

August 2022

**Consultation under sections 8
and 12A of the Water Industry
Act 1991 on proposed variation
to South West Water's area,
modifications to its licence and
termination of Bristol Water's
licence**

About this document

This document invites comments on our proposal to vary the area served by South West Water Limited (South West Water) for water services so that it covers the area currently served by Bristol Water plc (Bristol Water). We are also consulting on some associated changes to South West Water's instrument of appointment (licence).

Under section 7 of the Water Industry Act 1991 (WIA91) we can vary the area served by existing appointees (companies) and terminate their licences where the companies involved consent to the change and subject to the giving of notice as set out in section 8 WIA91. This document is a notice under section 8 WIA91.

Under section 12A WIA91, we are able to modify the conditions of South West Water's licence subject to the procedural requirements set out in sections 12A-12I WIA91. Before making modifications under section 12A, Ofwat must give notice. This document constitutes a statutory notice under section 12A WIA91, in particular section 3 and the appendix. Proposed modification drafting is shown in the appendix.

Executive summary

Pennon Group plc (Pennon), the owner of South West Water, acquired Bristol Water Holdings UK Limited, the owner of Bristol Water in June 2021. Pursuant to the special merger control regime under WIA91, the Competition and Markets Authority (CMA) launched a merger inquiry in October 2021. Following the acceptance of [undertakings](#) provided by Pennon, the CMA cleared the acquisition in March 2022.

In July 2022, South West Water [applied](#) to us to provide water services to the area currently served by Bristol Water. We are therefore consulting on the proposal that the area currently served by South West Water for water services is varied under s7(4)(a) WIA91 and, as a result of this, that the licence of Bristol Water is terminated.

We are proposing to make some changes to South West Water's licence as a consequence of the proposed area variation and the undertakings which Pennon gave to the CMA. These changes are intended to, amongst other things:

- allow the price controls currently in place for South West Water's and Bristol Water's customers to continue to apply to those customers;
- allow us to set separate price controls for wholesale water activities for the Bristol area and the South West area¹ at the next periodic review and beyond; and
- reflect some conditions from the existing Bristol Water licence in South West Water's licence.

We are also taking the opportunity to propose some further changes to South West Water's licence, including to:

- bring the requirement for South West Water to hold an investment grade credit rating in line with other companies; and
- implement a previously consulted on change to South West Water's licence in relation to business customers in the Isles of Scilly.

¹ References in this document to the 'Bristol area' are to the area currently served by Bristol Water and references to the 'South West area' are to the area currently served by South West Water.

Responding to this consultation

We would welcome any comments on this document. Please email them to governance@ofwat.gov.uk or post them to:

Christopher Pepper
Ofwat
Centre City Tower
7 Hill Street
Birmingham
B5 4UA

The closing date for this consultation is 6 October 2022.

We will publish responses to this document on our website at www.ofwat.gov.uk. Subject to the following, by providing a response to this consultation paper you are deemed to consent to its publication.

Information provided in response to this document, including personal information, may be published or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000 (FoIA), the General Data Protection Regulation 2016, the Data Protection Act 2018, and the Environmental Information Regulations 2004. For further information on how we process personal data please see our [Privacy Policy](#).

If you would like the information that you provide to be treated as confidential, please be aware that under the FoIA there is a statutory [Code of practice](#) which deals, among other things, with obligations of confidence.

If you think that any of the information in your response should not be disclosed (for example, because you consider it to be commercially sensitive), an automatic or generalised confidentiality disclaimer will not, of itself, be regarded as sufficient. You should identify specific information and explain in each case why it should not be disclosed and provide a redacted version of your response, which we will consider when deciding what information to publish. At a minimum, we would expect to publish the name of all organisations that provide a written response, even where there are legitimate reasons why the contents of those written responses remain confidential.

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1. Background

On 3 June 2021, Pennon announced that it had acquired the entire issued share capital of Bristol Water Holdings UK Limited.

The CMA [announced the launch of a merger inquiry](#) into the acquisition under WIA91 in October 2021. In March 2022 the CMA [announced its decision](#) that it would not carry out a further ('Phase 2') investigation but that it had instead accepted [undertakings](#) from Pennon which it considered addressed the prejudicial effect of the merger on our ability, in carrying out our functions, to make comparisons between different water companies.

Following this decision by the CMA, South West Water applied to us, on 27 July 2022, to vary the area for which it provides water services so that it can also provide those services to the area currently served by Bristol Water. This is usual when two large water companies come under common ownership. Sewerage services in Bristol Water's area are supplied by Wessex Water Services and this will not change as a result of this application.

If, following this consultation, we decide to make the changes requested by South West Water, some accompanying modifications to its licence will also be needed. This is primarily because the price controls, and associated mechanisms, currently in place for South West Water will need to be updated to be take account of the fact that it will also be serving the current Bristol Water area and to reflect the undertakings given to the CMA, where appropriate.

2. Proposed variation to the area served by South West Water for water services

2.1 Proposal

Section 7 WIA91 allows us to vary the area served by existing companies in certain circumstances, one of which is where the companies involved consent to that variation. South West Water has applied to us to make the variation and in doing so has provided us with a letter in which the directors of Bristol Water have confirmed that they support the variation of the area served by South West Water to cover the area currently served by Bristol Water.

We are also able to terminate a company's licence under section 7 WIA91 where another company or companies has been appointed to provide services for that company's area. In this case South West Water would be appointed to serve the entire area currently served by Bristol Water with respect to water services.

We are therefore proposing to vary the area served by South West Water for water services so that it includes the area currently served by Bristol Water for those services. We are also proposing to terminate Bristol Water's licence because it will no longer provide water services to any area.

2.2 Reason for making this proposal

The approach, of varying the area served by one company and terminating the licence of the other company, is the one we have usually taken in previous situations where two large water companies have come under common ownership². This helps reduce the regulatory burden of holding two separate licences where it may not be necessary.

As set out in the undertakings given to the CMA by Pennon, the price controls which were set at the 2019 periodic review for both companies, as amended by our in-period outcome delivery incentive determinations³, will remain in place for the remainder of the current price control period, until 31 March 2025. This means that customers of both South West Water and Bristol Water will be subject to the same controls (except as set out in the paragraph below) that they would be if the area variation was not made. In addition, the performance

² For example, South West Water and Bournemouth Water in 2016, South Staffordshire Water and Cambridge Water in 2013 and South East Water and Mid Kent Water in 2007.

³ And for Bristol Water, as also amended by the CMA's determination of March 2021, following its request for a redetermination of our 2019 final determination.

commitments which apply to Bristol Water currently will also continue to apply to customers in the Bristol area at their current level.

The undertakings to the CMA also record Pennon's agreement to sharing half of the merger specific savings generated with customers of the existing South West Water and Bristol Water businesses in the current price control period. It also agreed to the removal of the company-specific uplift to the cost of capital provided to Bristol Water as part of its final determination at the 2019 periodic review⁴. This will mean that the cost of this uplift will not be passed on to customers as it otherwise would have been for the remainder of the current price control period.

Pennon also agreed in the undertakings to provide separate cost and cost driver information in relation to the wholesale water activities in the South West area and the Bristol area. This will allow us to maintain separate comparative information despite the areas being served by the same company if the area variation is made. This is important for our ability to make comparisons between different water companies and to support the maintenance of the separate price controls.

South West Water has also told us that it will keep the Bristol Water brand to serve customers in the existing Bristol Water area and maintain a local presence in the Bristol area. It has also told us that, if the variation is made, there will be continuity of contact channels, the Bristol Water website and staff, meaning that there should be no obvious change for customers.

Pennon has stated that it will extend WaterShare+, which currently applies to South West Water customers to customers of Bristol Water. This is a mechanism to share gains from company performance with customers in a transparent way. It has also told us that its plans are to combine the best of both companies and implement changes to improve customer services.

⁴ And subsequently confirmed by the CMA in its determination of March 2021, following Bristol Water's request for a redetermination of our 2019 final determination.

3. Proposed changes to South West Water's licence

3.1 Background

As a consequence of the area variation proposed above we intend to make some changes to South West Water's licence. The reason for most of the changes is because we need to ensure that price controls which previously applied to Bristol Water now also apply to South West Water, in addition to the price controls which currently apply to South West Water. These changes relate to condition B.

We are using this opportunity to implement a previously consulted on change to condition G, which was the result of South West Water becoming the water and sewerage services supplier to the Isles of Scilly in April 2020.

We are proposing changes to condition P, including to the requirements in South West Water's licence to hold an investment grade credit rating, to bring this in line with other companies, including Bristol Water. We are also making some additional changes in relation to conditions A, E and N.

The reasons and intended effects of these proposed changes are explained further in section 3.2 below, and the proposed drafting changes to South West Water's licence are set out in detail in the appendix.

3.2 Summary of licence changes proposed

3.2.1 Condition A

We are proposing to add a definition of the 'Bristol Area' which will be necessary as it is used in some of the proposed changes to other conditions (see below). For the same reason, we are also proposing to amend the definition of the 'South West Area' so that it refers to the area currently served by South West Water up to the date the proposed area variation takes effect.

We are proposing to remove the definition of the 'Bournemouth Area' because it is no longer necessary as it was only used in paragraph 5 of condition E which applied until 31 March 2020 and is therefore now redundant.

We are also proposing a minor change to correct the numbering used in the definition of 'Relevant Index' which was incorrect and out of line with other companies' licences. This is

not necessary as a result of the area variation but we intend to take this opportunity to make this correction.

3.2.2 Condition B

We are proposing changes to this condition which would ensure that the relevant price controls⁵ which currently apply for South West Water and Bristol Water will continue to apply to customers in the areas currently served by those two companies. If we did not make this change, only South West Water's existing price controls would continue to apply and this would not take account of the proposed enlarged area to be served by the company.

Under the current price controls of both companies, we can make adjustments to the level of those controls within the current price control period in relation to certain performance commitments each company has made. We are therefore also proposing licence changes which will ensure that we can still make adjustments for the Bristol area for the relevant performance commitments which previously applied to Bristol Water. We also need to be able to take into account the performance of Bristol Water when considering what, if any, adjustments to make in relation to these performance commitments.

As explained above, to reflect the undertakings given to the CMA, we are proposing that the relevant price controls for the 2020-25 period for South West Water and Bristol Water will continue to apply to the respective areas. This means that the revenue forecasting incentive formula which was notified to the two companies at the 2019 periodic review will need to continue to apply to the separate price controls for the South West and Bristol areas. We have proposed some changes to the licence to allow this to happen.

Similarly, changes are also needed to allow us to set separate price controls for Network Plus Water Activities and Water Resources Activities (wholesale price controls) for the South West and Bristol areas going forward, starting with the next periodic review which will set price controls applying from 1 April 2025.

The definition of Standard and Excluded Charges is slightly different in the licences of Bristol Water and South West Water. In order to avoid any unintended consequences, we are proposing to amend the definition of both Standard and Excluded Charges in the South West Water licence so that the existing definition included in the Bristol Water licence will continue to apply in relation to the Bristol area.

We have also proposed some other minor changes which are necessary as a result of the changes relating to price controls set out above. In particular, we need to ensure that if we

⁵ These are price controls for Network Plus Water Activities, Water Resources Activities and Residential Retail Activities as defined in Condition B of company licences.

do not conclude our next periodic review, which should be by 31 December 2024, South West Water will still have price controls in place. Given that price controls which previously applied to Bristol Water will now apply to South West Water, we need to make particular allowance for such circumstances in the revised licence. This is only an issue for the next periodic review. Beyond the next periodic review, the approach which applies to all other companies can also apply to South West Water, in the event that we do not conclude future price controls by the time we should. The proposed changes also allow for this.

3.2.3 Condition E

The change we are proposing to this condition is to ensure that the company will not breach the condition as a result of us continuing to set separate wholesale price controls for the South West and Bristol areas. We are also removing a paragraph which became redundant in March 2020.

3.2.4 Condition G

We [consulted](#) on a change to this condition of South West Water's licence in December 2020. This change was proposed to ensure that business customers on the Isles of Scilly receive the same customer protection as household customers following the variation of the area served by South West Water to include the Isles of Scilly in March 2020. The reasons for the change are set out in our [consultation document](#) issued at the time. In summary, this change will protect business customers in the Isles of Scilly for a transitional period (until 31 March 2025) during which time they will be served by South West Water, rather than a retailer, as would be the case in the rest of England.

This change was consulted on under section 13 WIA91 which no longer applies to companies which serve areas that are wholly or mainly in England, following an amendment to WIA91 that came into force in January 2022. We are therefore no longer able to proceed with this change under section 13, so are re-consulting under section 12A.

The implementation of this change is not necessary as a result of the variation of South West Water's area being proposed here. However, we are taking this opportunity to propose to implement this change at the same time.

3.2.5 Condition N

The change we are proposing to this condition will ensure that South West Water pays the correct licence fee to us. Licence fees are apportioned across companies, and in part capped,

based on company turnover, and we need make sure that Bristol Water's turnover is also taken into account when making the calculation for South West Water.

3.2.6 Condition P

Each company is required to ensure that it (or any associated company that issues corporate debt on its behalf) holds an issuer credit rating that is an investment grade rating (as defined in the licence)⁶. However, paragraphs 24, 26 and 29 of condition P of South West Water's licence currently provide an alternative arrangement under which Ofwat is able to agree that the company's board can annually certify that the company would be able to maintain an investment grade credit rating. The option for this alternative arrangement appears in only one other company's licence⁷ and is therefore out of step with the ring-fencing protections that otherwise apply across companies' licences. In order for Bristol Water's customers to continue to enjoy the same level of protection as they do now, and to bring South West Water's licence into line with that of other companies, we are proposing to remove the wording enabling us to agree to this alternative to the requirement to hold an issuer credit rating in paragraphs 24, 26 and 29 of condition P.

In order to give South West Water reasonable time to obtain an issuer credit rating we are proposing to introduce a transitional arrangement within the licence whereby paragraphs 24, 26 and 29 currently in condition P will remain effective until 31 March 2025. However, if South West Water complies with the requirement to obtain an issuer credit rating prior to 31 March 2025, paragraphs 24, 26 and 29 which cease to effective at that earlier date. This will mean that the option for us to agree to the alternative arrangement described above will no longer be effective in South West Water's licence after either it (or an associated company which issues corporate debt on its behalf) obtains an issuer credit rating which is an investment grade rating, or the 31 March 2025, whichever is earlier.

We are also proposing a minor change to the paragraph which sets out the information that the company must provide to us in relation to the costs of an associated company which provides services to it. We are adding a clarification to the definition of costs to reflect the definition which is currently in Bristol Water's licence. The proposed change ensures that this additional level of clarification will not be lost if the area variation is made and brings South West Water's licence in line with the majority of other companies' licences.

⁶ Ofwat is currently consulting on proposed modifications to strengthen the ring-fencing licence conditions of the largest companies, including a proposal to require companies to maintain two investment grade Issuer Credit Ratings. See in particular page 30 of [Consultation under sections 13 and 12 A of the Water Industry Act 1991 on proposed modifications to strengthen the ring-fencing licence conditions of the largest undertakers](#) (July 2022).

⁷ Although the option for the alternative arrangement appears in Hafren Dyfrdwy's licence, it is not currently used and the company holds an issuer credit rating which is an investment grade rating.

4. Next steps

We will consider any responses we receive on both the proposed area variation and associated licence modifications. If we decide, subject to those responses, to make the area variation we will aim to give effect to that variation as soon as practicably possible given the benefit associated with that variation as set out in section 2. Depending on the responses we receive to the consultation, we therefore propose that the area variation, if made, will have effect from 1 November 2022.

If we decide to proceed with the area variation and the licence modifications, we intend to make the consequential changes to South West Water's licence at the same time as the area variation takes effect. Under section 12A(11) WIA91, modifications may not have effect less than 56 days after we publish our decision to make them. However, section 12B WIA91, provides us with the power to reduce the period between our decision to make modifications and the date the modifications take effect where we consider it necessary or expedient to do so. If we decide to apply section 12B WIA91, we are then required to have stated in our consultation the date from which the proposed modification should have effect, set out our reasons for proposing the earlier effective date and explained why we consider this earlier effective date would not have a material adverse effect on any water companies.

In this case, given our aim to give effect to the area variation, if made, as soon as practically possible, and the necessity to make the licence modifications at the same time, it will be necessary for the licence modifications, if made, to have effect less than 56 days from when we make our decision on them. Therefore, according to section 12B WIA91 and assuming we decide to make the modifications explained above, we propose to reduce the 56-day period between our decision to make modifications and the date on which these modifications will take effect. We do not consider that this will have a material adverse effect on any water companies because South West Water has indicated its agreement to the changes we are proposing, and we do not consider that these changes should have an impact on any other water companies⁸.

We therefore propose that if we decide to proceed with the licence modifications these should have effect from the 1 November 2022, the same time as the area variation.

⁸ Companies were also given the opportunity to provide views on the undertakings given to the CMA by Pennon prior to their final acceptance by the CMA. This is relevant because, as noted above, some of the proposed licence modifications are a consequence of the undertakings.

Appendix: Proposed licence modifications

This appendix forms part of the statutory notice under section 12A WIA91.

We set out below proposed changes to conditions A, B, E, G, N and P of South West Water's licence. Our reasoning and intended effects are set out in section 3.2 of this consultation. Text proposed to be added is marked in blue bold, and text proposed to be deleted is marked in blue strikethrough. Our proposals do not include any modifications to the provisions of the conditions set out above that are not listed in this appendix.

Condition A: Interpretation and Construction

...

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

...

~~“**Bournemouth Area**” means the area for which Bournemouth Water Limited was the water undertaker immediately prior to 1 April 2016;~~

“Bristol Area” means the area for which Bristol Water Plc was the water undertaker immediately prior to [1 November 2022];

...

“the Relevant Index” means –

- ~~(1)~~**(a)** for any period before 1 April 2020, the Retail Prices Index,
- ~~(2)~~**(b)** for any period including, or after, 1 April 2020, the Consumer Prices Index (H),
- ~~(a)~~**(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;

...

“South West Area” means the area for which South West Water Limited was the water undertaker immediately prior to ~~1 April 2016~~**[1 November 2022]**;

...

Condition B: Charges

Part I. Explanatory Provisions

1 Introduction

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

- 1.1 To empower the Water Services Regulation Authority to make determinations setting controls in respect of the charges to be levied by and/or revenue allowed to the Appointee or to any part of the Appointee's business (having regard to its costs) for the supply of water and sewerage services.
- 1.2 To provide for reviews of the Appointed Business to be carried out by the Water Services Regulation Authority, so that the Water Services Regulation Authority can determine whether one or more Price Controls should be changed. This is dealt with in Part III under the heading "Periodic Reviews".
- 1.3 To enable the Appointee:
 - (1) ...
 - (2) to refer to the Water Services Regulation Authority for determination from time to time the question of changing the Price Control or Price Controls to allow for Notified Items and Relevant Changes of Circumstance;
 - (3) to refer to the Water Services Regulation Authority for determination at any time the question of changing the Price Control or Price Controls where circumstances have a substantial adverse effect on the Appointed Business; and
 - (4) where notice to terminate either or both of the Appointments has been given, to refer to the Water Services Regulation Authority for determination the question what the Price Control or Price Controls should be in the future, on the assumption that the relevant Appointment or, as the case may be, the Appointments were to continue in force, for the purpose of facilitating consideration of the terms on which a new appointee could accept transfers of property, rights and liabilities from the Appointee, as provided in section 9(4) of the Water Industry Act 1991.

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

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

In this Condition:

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

"**Bioresources Activities**" means -

- (a) such activities carried out by the Appointee in performance of its functions as a sewerage undertaker in connection with sludge transport, sludge treatment, sludge disposal and Network+ – Sludge liquor treatment, and such ancillary activities, as may be so designated from time to time (which designation, for the avoidance of doubt, shall be reversible) by the Water Services Regulation Authority;

EXCEPT THAT:

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

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

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

- (1) amounts payable in respect of an unmeasured supply of water by means of stand-pipes or water tanks and in respect of the erection or maintenance of stand-pipes or water tanks;
- (2) charges for a supply of water provided by the Appointee under section 59 of the Water Industry Act 1991;
- (2A) in relation to the period from 1 April 2020 to 31 March 2025, amounts payable in relation to the alteration or removal of any relevant pipe (as defined in section 158 of the Water Industry Act 1991) or other apparatus that the Appointee is required to carry out under the New Roads and Streets Works Act 1991 or any other statutory provision except a provision of the Water Industry Act 1991;
- (3) charges for the reception and disposal by the Appointee, or other person specified by the Appointee or, as the case may be, the Water Authority, of matter delivered to the Appointee or such other person by a collection authority in pursuance of section 14(9) of the Control of Pollution Act 1974;
- (4) charges for unmeasured supplies of water to cattle troughs;
- (5) charges for unmeasured building water supplies;
- (6) amounts payable in respect of an unmeasured supply of water by means of bowsers or water tankers;
- (7) charges for unmeasured supplies of water to farm taps and other agricultural water points; and
- (7A) at any time before (but not including) 1 April 2015, charges in any Charging Year for supplies of water (or for the provision of sewerage services or for the reception, treatment and disposal of trade effluent) to premises where the premises were supplied in the relevant Prior Year with not less than such quantity of water as is specified from time to time under section 7(5)(a) of the Water Industry Act 1991

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

- (8) at any time before (but not including) 1 April 2015, charges payable for any such connection as is described in section 146(2) of the Water Industry Act 1991;
- (9) charges for a supply of water in bulk to another water undertaker;
- (10) amounts payable under any such agreement as is described in section 20(1)(b) of the Water Resources Act 1991 (including any such agreement entered into by the Water Authority under section 81 of the Water Resources Act 1963 with respect to any of the matters referred to in sections 81(1)(b) and 81(1)(d) of that Act as, by virtue of paragraph 29(1) of Schedule 26, has effect on and after the transfer date as a thing done by the Appointee); and
- (11) charges payable under any agreement for any unmeasured supply of water or unmeasured sewerage services which are calculated by reference to the rateable value of hereditaments, occupied by the person to whom the supply or services are provided, fixed in accordance with section 32, 33 or, as the case may be, 34 of the General Rate Act 1967 or, as the case may be, fixed in accordance with section 54 of the Local Government Finance Act 1988;

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

- (a) there were added to sub-paragraph (2) of this definition the words "and charges for a supply of water provided by the Appointee under section 37 of Schedule 3 to the 1945 Act", in respect of the Bristol Area; and**
- (b) there were added to sub-paragraph (9) of this definition the words "and any agreement entered into by the Appointee under section 81 of the Water Resources Act 1963 with respect to any of the matters referred to in sections 81(1)(b) and 81(1)(d) of that Act", in respect of the Bristol Area;**

"Interim Determination" means a determination by the Water Services Regulation Authority of the relevant questions pursuant to a reference by the Appointee under paragraph 14 or pursuant to paragraph 15 or, as the case may be, a determination by the Competition and Markets Authority of the relevant questions or of a disputed determination subject to a reference to it pursuant to paragraph 16 that relates to a reference by the Appointee under paragraph 14 or a determination pursuant to paragraph 15;

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

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

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

"Price Control" means a control set by the Water Services Regulation Authority, pursuant to a Periodic Review or Interim Determination, or deemed to be so set by virtue of sub-paragraph 16.2, in respect of the charges to be levied by and/or revenue allowed to an Appointed Business or any part thereof (having regard to its costs) and such matters ancillary to the said control, by way of a determination pursuant to this Condition. The appropriate nature and form of each control for Water Resources Activities, Bioresources Activities and Retail Activities will depend on the circumstances of each case;

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

- (a) water resources, raw water distribution, water treatment, treated water distribution, sewage collection, sewage treatment, sludge treatment or sludge disposal (as each of those is defined in the Water Services Regulation Authority's Regulatory Accounting Guideline (RAG) 4.06); or
- (b) in so far as the ownership of meters is so designated, the ownership of meters that were installed at, or in order to measure supplies to, End-Users' premises on or before the date of such designation;

"Standard Charges" means

- (1) charges fixed under any such charges scheme as is referred to in section 143 of the Water Industry Act 1991;
- (2) charges fixed by the Appointee in respect of its Water Resources Activities, Bioresources Activities and Network Plus Activities;

- (3) charges payable under any such agreement as is referred to in section 142 of the Water Industry Act 1991 (including any such agreement made or entered into by the Water Authority under section 30 of the Water Act 1973 as, in accordance with a scheme under Schedule 2, is transferred to the Appointee) under or for which all the charges payable are in accordance with standard charges published or fixed by the Appointee or, as the case may be, the Water Authority;
- (4) charges payable where a discharge is made in pursuance of a consent given by the Appointee for the purposes of Chapter III of Part IV of the Water Industry Act 1991 under or for which all the charges payable are in accordance with standard charges published or fixed by the Appointee;
- (5) charges determined by agreement in respect of a supply of water provided by the Appointee for non-domestic purposes where all the charges so determined in respect of that supply are in accordance with standard charges published or fixed by the Appointee;
- (6) charges fixed under any such charges scheme made by the Water Authority under section 31 of the Water Act 1973 as, by virtue of paragraph 16(1) of Schedule 26 of the Water Act 1989, had effect on and after the transfer date as if it were a charges scheme made under section 76 of the Water Act 1989 by the Appointee;
- (7) charges payable under any such consent or agreement under the Public Health (Drainage of Trade Premises) Act 1937 as, by virtue of paragraph 13 of Schedule 26 of the Water Act 1989, has effect on and after the transfer date as if it were given or entered into by the Appointee under which all the charges payable are in accordance with standard charges published or fixed by the Water Authority or, as the case may be, the Appointee;
- (8) charges in respect of any such supply which the Water Authority was under a duty to make under section 27 of the Water Act 1945 as, by virtue of paragraph 8 of Schedule 26 of the Water Act 1989, is a supply which the Appointee is under a duty to make on and after the transfer date where all charges in respect of such supply are in accordance with standard charges published or fixed by the Water Authority or, as the case may be, the Appointee;~~and~~
- (9) **charges payable under any agreement made or entered into by the predecessor to the Appointee in relation to the Bristol Area under any local statutory provision or under any other power conferred on the Appointee, or predecessors if applicable, otherwise than by virtue of the Water Industry Act 1991, under which all the charges payable are in accordance with standard**

**charges published or fixed by the Appointee or its predecessors if applicable;
and**

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

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

- (a) there were added to sub-paragraph (5) of this definition the words "and any charges scheme made by the Appointee under section 31 of the 1973 Act" in respect of the Bristol Area; and**
- (b) there were added to sub-paragraph (6) of this definition the words "and any such supply which the Appointee was under a duty to make under section 27 of the 1945 Act, where all the charges in respect of such supply were in accordance with standard charges published or fixed by the Appointee" in respect of the Bristol Area.**

In this definition references to standard charges published or fixed by the Appointee or the Water Authority 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;

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

"Water Resources Activities" means –

- (a) such activities carried out by the Appointee in performance of its functions as a water undertaker in connection with abstraction licences, raw water abstraction, raw water transport and raw water storage, and such ancillary activities, as may be so designated from time to time (which designation, for the avoidance of doubt, shall be reversible) by the Water Services Regulation Authority;

EXCEPT THAT:

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

3 Interpretation

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

4 [Not used]

5 [Not used]

6 [Not used]

7 [Not used]

Part III. Periodic Reviews

8 [Not used]

9 Periodic Reviews of the Appointed Business

9.1 The Appointee shall levy charges in a way best calculated to comply with the Price Control or Price Controls determined by the Water Services Regulation Authority pursuant to sub-paragraph 9.3 or sub-paragraph 9.4.

9.1A Sub-paragraph 9.1 does not prevent the Appointee from levying charges to recover a Relevant Shortfall in a Relevant Charging Year, regardless of the controls set in the Price Controls determined under sub-paragraph 9.4. For the purposes of this sub-paragraph:

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

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

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

9.1B Where a notification of a formula is made for the purposes of sub-paragraph 9.1A, that notification shall be treated for the purposes of sub-paragraph 16.1 (regarding

references to the Competition and Markets Authority) as part of the relevant determination made under sub-paragraph 9.4.

- 9.2 The Appointee shall furnish to the Water Services Regulation Authority such Information as the Water Services Regulation Authority may reasonably require to enable it to carry out a Periodic Review pursuant to sub-paragraph 9.3 or sub-paragraph 9.4.
- 9.3 In respect of the Appointed Business's Retail Activities, the Water Services Regulation Authority shall determine (having regard to all the circumstances which are relevant in the light of the principles which apply by virtue of Part I of the Water Industry Act 1991 in relation to the Water Services Regulation Authority's determinations, including, without limitation, any change in circumstance which has occurred since the last Periodic Review or which is to occur):
- (1) what is the appropriate nature, form and level of one or more Price Controls in respect of the relevant part or parts of the Appointed Business;
 - (2) how the Appointee shall, in respect of each such Price Control applicable to it, demonstrate the compliance referred to in sub-paragraph 9.1; and
 - (3) for how long each such Price Control in respect of the Appointee shall last (being a period of consecutive Charging Years).
- 9.4 (1) In respect of the Appointed Business's Water Resources Activities, Bioresources Activities, Network Plus Water Activities and Network Plus Wastewater Activities except for those activities for which there are Excluded Charges, the Water Services Regulation Authority shall determine separate Price Controls in accordance with this sub-paragraph (having regard to all the circumstances which are relevant in the light of the principles which apply by virtue of Part I of the Water Industry Act 1991 in relation to the Water Services Regulation Authority's determinations including, without limitation, any change in circumstance which has occurred since the last Periodic Review or which is to occur).
- (2) In relation to Network Plus Activities, the Water Services Regulation Authority shall determine:
- (a) one single Price Control **for the South West Area** in respect of the Appointed Business's Network Plus Water Activities, **one single Price Control for the Bristol Area in respect of the Appointed Business' Network Plus Water Activities** and one single Price Control in respect of the Appointed Business's Network Plus Wastewater Activities, each such Price Control consisting of, in each Charging Year:

- (i) the percentage change (expressed, in the case of an increase, as a positive number, in the case of a decrease, as a negative number, and in the case of no change, as zero) in the Relevant Index between that published for the month of November in the Prior Year and that published for the immediately preceding November; and
- (ii) a number, "**K**" which may be a positive number or a negative number or zero

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

- (b) how the Appointee shall, in respect of each Network Plus Activities Price Control applicable to it, demonstrate the compliance referred to in subparagraph 9.1).
- (3) In relation to Water Resources Activities, the Water Services Regulation Authority shall determine:
- (a) what is the appropriate nature, form and level of the Price Control **for the South West Area** in respect of Water Resources Activities;
 - (aa) what is the appropriate nature, form and level of the Price Control for the Bristol Area in respect of Water Resources Activities;** and
 - (b) how the Appointee shall demonstrate the compliance referred to in subparagraph 9.1 in respect of Water Resources Activities,

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

- (4) In relation to Bioresources Activities, the Water Services Regulation Authority shall determine:
- (a) what is the appropriate nature, form and level of the Price Control in respect of Bioresources Activities; and

- (b) how the Appointee shall demonstrate the compliance referred to in sub-paragraph 9.1 in respect of Bioresources Activities,

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

- 9.5 Each Price Control determined under sub-paragraph 9.3 pursuant to a Periodic Review shall be set for a period which shall be a number of Charging Years to be determined by the Water Services Regulation Authority, in conjunction with its determination pursuant to sub-paragraph 9.3, in each case starting on 1 April, with the first such period starting on 1 April 2015, provided that no such period shall exceed five consecutive Charging Years.
- 9.6 Each Price Control determined under sub-paragraph 9.4 pursuant to a Periodic Review shall be set:
- (1) for the five consecutive Charging Years starting on 1 April 2020; and
 - (2) thereafter for each period of five consecutive Charging Years starting on the fifth anniversary of the first day of the period in respect of which the immediately preceding Periodic Review was carried out.
- 9.7 If, at any time after 1 April ~~2020~~2025, the Water Services Regulation Authority is unable to conduct a Periodic Review by 31 December in the Charging Year before the Review Charging Year, then:
- (1) in respect of Retail Activities, the previous determination pursuant to sub-paragraph 9.3 – in so far as that determination includes the matters decided under sub-paragraphs 9.3(1) and (2) – in respect of the final Charging Year of the period that was set in that previous determination pursuant to sub-paragraph 9.3(3), shall continue to apply for consecutive Charging Years until the next relevant determination under sub-paragraph 9.3 (or equivalent determination by the Competition and Markets Authority pursuant to paragraph 16) or the next relevant Interim Determination becomes effective;
 - (2) in respect of Water Resources Activities, Bioresources Activities or Network Plus Activities, the previous determination pursuant to sub-paragraph 9.4 in respect of the final Charging Year of the period that was set in that previous determination shall continue to apply for consecutive Charging Years until the next relevant determination under sub-paragraph 9.4 (or equivalent

determination by the Competition and Markets Authority pursuant to paragraph 16) or the next relevant Interim Determination becomes effective;

- (3) the Water Services Regulation Authority shall conduct a Periodic Review as soon as reasonably practicable thereafter, provided that the Appointee has not given a relevant notice under paragraph 16.

9.8 Where there is a material change to the basis of compiling the Relevant Index, this Condition, in so far as it relates to that part of the calculation of any Price Control to which the Relevant Index is relevant, shall be modified in such a manner as the Water Services Regulation Authority, after prior consultation with the Appointee, may determine to be appropriate to take account of such change.

9.9 The Water Services Regulation Authority may, at its discretion, from time to time (whether pursuant to a Periodic Review in connection with a determination pursuant to sub-paragraph 9.3 or sub-paragraph 9.4, or at other times) designate any activity carried out as part of the Appointed Business as falling within:

- (i) Retail Activities (subject to the definition of "Retail Activities" in paragraph 2);
- (ii) Water Resources Activities (subject to the definition of "Water Resources Activities" in paragraph 2);
- (iii) Bioresources Activities (subject to the definition of "Bioresources Activities" in paragraph 2);
- (iv) Network Plus Water Activities (subject to the definition of "Network Plus Water Activities" in paragraph 2); or
- (v) Network Plus Wastewater Activities (subject to the definition of "Network Plus Wastewater Activities" in paragraph 2).

9.10 Where a designation is made under sub-paragraph 9.9 pursuant to a Periodic Review in conjunction with a determination pursuant to sub-paragraph 9.3 or sub-paragraph 9.4, that designation shall be treated for the purposes of sub-paragraph 16.1 as part of the determination.

9.11 Where a designation is made under sub-paragraph 9.9 otherwise than pursuant to a Periodic Review in conjunction with a determination pursuant to sub-paragraph 9.3 or sub-paragraph 9.4, that designation shall be treated for the purposes of sub-paragraph 16.1 as part of the next following determination in respect of the activity concerned.

10 Non Retail Charges Publication

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

11 Periodic Reviews relating to 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 Water Industry Act 1991 in relation to the Water Services Regulation Authority's determination, including, without limitation, any change in circumstance which has occurred since the most recent one or more Periodic Reviews or which is to occur), the Price Controls, and in the case of Retail Activities, Water Resources Activities and Bioresources Activities, the nature, form and level of one or more Price Controls should be changed (and if so what change should be made to the relevant Price Control or Price Controls and, in the case of Retail Activities, Water Resources Activities and Bioresources Activities, to the nature, form and level of the relevant Price Control or Price Controls) for one or more periods (as decided by the Water Services Regulation Authority) of consecutive Charging Years starting with the Charging Year starting 1 April last before the Termination Notice is to expire.

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 1 July and not later than 14 July in the Charging Year next but one before that commencing on the said 1 April.

Part 3A Performance Measure Adjustments

12.1 This Part 3A applies where the Water Services Regulation Authority has notified the Appointee by 31 December in the Charging Year before the Review Charging Year that a Price Control determined under sub-paragraph 9.3 in respect of the Appointee's Retail Activities or sub-paragraph 9.4 in respect of the Appointee's Water Resources,

Bioresources Activities or Network Plus Activities may be adjusted to reflect the Appointee's performance in relation to a specific Performance Commitment.

- 12.2 The Appointee may by notice to the Water Services Regulation Authority refer for a determination under this Part the question set out in sub-paragraph 12.5 or the Water Services Regulation Authority may make a determination under this Part of the question set out in sub-paragraph 12.5 on its own initiative.
- 12.3 Any such reference by the Appointee must be made no later than 15 August in the year before the first Charging Year for which any adjustment to a Price Control is sought.
- 12.4 Any such determination by the Water Services Regulation Authority must be made no later than 15 November in the year before the first Charging Year for which any adjustment to a Price Control would take effect.
- 12.5 Under this Part the Water Services Regulation Authority may determine the question of whether there should be a change to the revenue allowed under, or, as the case may be, the level of, any Price Control determined under sub-paragraph 9.3 in respect of the Appointee's Retail Activities or sub-paragraph 9.4 in respect of its Water Resources Activities, Bioresources Activities or Network Plus Activities for the following and any subsequent Charging Year and, if so, the amount of such change.
- 12.6 The Appointee shall furnish to the Water Services Regulation Authority such Information as the Water Services Regulation Authority may reasonably require for the purpose of making a determination pursuant to this Part.
- 12.7 In making a determination pursuant to this Part, the Water Services Regulation Authority shall:
- (a) consider the Appointee's performance in relation to each relevant Performance Commitment in the period for which performance is being assessed and, in deciding for which Charging Year or Charging Years an adjustment to a Price Control should be made, shall consider both that and the Appointee's expected performance in the current year or one or more future years up to, but not including, the next Review Charging Year; and
 - (b) take account of the adjustments to the relevant Price Control which the Water Services Regulation Authority notified to the Appointee under sub-paragraph 12.1 above in relation to each relevant Performance Commitment in question.
- 12.8 In this Part "**Performance Commitment**" means a target or other measure of the performance of the Appointee in relation to the carrying out of the Regulated Activities that the Water Services Regulation Authority has notified to the Appointee by 31

December in the Charging Year before the Review Charging Year or which is set by the Competition and Markets Authority following a determination under paragraph 16.

- 12.9 In this Condition references to a "**Price Control**" include a Price Control that has been changed in accordance with a determination made under this Part.
- 12.10 Where a notification of a Performance Commitment is made for the purposes of sub-paragraph 12.1, that notification shall be treated for the purposes of sub-paragraph 16.1 (regarding references to the Competition and Markets Authority) as part of the relevant determination made under sub-paragraph 9.3 or sub-paragraph 9.4.

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 upon borrowing as, at the time at which the Appropriate Discount Rate falls to be applied from time to time under this Condition, investors and creditors would reasonably expect of a properly managed company holding the 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, 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;

"**making a Relevant Determination**" means, as regards each Price Control to which an Interim Determination relates or is to relate, making one or more determinations pursuant to sub-paragraph 9.3 or sub-paragraph 9.4, pursuant to a Periodic Review, as to that Price Control, or making any subsequent Interim Determination as to whether the level of that Price Control should be changed (and, if so, what change should be made to the level of the Price Control or Price Controls), and "**Relevant Determination**" shall be construed accordingly;

"**Net Present Value**" means the net present value calculated as at 30 September in the year in which the relevant Reference Notice is given or, where in any year no Reference Notice is given under paragraph 14 but the Water Services Regulation Authority gives a notice to the Appointee under paragraph 15, as at 30 September in the year in which the Water Services Regulation Authority gives the notice, by

discounting subsequent cash flows and inflating earlier cash flows at the Appropriate Discount Rate, assuming all cash flows in any Charging Year occur on 30 September in that Charging Year;

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

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

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

- (1)
 - (a) the application to the Appointee of any legal requirement; and
 - (b) any change to any legal requirement which applies to the Appointee (including any legal requirement ceasing to apply, being withdrawn or not being renewed);
- (2) either of the following circumstances for any Charging Year in respect of which the Secretary of State, or, as the case may be, the Water Services Regulation Authority, notified the Appointee that variations in value received or expected to be received from Relevant Disposals of Land shall constitute a Relevant Change of Circumstance:
 - (a) where for any Charging Year the value received or expected to be received from a Relevant Disposal of any Identified Land is, or is expected to be, different from the value which the Secretary of State, or, as the case may be, the Water Services Regulation Authority, notified the Appointee was the value attributable to a Relevant Disposal of that Identified Land for that Charging Year which had been allowed for in making a Relevant Determination; or

- (b) where for any Charging Year, and to the extent not taken into account under (a) above, the aggregate value received or expected to be received from Relevant Disposals of Non-identified Land is, or is expected to be, different from the value which the Secretary of State, or, as the case may be, the Water Services Regulation Authority, notified the Appointee was the value attributable to Relevant Disposals of Non-identified Land for that Charging Year which had been allowed for in making a Relevant Determination

and so that any notification by the Water Services Regulation Authority for the purposes of this sub-paragraph (2) shall be relevant for the purposes of this sub-paragraph (2) to the exclusion of any earlier notification by the Secretary of State or the Water Services Regulation Authority for the purposes of this sub-paragraph (2) to the extent that the first-mentioned notification is made in respect of matters in respect of which that earlier notification was made.

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

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

- (vi) a "**Relevant Disposal of Land**" means and includes a Relevant Disposal of Identified Land and a Relevant Disposal of Non-identified Land;
 - (vii) "**value**" includes value of any kind including, without limitation, cash, the value of real or personal property or any interest in such property, the value of any right or benefit (actual or prospective) and the value of any release, in whole or in part, of any obligation or claim, provided that to the extent that any property, right or benefit shall consist of a right to receive cash or any other asset then no value shall be attributed to that property, right or benefit but the cash or other asset the subject thereof shall be included and treated as value received or expected to be received in the Charging Year in which it is received or expected to be received;
 - (viii) references to "**value received or expected to be received**" shall be construed so as to include receipts by, and grants to, the Appointee, any Associated Company or any other business in which either the Appointee or any Associated Company has a material direct or indirect interest;
 - (ix) in the case of a right or benefit, but subject to the proviso to (vii) above, value shall be deemed to have been received at the time the right is granted or the benefit arises;
- (3) where:
- (i) in making a Relevant Determination, an amount has been allowed for on account of steps taken or to be taken for the purpose of securing or facilitating compliance with a legal requirement (not being one to comply with which the Appointee has determined to make a change to the basis on which it charges customers for water supply 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 (other than a Relevant Change of Circumstance falling within sub-paragraph (2) of the definition);
- (2) A Notified Item; and
- (3) A Relevant Disposal of Land

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

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 of the Water Industry Act 1991, 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) of the Water Industry Act 1991;
- (e) other than any such undertaking as is referred to in (d), any undertaking given by the Appointee to any enforcement authority, and accepted by that enforcement authority, to take all such steps:
 - (i) as are specified by that enforcement authority to be necessary or appropriate for the Appointee to take for the purpose of securing or facilitating compliance with any legal requirement in relation to which that enforcement authority is the enforcement authority; or
 - (ii) the taking of which is specified by that enforcement authority to be a condition or requirement of granting or renewing any such licence, consent or authorisation as is referred to in (c) or agreeing not to withdraw the same;
- (f) the Conditions of these Appointments; and
- (g) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within (a) to (f) above to have effect in a way:
 - (i) different to that in which it previously had effect; or
 - (ii) different to that in which it was taken to have effect:
 - (A) for the purpose of making a Relevant Determination or, as the case may be,
 - (B) in determining whether a Relevant Determination should be changed

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

- (i) any such legal requirement as is referred to in section 41 of the Environment Act 1995 or any such legal requirement that is

equivalent to those referred to in section 113 of the Water Act 1989 (as originally enacted), or

- (ii) those sections

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

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

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 third party services as defined in pro forma A7 and A8 of the Water Services Regulation Authority's Regulatory Accounting Guideline 3.07. For the avoidance of doubt, depreciation, the write-down/off of assets, the profits/loss on disposal of assets and infrastructure renewals expenditure or charges are excluded.

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 sub-paragraph 15.1.

- (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 Relevant 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, 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 Relevant Index from 30 September in the year in which that Base Cash Flow or depreciation occurred or is expected to occur, up to and including 30 September in the relevant year.

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

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 the 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 and also, in the case of a Relevant Change of Circumstance falling within sub-paragraph (2) of the definition, the costs, receipts and savings reasonably connected with the Relevant Disposal of Land;
- (2) except in the case of a Relevant Change of Circumstance falling within sub-paragraph (2) of the definition, to what extent:
 - (a) are the costs determined under (1) reasonably recoverable through charges for services provided, functions carried out by, and other activities of, the Appointee in its capacity as a water undertaker or sewerage undertaker which are not Standard Charges for water supply,

sewerage services and the reception, treatment and disposal of trade effluent(not being Excluded Charges);

- (b) in the case of receipts and savings, is the Relevant Item relevant to services provided, functions carried out by, and other activities of, the Appointee as a water undertaker or sewerage undertaker which are not water supply, sewerage services and the reception, treatment and disposal of trade effluent in respect of which the Appointee makes Standard Charges (not being Excluded Charges)

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

- (3) both of the following:
 - (a) what costs reasonably attributable to, or connected with, the Relevant Item as determined under (1) and what timing of incurring of such costs are appropriate and reasonable for the Appointee in all the circumstances to incur and programme, or, as the case may be, to have incurred and programmed, by reason of the Relevant Item; and
 - (b) what receipts and savings reasonably attributable to, or connected with, the Relevant Item as determined under (1) and what timing of such receipts and savings is appropriate and reasonable for the Appointee in all the circumstances to achieve and programme or, as the case may be, to have achieved and programmed, by reason of the Relevant Item

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

- (i) no account shall be taken of:
 - (A) any trivial amounts;
 - (B) any costs, to the extent that they would have been, or would be, avoided by prudent management action taken since the transfer date (and for this purpose what constitutes "prudent management action" shall be assessed by reference to the circumstances which were

- known or which ought reasonably to have been known to the Appointee at the relevant time);
- (C) any savings achieved by management action taken since the transfer date over and above those which would have been achieved by prudent management action (and for this purpose what constitutes "prudent management action" shall be assessed by reference to the circumstances at the relevant time); or
 - (D) any amounts attributable to matters allowed for in making a Relevant Determination, except to the extent that such amounts otherwise fall to be taken into account as amounts reasonably attributable to, or connected with, the Relevant Item under this sub-paragraph (3) and sub-paragraph (1) by virtue of the definition of a Notified Item and a Relevant Change of Circumstance; and
- (ii) in the case of a Relevant Change of Circumstance falling within sub-paragraph (1) of the definition, regard shall be had to whether either:
- (a) the 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 last Relevant Determination; or
 - (b) the Appointee has itself given notice to the Water Services Regulation Authority of the application to it of, or any change to, any legal requirement, before referring that legal requirement to the Water Services Regulation Authority under sub-paragraph 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:

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

in both cases the subject of the notice or notices under sub-paragraph 14.4 or paragraph 15;

- (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 (save in respect of Relevant Changes of Circumstance falling within sub-paragraph

- (2) of that definition, where one half of the Base Cash Flow at Outturn Prices shall be used) attributable to the creation, acquisition or disposal of non-depreciable assets ("**Allowable Infrastructure Asset Expenditure**");
- (iii) all other Base Cash Flows at Outturn Prices ("**Other Allowable Expenditure**");
- (iv) the sum of the Current Value of all Allowable Capital Expenditure occurring up to and including the relevant year, divided by the weighted average expected life of the assets attributable to that Allowable Capital Expenditure at the time those assets were or are expected to be created or acquired ("**Allowable Depreciation**");
- (v) the sum of the Current Value of all Allowable Capital Expenditure occurring up to and including the relevant year less the sum of the Current Value of all Allowable Depreciation occurring up to and including the relevant year ("**Allowable Net Asset Value**");
- (vi) the sum of the Current Value of all Allowable Infrastructure Asset Expenditure occurring up to and including the relevant year ("**Allowable Infrastructure Asset Value**");
- (vii) the Appropriate Discount Rate, adjusted so as to exclude any allowance for changes in the Relevant Index, multiplied by the sum of:
- (A) the Allowable Net Asset Value for the relevant year; and
- (B) the Allowable Infrastructure Asset Value for the relevant year;
- ("the **Allowable Return**"); and
- (b) what is the sum of:
- (i) Other Allowable Expenditure;
- (ii) Allowable Depreciation; and
- (iii) the Allowable Return;

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

(9) what change to the level of Price Control or Price Controls over the period beginning from the first of the Charging Years referred to in sub-paragraph 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, the decrease, in revenue attributable to the making of Adjusted Charges would, in each year of the Relevant Period, be equal to:

(i) the Annual Allowable Amount for that year,

plus

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

Provided that -

(a) where costs have been allowed for in determining the Annual Allowable Amount, it shall be assumed that those costs will be financed other than by the proceeds of an issue of equity share capital and

(b) the revenue attributable to the making of Adjusted Charges over the Relevant Period shall not result in interest cover which, measured both by its level in any one year and by trends in that level over time, is less than that appropriate to the financial position and performance which investors and creditors would reasonably expect of a properly managed company holding the Appointments, whose sole business consists of being a water and sewerage undertaker and having its equity share capital listed on the London Stock Exchange.

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

For this purpose:

- (i) what constitutes "prudent management action" shall be assessed by reference to the circumstances which were known or which ought reasonably to have been known to the Appointee at the relevant time;
- (ii) an effect shall not be regarded as a substantial adverse effect or a substantial favourable effect in any case unless, if the questions set out in sub-paragraph 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 level of Price Control or Price Controls to take effect; or
- (2) if later, where the Water Services Regulation Authority has given a notice to the Appointee under sub-paragraph 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 level of a Price Control or Price Controls initiated by the Water Services Regulation Authority relating to Notified Items and Relevant Changes of Circumstance and circumstances within sub-paragraph 14.3(1)(b)

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 level of a Price Control or Price Controls to take effect; or
- (2) if later, where the Appointee has given a Reference Notice to the Water Services Regulation Authority in respect of sub-paragraph 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

16 References to the Competition and Markets Authority

16.1 Where:

- (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 or determinations within one year from the Review Notice

Date(s) 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 9.3 or sub-paragraph 9.4 or any Interim Determination made by the Water Services Regulation Authority under Part IV of this Condition,

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

- (a) 13 months from the Review Notice Date or, in the case of a reference under paragraph 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 relevant determination or determinations to the Appointee (in the case referred to in sub-paragraph (3))

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

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

16.2 Where the Appointee requires the Water Services Regulation Authority to make a reference to the Competition and Markets Authority under sub-paragraph 16.1 in the case referred to in section (3) of that sub-paragraph, the Appointee shall levy charges in a way best calculated to comply with the Price Control or Price Controls determined by the Water Services Regulation Authority as if a reference had not been made until

the Competition and Markets Authority makes its determination following such reference. The determination made by the Competition and Markets Authority shall then take effect as if it had been made by the Water Services Regulation Authority.

- 16.3 Where after 1 April 2019 the Appointee requests the Water Services Regulation Authority to make a reference to the Competition and Markets Authority in respect of any determination under sub-paragraph 9.3 concerning Retail Activities, or under sub-paragraph 9.4 concerning Water Resources Activities, Bioresources Activities or Network Plus Activities, such reference must comprise all such determinations made under sub-paragraphs 9.3 or 9.4 at the same time relating to the Appointee.

17 [Not used]

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

18

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

- (1) ...
- (2) not later than 30 September immediately following the date of the Reference Notice (in the case of a reference under paragraph 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 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, his employees and agents to keep confidential and not to disclose, except to the Water Services Regulation Authority or as required by law, any Information which the Reporter obtains in the course of preparing his report.

- 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.

Part VII. Developing the Price Controls

19

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

Part VIII. Price Controls in effect from 1 April 2020 before 1 April 2025

20

20.1 ~~The provisions of Condition B of this instrument in the form that had effect immediately prior to 15 April 2017 shall continue to have effect in respect of the Price Controls set for a period ending before 1 April 2020 and in respect of the making of any Interim Determinations to set any such Price Controls~~ **In relation to the period from [1 November 2022] to 31 March 2025 this Condition and the determination dated 16 December 2019 made by the Water Services Regulation Authority in accordance with Part III of this Condition (the "PR19 Determination") shall have effect as if the PR19 Determination had been made in accordance with this Condition with the following modifications:**

- (a) **that the Price Controls for Network Plus Water Activities, Water Resources Activities and Residential Retail Activities included in the PR19 Determination, as adjusted by any changes to the levels of the Price Controls determined under Part 3A of this Condition, had been determined under this Condition as the Price Controls for the South West Area in respect of the Appointed Business's Network Plus Water Activities, Water Resources Activities and Residential Retail Activities; and**
- (b) **that the Price Controls for Network Plus Water Activities, Water Resources Activities and Residential Retail Activities included in the determination dated 17 March 2021 made by the Competition and Markets Authority in accordance with Part V of Condition B of the appointment of Bristol Water Plc as a water undertaker, as adjusted by any changes to the levels of the Price Controls determined under Part 3A of Condition B of the appointment of Bristol Water Plc as a water undertaker, had been determined under this Condition as the Price Controls for the Bristol Area in respect of the Appointed Business's Network Plus Water Activities, Water Resources Activities and Residential Retail Activities.**

20.1A **Part 3A of this Condition shall have effect as if:**

- (a) **when the Water Services Regulation Authority notified the Appointee in December 2019 that Price Controls for Network Plus Water Activities, Water Resources Activities or Residential Retail Activities may be adjusted to reflect the Appointee's performance in relation to specific Performance Commitments it notified the Appointee that the Price Controls for the South West Area in respect of the Appointed Business's Network Plus Water Activities, Water Resources Activities or Residential Retail Activities may be adjusted to reflect the Appointee's performance in relation to those specific Performance Commitments;**

- (b) **the Appointee had been notified in December 2019 that the Price Controls for the Bristol Area in respect of the Appointed Business's Network Plus Water Activities, Water Resources Activities or Residential Retail Activities may be adjusted to reflect the performance of the Appointee in relation to the specific Performance Commitments set out in the notification to Bristol Water Plc in December 2019 that was made in accordance with Part 3A of Condition B of Bristol Water Plc's appointment as a water undertaker, as adjusted by the changes to those specific Performance Commitments set out in the determination dated 17 March 2021 made by the Competition and Markets Authority in accordance with Part V of Condition B of the appointment of Bristol Water Plc as a water undertaker; and**
- (c) **references to the performance of the Appointee included references to the performance of Bristol Water plc in relation to the specific Performance Commitments deemed to have been notified to the Appointee in December 2019 by virtue of sub-paragraph 20.1A(b).**

20.2 In the event that the Water Services Regulation Authority is, in respect of the Appointed Business, unable to determine Price Controls, for the period or periods starting on 1 April ~~2020~~**2025**, under sub-paragraph 9.3 and sub-paragraph 9.4 of this Condition B by 31 December ~~2019~~**2024**, ~~the provisions of Condition B in the form that had effect immediately prior to 15 April 2017 shall continue to have effect in respect of the Price Controls~~ **in respect of the Charging Year starting on 1 April 2024 shall continue to apply for consecutive Charging Years** until such time as a determination under sub-paragraph 9.3 and sub-paragraph 9.4 of ~~thise current~~ Condition B is made and takes effect.

20.3 In relation to the determination of a Price Control in respect of the Appointed Business's Network Plus Water Activities and a Price Control in respect of the Appointed Business's Network Plus Wastewater Activities for the period starting on 1 April 2020, sub-paragraph 9.4(2)(a) of this Condition B shall, for the avoidance of doubt, have effect as if it allowed the determination of a Price Control that includes an amount in relation to the Charging Year starting on 1 April 2020 that has effect as if it was the revenue allowed to the Appointed Business in respect of the activities concerned for the Charging Year starting on 1 April 2019.

Part IX Changes to the Revenue Forecasting Incentive formula

21 The formula notified to the Appointee for the purposes of sub-paragraph 9.1A of this Condition in relation to the Charging Years beginning on 1 April 2021, 1 April 2022, 1 April 2023 and 1 April 2024 shall have effect as if:

- (a) the definition of TBYA (the blind year adjustment to be announced by Ofwat) provided that the adjustment will be based on the items listed in the definition and the difference between the Appointee's forecast and actual performance for the Charging Year beginning on 1 April 2019 in relation to the revenue adjustments arising from the totex menu model applied in relation to Price Controls for the five consecutive Charging Years beginning on 1 April 2015;
- (b) **the parts of the formula relating to Price Controls for Network Plus Water Activities and Water Resources Activities related only to the Price Controls for Network Plus Water Activities and Water Resources Activities for the South West Area; and**
- (c) **it included the formula notified to Bristol Water Plc in December 2019 for the purposes of sub-paragraph 8.1A of Condition B of its appointment as a water undertaker in relation to the Price Controls for Network Plus Water Activities and Water Resources Activities for the Bristol Area (and for the purposes of the formula references to "the company" include Bristol Water Plc as well as the Appointee and references to the "Appointed Business" include the business consisting of the carrying out by Bristol Water Plc of the functions of a water undertaker).**

Condition E: Undue Preference/Discrimination in Charges

...

Customers in the ~~Bournemouth~~ Bristol Area

~~E5— Until 31 March 2020 (or any earlier date that Ofwat may agree):~~

~~E5.1— the Appointee must ensure that the charges which it fixes or agrees in respect of customers or potential customers in the Bournemouth Area are no higher than they would have been if the Appointment of Bournemouth Water Limited had not been terminated; and~~

~~E5.2— any difference between charges which the Appointee fixes or agrees in respect of customers or potential customers in the South West Area and the Bournemouth Area shall not be treated as amounting to a breach of paragraph E1.~~

E5 Any difference between charges which the Appointee fixes or agrees in respect of customers or potential customers in the South West Area and the Bristol Area shall not be treated as amounting to a breach of paragraph E1.

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.

For Customers of Eligible Premises on the Isles of Scilly, this Condition G must be read in the light of paragraph G15.

...

Eligible Premises on the Isles of Scilly

G15 Unless Ofwat notifies the Appointee otherwise, and until 31 March 2025, paragraphs G3, G4, G5 and G13 must be read as also applying to Customers of Eligible Premises on the Isles of Scilly.

Condition N: Fees

...

Appointed business turnover for any periods prior to [1 November 2022]

N17 For the purposes of this Condition and the definition of "Appointee's Turnover Share" in Condition A, the turnover of the Appointed Business in relation to any period prior to [1 November 2022] shall include the equivalent turnover of the Appointed Business of Bristol Water Plc as shown in the accounting statements prepared by it under Condition F of its appointment as a water undertaker.

Condition P: Regulatory ring-fence

...

Transfer pricing and Cross-Default Obligations

P18 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:

- P18.1 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
- P18.2 the Appointed Business neither gives nor receives any cross-subsidy from any other business or activity of the Appointee.
- P19 The Appointee must provide Ofwat with any Information about the costs of an Associated Company which provides services to the Appointee which Ofwat reasonably requests. **For the purposes of this paragraph P19, reference to the provision of services includes references to anything (including the services of any employee) being made available.**
- P20 The Appointee must not, without the prior approval of Ofwat:
- P20.1 give a guarantee in relation to any liability of an Associated Company;
- P20.2 make a loan to an Associated Company; or
- P20.3 enter into an agreement or other legal instrument incorporating a Cross-Default Obligation.
- P21 The Appointee must not continue or permit to remain in effect an agreement or other legal instrument incorporating a Cross-Default Obligation unless:
- P21.1 prior approval has been given by Ofwat; or
- P21.2 the Cross-Default Obligation would only arise on a default by a subsidiary of the Appointee and the Appointee ensures that:
- P21.2.1 the period for which the Cross-Default Obligation is in effect is not extended;
- P21.2.2 liability under the Cross-Default Obligation is not increased; and
- P21.2.3 no change is made to the circumstances in which liability under the Cross-Default Obligation may arise.
- P22 The Appointee must not, without the consent of Ofwat, transfer to any Associated Company any right or asset to which paragraph P13 applies.
- P23 In giving consent under paragraph P22, Ofwat may also give a direction to the Appointee on the valuation of the asset and the treatment of the consideration in respect of that asset in the Appointee's accounts.

Credit Ratings and “Cash Lock-Up”

- P24 The Appointee must demonstrate its ability to service its debt obligations by complying with paragraph P25 ~~other than where Ofwat agrees that the Appointee does not need to comply with paragraph P25, whereupon it must comply with paragraph P26.~~
- P25 The Appointee must ensure that it or any Associated Company which issues corporate debt on its behalf maintains, at all times, an Issuer Credit Rating which is an Investment Grade Rating.
- P26 **[Not used]**~~Where Ofwat has agreed that the Appointee is not required to comply with paragraph P25, the Appointee must no later than the date on which the Appointee is required to deliver to Ofwat a copy of each set of accounting statements prepared under Condition F submit to Ofwat a certificate which states that:~~
- ~~P26.1 in the opinion of the Board of the Appointee, the Appointee would be able to maintain an Issuer Credit Rating which is an Investment Grade Rating; and~~
- ~~P26.2 includes a statement of the main factors, including financial ratios and other information, which the Board has taken into account in giving its opinion for the certificate.~~
- P27 The “Cash Lock-Up” provisions set out in paragraph P28 apply in any circumstances:
- P27.1 where neither the Appointee or any Associated Company which issues corporate debt on its behalf holds an Issuer Credit Rating which is an Investment Grade Rating; or
- P27.2 where the Appointee or any Associated Company which issues corporate debt on its behalf:
- P27.2.1 holds one or more Issuer Credit Ratings and one or more such Issuer Credit Ratings is not an Investment Grade Rating; or
- P27.2.2 holds an Issuer Credit Rating which is the Lowest Investment Grade Rating and:
- P27.2.2.1 the rating is on review for possible downgrade or is on “Credit Watch” or “Rating Watch” with a negative designation; or
- P27.2.2.2 otherwise where the rating outlook of the Lowest Investment Grade Rating has been changed from stable or positive to negative.

- P28 Where this paragraph applies, the Appointee must not, without the prior approval of Ofwat, transfer, lease, licence or lend any sum, asset, right or benefit to any Associated Company, other than where:
- P28.1 the Appointee makes a payment to an Associated Company which is:
- P28.1.1 pursuant to an agreement entered into prior to the circumstances referred to in paragraph P27 arising, which provides for goods, services or assets to be provided on an arm's length basis and on normal commercial terms; and
- P28.1.2 properly due in respect of the relevant goods, services or assets;
- P28.2 the Appointee transfers, leases, licenses or lends any sum, asset, right or benefit to any Associated Company (excluding a dividend payment, a distribution out of distributable reserves or a repayment of capital), where:
- P28.2.1 the transaction is on an arm's length basis on normal commercial terms; and
- P28.2.2 the value due in respect of the transaction is payable wholly in cash and is paid in full when the transaction is entered into;
- P28.3 the Appointee makes a repayment of, a payment of interest on or payments in respect of fees, costs or other amounts incurred in respect of:
- P28.3.1 a loan made from a Financing Subsidiary to the Appointee, provided that the Financing Subsidiary continues to be an Associated Company of the Appointee; or
- P28.3.2 a loan made prior to the circumstances referred to in paragraph P27 arising which is otherwise in accordance with these Conditions, provided that payment in respect of such a loan is not made earlier than provided for in accordance with its terms;
- or
- P28.4 the Appointee makes a payment for group corporation tax relief or for the surrender of Advance Corporation Tax, calculated on a basis not exceeding the value of the benefit received, provided that the payment is not made before the date on which the amounts of tax subject to the relief would have become due.
- P29 ~~**[Not used]**Where Ofwat has agreed that the Appointee is not required to comply with paragraph P25, the "Cash Lock Up" provisions set out in paragraph P28 apply in any circumstances where the Appointee has not complied with paragraph P26~~

~~(and in those circumstances the references in paragraph P28 to paragraph P27 have effect as if they were references to this paragraph) and do not apply in any other circumstances.~~

P29A The provisions of paragraphs P24, P26 and P29 of Condition P of this instrument in the form that had effect immediately prior to [1 November 2022] shall continue to have effect until 31 March 2025 or, if earlier, the date on which the Appointee or any Associated Company which issues corporate debt on its behalf first obtains an Issuer Credit Rating which is an Investment Grade Rating.

...

**Ofwat (The Water Services Regulation Authority)
is a non-ministerial government department.
We regulate the water sector in England and Wales.**

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