination made by the Water Services Regulation Authority under sub-paragraph 1A.2, Part III or Part IV of this Condition,

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

- (aza) 2 months from the date on which the Water Services Regulation Authority gives notice under sub-paragraph 1A.1 (in the case referred to in sub-paragraph (A1)),
- (a) 13 months from the Review Notice Date or, in the case of a reference under paragraph 11, from the date of the relevant Reference Notice (in the cases referred to in sub-paragraph (1));
- (b) 4 months from the date of the relevant Reference Notice (in the case referred to in sub-paragraph (2)); or
- (c) 2 months from the date on which the Water Services Regulation Authority gives notice of its determination 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 by it:

- (i) in any case referred to in sub-paragraph (A1), (1) or (2), the relevant question or questions (including, where relevant, the questions in respect of any Notified Item or Relevant Change of Circumstance the subject of a notice under paragraph 15); or
- (ii) in any case referred to in sub-paragraph (3), the disputed determination.

17 Modification of this Condition following Periodic Reviews and references to the Water Services Regulation Authority or the Competition and Markets Authority

17.1 Except in the case of a Periodic Review carried out under paragraph 11, this Condition shall be modified by the change (if any) to the Adjustment Factor (which may be a different number for any Charging Year and may be a positive or negative number, or zero) 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, sub-paragraph 1A.2, Part III, Part IV or Part V of this Condition.

- 17.2 Where the Appointee requires the Water Services Regulation Authority to make a reference to the Competition and Markets Authority under paragraph 16 in the case referred to in sub-paragraph (3) of that paragraph this Condition shall be modified by the change (if any) to the Adjustment Factor necessary to give effect to the Water Services Regulation Authority's determination but so that sub-paragraph 17.1 shall then apply to the determination made by the Competition and Markets Authority following such reference.

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

18 **[Not used]**

- 18.1 The Appointee shall furnish to the Water Services Regulation Authority:

- (1) Not used.
- (2) not later than 30th September immediately following the date of the Reference Notice (in the case of a reference under paragraph 11);
- (3) at the time when it gives the relevant Reference Notice to the Water Services Regulation Authority (in the case of a reference under paragraph 14 falling within sub-paragraph 14.4(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 15 (in the case of such a notice, including the case of a reference under paragraph 14 falling within sub-paragraph 14.4(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.

- 18.2 The Appointee shall also furnish to the Water Services Regulation Authority from time to time when so requested by the Water Services Regulation Authority such Information as the Water Services Regulation Authority may reasonably require to decide whether or not to make a determination under sub-paragraph 1A.2 or, as the case may, determinations under paragraph 15.
- 18.3 Any Information furnished to the Water Services Regulation Authority under this paragraph 18 or under paragraph 9 shall, if the Water Services Regulation Authority so requires to make its determination, be reported on by a person appointed by the Appointee and approved by the Water Services Regulation Authority (such approval not to be unreasonably withheld) ("**the Reporter**").
- 18.4 The Appointee shall enter into a written contract of engagement with the Reporter which shall:
- (1) where such a report is required by the Water Services Regulation Authority under sub-paragraph 18.3, require the Reporter to prepare and furnish to the Water Services Regulation Authority, and separately to the Appointee, a written report addressed jointly to the Water Services Regulation Authority and the Appointee in form and substance such as may be specified by, or consistent

with any guidelines specified by, the Water Services Regulation Authority at the time when it requires the report to be furnished, the matters so specified being reasonably appropriate to enable the Water Services Regulation Authority to make its determination (to the extent that the Information in respect of which that report is required to be prepared and furnished is relevant to that determination); and

- (2) include a term that the Reporter will provide such further explanation or clarification of his report as the Water Services Regulation Authority may reasonably require and such further Information in respect of, or verification of, the matters which are the subject of his report as the Water Services Regulation Authority may reasonably require.

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

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

- (1) subject to reasonable prior notice to the Appointee, giving to the Reporter access at reasonable hours to any Relevant Plant and to any premises occupied by the Appointee in relation to the Appointed Business; and
- (2) subject to reasonable prior notice to the Appointee, allowing the Reporter at reasonable hours:

- (a) to inspect and make photocopies of, and take extracts from, any books and records of the Appointee maintained in relation to the Appointed Business;
- (b) to carry out inspections, measurements and tests on or in relation to any such premises or Relevant Plant; and
- (c) to take on to such premises or on to or in to any Relevant Plant such other persons and such equipment as may be necessary for the purposes of preparing and completing his report.

18.6 Nothing in sub-paragraph 18.5 shall require the Appointee:

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

18.7 In sub-paragraphs 18.4 and 18.5:

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

Condition C: [not used]

Condition D: New connections

Introduction

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

Informing sewerage undertakers of connections

D1 Where the Appointee connects premises to a water main which is owned by the Appointee, and the drainage of those premises is into a public sewer owned by a sewerage undertaker which is not the Appointee, the Appointee must as soon as reasonably practicable inform that sewerage undertaker of:

D1.1 the address of the premises;

D1.2 the date of the connection; and

D1.3 to the extent known to the Appointee:

D1.3.1 the name and address of the person who is liable to pay charges for the supply of water to the premises; and

D1.3.2 the name and address of any other person who is liable to pay Infrastructure Charges in respect of the premises.

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 [not used];

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 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: Core Customer Information

Introduction

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

Core Customer Information

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

- G3.2 the role of the Consumer Council for Water and how those customers can contact it;
 - G3.3 the services provided to those customers by the Appointed Business;
 - G3.4 the terms on which those services are provided, including the charges levied for the services;
 - G3.5 the payment methods available to customers in respect of those charges, including payment by instalments and budget plans;
 - G3.6 the Complaints Handling Procedure which applies for those customers; and
 - G3.7 any independent dispute resolution scheme which is in place for resolving disputes between the Appointee and those customers and how customers can access the scheme.
- G4 The Core Customer Information must include guidance for customers whose premises are not Eligible Premises who are having difficulty paying their bills and a description of the procedures which the Appointee may apply to collect outstanding debt from those customers.
- G5 The Core Customer Information must include, in relation to Domestic Customers, the procedures which the Appointee applies in relation to leakage (in accordance with Condition H) and the charges which the Appointee may levy where there is an unidentified leak on the Supply Pipe at metered Domestic Premises.

Publication of the Core Customer Information

- G6 The Appointee must:
- G6.1 publish the Core Customer Information, presenting it in a manner which is effective, accessible and clear as a means of informing customers;

G6.2 publicise the Core Customer Information to its customers; and

G6.3 where any customer requests information which is part of the Core Customer Information, provide that information to the customer in writing.

Revising the Core Customer Information

G7 The Appointee must ensure that the Core Customer Information is accurate and up to date.

G8 The Appointee must review the Core Customer Information as a whole and, where necessary, revise it:

G8.1 at least once every three years; and

G8.2 whenever requested to do so by Ofwat, provided that such a request may not be made more than once in each year.

G9 In carrying out any review under paragraph G8, the Appointee must consider whether the content of the Core Customer Information remains appropriate and whether the manner in which the Core Customer Information is published is effective.

G10 Whenever it undertakes a review of the Core Customer Information under paragraph G8 or proposes to make any substantive revision to the Core Customer Information or the manner in which it is presented, the Appointee must consult the Consumer Council for Water and take its representations into account before (as the case may be) completing the review or making the revision.

G11 Where a revision is made to the Core Customer Information or the manner in which it is presented, the Appointee must inform the Consumer Council for Water of the revision which has been made and of how the revised Core Customer Information may be accessed.

G12 Where a revision is made to the Core Customer Information, the Appointee must

publicise the revised Core Customer information to its customers.

Inclusion of information with bills

G13 The Appointee must:

G13.1 with every bill for Metered Charges, inform the customer of how the Core Customer Information set out at paragraphs G2.3 to G2.5 may be accessed;

G13.2 with every bill for charges payable by a customer whose premises are not Eligible Premises, inform the customer of how the Core Customer Information set out at paragraph G4 may be accessed; and

G13.3 with every bill for Metered Charges payable by a Domestic Customer, inform the customer of how the Core Customer Information set out at paragraph G5 may be accessed.

Complaints Handling Procedure

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

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: [Not used]

Condition L: [Not used]

Condition M: Provision of Information to Ofwat

Introduction

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

Duty to provide Information

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

Limits on the duty to provide Information

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

Use of Information provided

M6 Ofwat may use or disclose any Information which it has received from the Appointee for the purpose of carrying out any of its functions under the provisions of any enactment, including its functions under sections 14 and 201 of the Water Industry Act 1991.

Relationship to other conditions

M7 Any duty on the Appointee to provide Information to Ofwat under any other Condition does not limit the duty of the Appointee to provide Information under paragraph M1.

M8 The requirement in paragraph M2, and the limits in paragraphs M4 and M5, also apply in any other Condition under which the Appointee has a duty to provide Information to Ofwat.

Standards of Performance

M9 Paragraph M10 applies in any case in which Ofwat notifies the Appointee that, for the purpose of deciding whether to make an application to the Secretary of State under either section 39 or 96 of the Water Industry Act 1991, it intends to investigate:

M9.1 any Information provided by the Appointee to Ofwat in relation to the Appointee's service levels in carrying out the Regulated Activities; or

M9.2 the means by which that Information was collated or recorded.

M10 Where this paragraph applies, the Appointee must co-operate fully with any investigation by Ofwat, including in particular by allowing Ofwat (at reasonable hours and on reasonable notice) to:

- M10.1 access any plant or premises used by the Appointee in carrying out the Regulated Activities;
- M10.2 while at the plant or premises, carry out inspections, measurements or tests, and take copies of any document or record held for the purpose of the Appointed Business; and
- M10.3 take with it any persons or equipment necessary for those purposes.

Condition N: Fees

Introduction

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

Fees

N1 The Appointee must pay the following **Fees** to the Secretary of State in accordance with this condition:

N1.1 the Annual General Fee (or such part of the Annual General Fee as is payable under paragraph N2);

N1.2 the Special Fee (if any);

N1.3 the Interim Determination Fee (if any);

N1.4 the Consumer Council for Water Fee; and

N1.5 the Competition and Markets Authority Fee (if any).

N2 Where Ofwat notifies the Appointee of an amount which is payable towards the Annual General Fee, the Appointee must pay that amount no later than 30 days following the notification, provided that:

N2.1 the total of such amounts in a Charging Year may not exceed the Annual General Fee; and

N2.2 Ofwat may not give such a notification more than twice for a Charging Year.

N3 Where Ofwat notifies the Appointee of the amount of any Fee other than the Annual General Fee, the Appointee must pay that amount no later than 30 days following the notification, provided that Ofwat may not give such a notification in respect of any one of these Fees more than once in a Charging Year.

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

Annual General Fee

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

Special Fee

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

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

N6.2 were not included in that estimate,

provided that any such determination is subject to paragraph N13.

Interim Determination Fee

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

Consumer Council for Water Fee

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

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

with paragraph N10; or

- N8.2 where a direction has been given to Ofwat by the Secretary of State under section 37(8) of the Water Act 2003, any greater amount which Ofwat determines is necessary to give effect to that direction.
- N9 Any estimates which are used in the determination of the Consumer Council for Water Fee will be arrived at following consultation with the Consumer Council for Water
- N10 A Consumer Council for Water Fee determined under paragraph N8.1 shall not exceed an amount calculated as $G \times A$ where:
- N10.1 G is the amount of £7.65 million, as increased from November 2015 to the November immediately before the Charging Year using the Retail Prices Index (for any period up to November 2019) and the Relevant Index (for any period thereafter); and
- N10.2 A is the Appointee's Turnover Share for the Charging Year.

Competition and Markets Authority Fee

- N11 The **Competition and Markets Authority Fee** is an amount determined by Ofwat (in accordance with paragraph N12) which is the sum of:
- N11.1 Ofwat's estimate of the costs incurred by the Competition and Markets Authority in the previous twelve months in relation to any reference under section 12 or section 14 of the Water Industry Act 1991, where the reference related solely to the Appointed Business; and
- N11.2 Ofwat's determination of a fair proportion of Ofwat's estimate of the costs incurred by the Competition and Markets Authority in the previous twelve months in relation to any reference under section 14 of the Water Industry Act 1991, where the reference related to the Appointed Business and the appointed businesses of other relevant undertakers.

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

Cap on Annual General Fee and Special Fee

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

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

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

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

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

N14.2 an amount equal to 0.1% of the average of the annual turnover of the Appointed Business, as shown in the accounting statements prepared by the Appointee under Condition F, over the Prior Five Year Period.

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

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

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

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

Condition 0: Termination and replacement appointments

Introduction

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

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

Circumstances when a replacement appointment may be made

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

Condition P: Regulatory ring-fence

Conduct of the Appointed Business

P1 The Appointee shall, at all times, conduct the Appointed Business as if it were substantially the Appointee's sole business and the Appointee were a separate public limited company. The Appointee should have particular regard to the following in the application of this Condition:

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

P1.2 the Appointee must ensure that each of its directors must disclose, to the Appointee and Ofwat, conflicts between duties of the directors as directors of the Appointee and other duties;

P1.3 where potential conflicts exist between the interests of the Appointee as a water and a sewerage undertaker and those of other Group Companies, the Appointee and its directors must ensure that, in acting as directors of the Appointee, they should have regard exclusively to the interests of the Appointee as a water and a sewerage undertaker;

P1.4 no director of the Appointee should vote on any contract or arrangement or any other proposal in which he has an interest by virtue of other directorships.

This arrangement should be reflected in the articles of association of the

Appointee;

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

P1.5.1 a new director is appointed;

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

P1.5.3 any important change in the functions or executive responsibilities of a director occurs.

The Appointee should notify Ofwat of the effective date of the change and, in the case of an appointment, whether the position is executive or non-executive and the nature of any specific function or responsibility;

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

P1.7 the Principles of Good Governance and Code of Best Practice (or any successor document having a similar purpose and content) as may from time to time be incorporated into or approved for the purposes of the Listing Rules of the Financial Conduct Authority.

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

_P2 The Appointee must ensure that, at all times:

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

P2.2 where the United Kingdom Holding Company of the Appointee is not the

Ultimate Controller of the Appointee, there is an undertaking in place which is given by the United Kingdom Holding Company of the Appointee in favour of the Appointee.

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

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

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

P3.3 ensure that at all times after Ofwat has given notice to the Appointee that it considers it appropriate the Board of the Appointee contains not less than two independent non-executive directors, who shall be persons of standing with relevant experience and who shall collectively have connections with and knowledge of the areas within which the Appointee holds the Appointments and an understanding of the interests of the customers of the Appointee and how these can be respected and protected; and

P3.4 at all times make available to the Appointee such money as Ofwat determines

in writing is necessary to enable the Appointee to comply with its obligations under the Act or the conditions of the Appointments.

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

P5 The circumstances referred to in P4 are:

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

P5.2 where there has been a breach of the terms of such an undertaking by the person that gave it and that breach has not been remedied.

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

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

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

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

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

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

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

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

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

Assets, rights and resources

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

P10.1 financial resources and facilities;

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

P10.3 systems of planning and internal control.

P11 The Appointee must ensure that, as far as reasonably practicable, it has available to

it sufficient rights and resources other than financial resources so that if, at any time, a special administration order were to be made in relation to it, the special administrator would be able to manage the affairs, business and property of the Appointee in accordance with the purposes of the special administration order.

P12 For the purposes of paragraph P11, the Appointee is not required to amend the terms of any legal obligation which has been transferred to it in accordance with a scheme made under Schedule 2 to the Water Industry Act 1991.

P13 Where rights and resources which are required to be made available pursuant to paragraph P11 are made available by a Group Company, the Appointee must ensure that if, at any time, a special administration order were to be made in relation to it, the rights and resources would be available to the special administrator for the purpose set out in paragraph P11.

Transfer pricing and Cross-Default Obligation

P14 In accordance with Regulatory Accounting Guideline 5 (Transfer Pricing in the

Water and Sewerage Industry) published by Ofwat and revised from time to time, the

Appointee must ensure that:

P14.1 every transaction between the Appointed Business and any Associated Company is at arm's length, so that neither the Appointed Business nor the Associated Company gives a cross-subsidy to the other; and

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

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

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

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

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

P16.3 enter into an agreement or other legal instrument incorporating a CrossDefault Obligation.

P17 The Appointee must not continue or permit to remain in effect an agreement or

other legal instrument incorporating a Cross-Default Obligation unless:

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

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

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

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

and

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

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

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

Dividend policy

P20 The Appointee shall declare or pay dividends only in accordance with a dividend policy which has been approved by the Board of the Appointee and which complies with the following principles:

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

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

Ring-fencing statement and certificate

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

P22 Where the Board of the Appointee becomes aware of any activity of the Appointee or any Group Company which does not form part of the Regulated Activities, and which may be material in relation to the Appointee's ability to finance the Regulated Activities, the Appointee must:

P22.1 inform Ofwat; and

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

P23 Where the Board of the Appointee becomes aware of any circumstances which would change its opinion such that it would not give the opinion contained in the Ringfencing Certificate, the Appointee must inform Ofwat of this in writing.

P24 Whenever the Appointee submits a Ring-fencing Certificate to Ofwat, the Appointee must submit a statement of the main factors which the Board of the

Appointee has taken into account in giving its opinion for the Ring-fencing Certificate.

P25 A Ring-fencing Certificate must be:

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

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

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

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

P26 Each Ring-fencing Certificate shall be accompanied by a report prepared by the Appointee's Auditors and addressed to Ofwat, stating whether they are aware of any inconsistencies between that Ring-fencing Certificate and either the statements referred to in condition F6.1 or any information which the Auditors obtained in the course of their work as the Appointee's Auditors and, if so, what they are.

Reporting of material issues

P27 Where the Board of the Appointee becomes aware of any circumstance that may materially affect the Appointee's ability to carry out the Regulated Activities the Appointee must inform Ofwat as soon as possible.

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 – 4 [Not used]

Anti-competitive behaviour

5. (1) If and for so long as the Appointee is related to any Licensee it shall ensure that every transaction between the Appointed Business and that Licensee is at arm's length.
 - (2) For the purpose of this paragraph the Appointee is related to a Licensee if their enterprises are under common ownership or common control (within the meaning those expressions have in section 26(1) of the Enterprise Act 2002).
 - (3) The Appointee shall by notice inform the Water Services Regulation Authority if at any time it becomes, or ceases to be, related to a Licensee.
 - (4) This paragraph is without prejudice to anything contained in paragraph 6 of Condition 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, or 117A to 117B; or

(b) discharging any of those duties,

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

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

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

(b) where required or permitted by law; or

(c) where otherwise agreed with the Licensee.

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

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

(b) Compliance Guidance means guidance -

(i) in relation to the matters specified in this paragraph; in relation to the Appointee's compliance with its obligations under this paragraph and under paragraph 5(1) above; and generally in relation to any obligation of confidentiality on the Appointee in

relation to information provided to or by it under or for the purposes of this Condition or Condition S, and its compliance with those obligations; and

- (ii) for the time being issued by the Water Services Regulation Authority where -
 - a. before issuing such guidance, the Water Services Regulation Authority has consulted such persons as it considers appropriate; and
 - b. the Water Services Regulation Authority has published such guidance in such a manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

- (c) Subject to sub-paragraph (d) below, the Appointee -
 - (i) shall review its Compliance Code annually not later than the anniversary of the date upon which Compliance Guidance is first issued by the Water Services Regulation Authority; and
 - (ii) may at any time revise it.

- (d) If the Water Services Regulation Authority revises its Compliance Guidance, the Appointee shall revise its Compliance Code to conform to such revised guidance, within the timescales set out by the Water Services Regulation Authority, provided that the Water Services Regulation Authority has -
 - (i) consulted such persons as it considers appropriate before revising that Compliance Guidance; and
 - (ii) published that Compliance Guidance in such a manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

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

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

- (7) Under sub-paragraph (6) -
 - (a) a determination shall not have effect unless, before making the determination, the Water Services Regulation Authority has consulted such persons as it considers appropriate; and
 - (b) a "relevant notice" is a notice published in such manner as the Water Services Regulation Authority considers appropriate and served on the Appointee.

- (8) (a) The Appointee shall immediately inform each Licensee which is supplying water to premises in its Water Supply Area of every actual or potential incident which affects adversely, or is likely to affect adversely -
 - (i) water quality;
 - (ii) water pressure;
 - (iii) continuity of supply; or
 - (i) any other matter related to the Appointee's supply system as defined in section 17B(5);

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

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

Application

- 10. (1) This Condition shall not apply to the Appointee in the circumstances and to the extent set out in this paragraph.

- (2) Paragraphs 1 to 9 of this Condition shall not apply if and for so long as the Appointee has no supply system, as defined in section 17B(5) or no sewerage system as defined in section 17BA(7).
- (3) Subject to sub-paragraph (4), the Appointee shall notify the Water Services Regulation Authority as soon as it has a supply system, as defined in section 17B(5) or a sewerage system as defined in section 17BA(7).
- (4) If the Appointee has a supply system, as defined in section 17B(5), or a sewerage system as defined in section 17BA(7) on the Effective Date, it shall be deemed to have notified the Water Services Regulation Authority that it has a supply system or sewerage system at that date.
- (5) If and for such time as the Appointee has a supply system, as defined in section 17B(5) or a sewerage system as defined in section 17BA(7) –
 - (a) the Appointee shall notify the Water Services Regulation Authority immediately of the fact and terms of each request the Appointee receives from a Licensee to provide a supply of water or to permit the introduction of water into the Appointee's supply system pursuant to section 66A, 66B or 66C; or pursuant to 117A to 117B to permit the use of the Appointee's sewerage system; and
 - (b) paragraphs 1 to 9 of this Condition shall apply only from and for such time and to such extent as may be specified by the Water Services Regulation Authority from time to time by relevant notice.
- (6) Under sub-paragraph (5)(a) –
 - (a) a relevant notice shall not have effect unless, before making the relevant notice, the Water Services Regulation Authority has consulted the Appointee and such persons as it considers appropriate; and
 - (b) a "relevant notice" is a notice published in such manner as the Water Services Regulation Authority considers appropriate and served on the Appointee.

Condition 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.

This Condition R4 of the Appointment shall cease to have effect on the Exit Date.

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

Condition R5 – Customer protection condition

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

This Condition R5 of the Appointment shall cease to have effect on the Exit Date.

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

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

Introduction

1. For the 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;
 - (d) **“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
 - (e) **“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 a 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); and

(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.

Application

12. (1) Paragraphs 1 to 11 of this Condition shall only apply from and for such time and to such extent as may be specified by the Authority from time to time by relevant notice.

(2) The Appointee shall notify the Authority immediately of the fact and terms of each request the Appointee receives from a water supply licensee to permit the introduction of water into the Appointee's supply system pursuant to section 66B or 66C.

(3) Under sub-paragraph (1) -

(a) a relevant notice shall not have effect unless, before making the relevant notice, the Authority has consulted the Appointee and such persons as it considers appropriate; and

(b) a "relevant notice" is a notice published in such manner as the Authority considers appropriate and served on the Appointee.