

**Instrument of Appointment by
the Department for Regional Development
of Northern Ireland Water Limited
as a water and sewerage undertaker
under the Water and Sewerage Services (Northern Ireland) Order 2006**

**INSTRUMENT OF APPOINTMENT OF NORTHERN IRELAND WATER LIMITED AS A WATER UNDERTAKER
AND AS A SEWERAGE UNDERTAKER**

This publication contains the full text of the Instrument of Appointment of Northern Ireland Water Limited as a water and sewerage undertaker by the Department for Regional Development under Articles 13, 18 and 19 of the Water and Sewerage Services (Northern Ireland) Order 2006.

The text on which this is based is held in the Authority's register and may be inspected during normal office hours at the Northern Ireland Authority for Utilities Regulation, Queens House, 14 Queen Street, Belfast, BT1 6ER.

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THE APPOINTMENTS

1. The Department for Regional Development, in exercise of the powers conferred on it by Articles 13, 18 and 19 of the Water and Sewerage Services (Northern Ireland) Order 2006 ("**the Order**") hereby appoints Northern Ireland Water Limited ("**the Appointee**") to be the water undertaker for the area described in paragraph 1 of Schedule 1 and to be the sewerage undertaker for the area described in paragraph 2 of Schedule 1, subject to the Conditions set out in Schedule 2.
2. The appointments contained in this instrument ("**the Appointments**") shall come into force on the day appointed as the transfer date under Article 270 of the Order.

Authorised by the
Department for Regional Development
to sign in that behalf

Name: Nigel McCormick

A senior officer in the Department for
Regional Development

Date: 23 March 2007

SCHEDULE 1: Area for which the Appointments are made

1. The Water Supply Area
The area for which the Appointee is appointed to be the water undertaker ("**the Water Supply Area**") comprises Northern Ireland.
2. The Sewerage Services Area
The area for which the Appointee is appointed to be the sewerage undertaker ("**the Sewerage Services Area**") comprises Northern Ireland.

SCHEDULE 2: Conditions of the Appointment

Condition A: Interpretation and Construction

1. Unless the contrary intention appears:
 - (1) words and expressions used in these Conditions and references in these Conditions to enactments shall be construed as if they were in a Northern Ireland enactment and the Interpretation Act (Northern Ireland) 1954 applied to them;
 - (2) references in these Conditions to enactments shall include any statutory modification thereof after the transfer date;
 - (3) words and expressions used in these Conditions shall have the same meaning as in any provision of the Order;
 - (4) references in these Conditions to Articles and Schedules are references to Articles of, and Schedules to, the Order; and
 - (5) references in these Conditions to paragraphs are references to paragraphs of the Condition in which the reference appears and references to subparagraphs are references to subparagraphs of the paragraph in which the reference appears.

2. In construing these conditions:
 - (1) the heading or title of any Condition or of any paragraph of any Condition shall be disregarded; and
 - (2) any description of the purposes of a Condition shall be construed subject to the provisions of the rest of the Condition in which that description appears and, accordingly, in the event of any conflict between such description and the provisions of the rest of the Condition, the latter shall prevail.

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

"the 1973 Order" means the Water and Sewerage Services (Northern Ireland) Order 1973;

"the 1986 Order" means the Companies (Northern Ireland) Order 1986;

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

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

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

"the Auditors" means the Appointee's auditors for the time being appointed in accordance with the 1986 Order;

"books and records" means any and all books, records, files, maps, plans, documents, papers, accounts, estimates, returns and other data of whatsoever nature and whether or not created, recorded or maintained in a document;

"Charging Year" means a year commencing on 1st April;

"domestic customer" means the occupier of domestic premises;

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

"Regulatory Price Control Period" means the period commencing on the day provided by paragraph 5A of Condition B and continuing through any remaining part of the Charging Year in which that day falls and subsequent Charging Years;

"financial year" means a financial year of the Appointee beginning and ending on the respective dates referred to in Article 231(2) of the 1986 Order;

"the General Consumer Council" means the General Consumer Council for Northern Ireland on which functions in relation to consumer matters are conferred by Chapter III of Part III of the Order;

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

"Information" means information which is in the possession of the person required to furnish it or which it can reasonably obtain or which it can reasonably prepare from information which is in its possession or which it can reasonably obtain, and information which is required to be furnished under any of these Conditions shall be furnished, subject to the provisions of the Condition under which that information is required to be furnished, in such form and manner as the Authority may reasonably require;

"London Stock Exchange" means the London Stock Exchange plc;

"Official List" means the official list of the UK Listing Authority;

"Ofwat" means the Water Services Regulation Authority established under section 1A of the Water Industry Act 1991;

"PPP Contractor" means the counterparty to:

- (i) long-term arrangements with the Appointee under HM Government's private finance initiative; or
- (ii) broadly equivalent long-term arrangements with the Appointee involving the significant transfer of risk from the Appointee to the counterparty and the provision to the Appointee of capital works, both in relation to the performance by the Appointee of the Regulated Activities,

pursuant to which, in each case, the counterparty provides works (or, as the case may be, such works) whether or not together with facilities or services, which relate to the performance by the Appointee of the Regulated Activities.

"Periodic Review" means a review of the Appointed Business carried out under paragraph 10 or 12 of Condition B, and as more particularly described in paragraph 1.2 of Condition B, but so that references in Part IV of Condition B to a Periodic Review shall exclude any review carried out under paragraph 12 of that Condition and shall include the determination by the Competition Commission of the disputed determination referred to it under paragraph 17 of Condition B following the giving of Information to the Authority in accordance with paragraph 10;

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

"Reference Notice" means a notice given to the Authority under paragraph 12 or 15 of Condition B;

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

"Related Company" means any company in relation to which the Appointee or any Group Company is a Related Undertaking or which is such a Related Undertaking in relation to the Appointee or any Group Company;

"Related Undertaking" means, in relation to any company, any body corporate (other than one which is a Group Company in relation to that company or which is a Government department) in which that company holds on a long-term basis a qualifying capital interest for the purpose of securing a contribution to that company's own activities by the exercise of any control or influence arising from that interest. For this purpose, "qualifying capital interest" means, in relation to any body corporate, an interest in shares comprised in the equity share capital of that body corporate of a class carrying rights to vote in all circumstances at general meetings of that body corporate. Where:

- (a) a company holds a qualifying capital interest in a body corporate; and

- (b) the nominal value of any relevant shares in that body corporate held by that company is equal to twenty per cent or more of the nominal value of all relevant shares in that body corporate

it shall be presumed to hold that interest on the basis and for the purpose of securing a contribution to that company's own activities unless the contrary is shown. For this purpose, "relevant shares" means, in relation to a body corporate, any shares in that body corporate comprised in the equity share capital of that body corporate of a class carrying rights to vote in all circumstances at general meetings of that body corporate.

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

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

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

"Sewerage Infrastructure Charge" means such a charge as is described in Article 206(2)(b) of the Order;

"PE Budget and Regulatory Price Control Period" means the period commencing on 1st April 2010 (the fourth Charging Year) and ending on the day provided by paragraph 5A of Condition B;

"trade effluent" has the same meaning as in Article 199 of the Order;

"UK Listing Authority" means the Financial Services Authority acting in its capacity as the competent authority for the purposes of the Financial Services and Markets Act 2000;

"Water Service" means Water Service, an executive agency of the Department for Regional Development, of which the Appointee is the successor company (and references to Water Service include references to the Department for Regional Development acting in its capacity as, or through the agency of, Water Service);

"Water Infrastructure Charge" means such a charge as is described Article 206(2)(a) of the Order;

4. [Not used.]
5. Any notification required or permitted to be given under any Condition shall be given in writing and cognate expressions shall be construed accordingly.
6. Where only one of the Appointments is terminated, so much of the provisions of these Conditions as applies or is relevant exclusively to the Appointment which has been so terminated or to the activities of an undertaker holding an appointment of the kind which has been so terminated shall cease to have effect as from the date on which the termination of that Appointment takes place.
7. The Appointee may refer to the Department for Regional Development for determination by it (having considered any representations by the Authority, the Appointee and any other water undertaker or as the case may be, sewerage undertaker) any question arising as to whether any area, island, premises or installation is, or, as the case may be, are, comprised within the Water Supply Area or as the case may be, the Sewerage Services Area as that expression is defined in Schedule 1 to this instrument.

Condition B: Charges

Part I. *Explanatory Provisions*

1. Introduction

The purposes of this Condition are set out in the following subparagraphs.

1.1 To limit the revenue receivable through increases in Standard Charges for the supply of water, the provision of sewerage services and the reception, treatment and disposal of trade effluent in the fourth Charging Year (commencing on 1st April 2010) and in subsequent Charging Years.

The limits imposed through this Condition apply in two distinct periods:

- First, in the period commencing on 1st April 2010 (the fourth Charging Year) and ending on the day provided by paragraph 5A of Condition B, the **PE Budget and Regulatory Price Control Period**; and
- secondly in the period commencing on the day provided by paragraph 5A of Condition B and continuing through any remaining part of the Charging Year in which that day falls and subsequent Charging Years, the **Regulatory Price Control Period**.

The limits that had been imposed between 1 April 2007 and 31 March 2010 have been removed from this Condition

The weighted average increase in the Charging Years within the PE Budget and Regulatory Price Control Period and the Regulatory Price Control Period is limited to the sum of the movement in the Retail Prices Index, an Adjustment Factor, called K, and a Subsidy Factor, called S. The Subsidy Factor is intended to compensate the Appointee for any revenue shortfall that results from non-payment of any subsidy in respect of customers for whom special provision is made and the payment of which has been taken into account by the Authority in determining the Adjustment Factor.

Changes in metered charges are calculated by reference to actual consumption in respect of a Weighting Year (a financial year of the Appointee). Changes in unmetered charges are calculated by reference to changes in average revenue per chargeable supply calculated on the customer base as at the preceding 1st December. Changes are weighted in proportion to the contribution which each type of charge makes to total revenue in the Weighting Year.

These matters are dealt with in Part II under the heading "Maximum Allowable Controlled Revenue and control of Standard Charges."

1.2 To provide for Periodic Reviews the Appointed Business to be carried out by the Authority in respect of the following periods:

- (i) 1st April 2010 to 31st March 2013 (noting that these dates may change);
- (ii) 1st April 2013 to 31st March 2015 (noting that these dates may change); and
- (iii) thereafter at intervals of such duration as may be notified from time to time by the Authority to the Appointee,

so that the Authority can determine the Adjustment Factor for the periods referred to in (i) and (ii) above and thereafter whether the Adjustment Factor should be changed in relation to (iii) above. This is dealt with in Part III under the heading "Periodic Reviews."

1.3 To enable the Appointee:

- (1) [Removed]
- (2) to refer to the Authority for determination from time to time the question of (i) modifying the Adjustment Factor as provided during the PE Budget and Regulatory Price Control Period or (ii) modifying the Adjustment Factor (as appropriate) as provided during the Regulatory Price Control Period to allow for Notified Items and Relevant Changes of Circumstance;

- (3) to refer to the Authority for determination at any time the question of (i) modifying the Adjustment Factor as provided during the PE Budget and Regulatory Price Control Period or (ii) modifying the Adjustment Factor (as appropriate) as provided during the Regulatory Price Control Period 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 Authority for determination the question of what (i) the Adjustment Factor should be in the future, on the assumption that the relevant Appointment or, as the case may be, the Appointments were to continue in force, for the purpose of facilitating consideration of the terms on which a new appointee could accept transfers of property, rights and liabilities from the Appointee, as provided in Article 16(4) of the Order.

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

- 1.4 To enable the Authority to initiate changes to the Adjustment Factor, to allow for Notified Items and Relevant Changes of Circumstance. This is also dealt with in Part IV.
- 1.4A To provide for a framework within which the Appointee, the Department for Regional Development or the Authority may refer certain questions relating to the funding of the Appointee for determination by the Authority and the Department for Regional Development during the PE Budget and Regulatory Price Control Period.
- 1.5 To enable the Appointee to require the Authority to refer to the Competition Commission matters arising out of determinations by the Authority referred to in subparagraphs 1.2, 1.4 and 1.4A and references referred to in subparagraph 1.3. These matters are dealt with in Part V under the heading "References to the Competition Commission and Modification of this Condition."
- 1.6 To require the Appointee to give Information to the 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 Authority."
- 2. *Defined Terms Which Apply For The Purpose Of All Parts Of This Condition*

In this Condition:

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

Average Charge per Chargeable Supply means in respect of a specified Unmeasured Basket Item

for a specified year, the amount $\frac{R}{N}$, where:

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

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

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

Standard Charges to be made in respect of the Unmeasured Basket Item in the relevant Charging Year had applied;

Basket Items are:

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

where:

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

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

Excluded Charges unless and until otherwise agreed between the 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 Article 98 of the Order;
- (3) charges for the reception and disposal by the Appointee, or other person specified by the Appointee or, as the case may be, Water Service, of matter delivered to the Appointee or such other person by tanker or similar means;
- (4) charges for unmeasured supplies of water to cattle troughs;
- (5) charges for unmeasured building water supplies;
- (6) amounts payable in respect of an unmeasured supply of water by means of bowsers or water tankers;
- (7) charges for unmeasured supplies of water to farm taps and other agricultural water points; and
- (7A) charges in any Charging Year for supplies of water (or for the provision of sewerage services or for the reception, treatment and disposal of trade effluent) to premises where the premises were supplied in the relevant Weighting Year with not less than such quantity of water as is specified from time to time under Article 14(5)(a) of the Order;

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

- (8) charges payable for any such connection as is described in Article 206 of the Order; and
- (9) charges for a supply of water in bulk to another water undertaker;

LIBOR means the London Inter-Bank Offered Rate for six month deposits in sterling which appears on the display designated as page 3750 on the Dow-Jones telerate monitor (or such other page or service as may replace it for the purpose of displaying London inter-bank offered rates of leading banks for sterling deposits) provided that, if for any reason that rate does not appear or the relevant page is unavailable the Appointee may request each of the banks whose offered rates would have been used for the purposes of the relevant page if the event leading to the application of this proviso had not occurred, to notify to the Appointee its offered quotation to leading banks for sterling deposits for a six

month period, and in that event the rate shall be the arithmetic mean (rounded upwards if necessary to the nearest decimal place) on the respective quotations (being not less than two) notified to the Appointee;

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

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

Standard Charges means:

- (1) charges fixed under any such charges scheme as is referred to in Article 201 of the Order;
- (2) charges payable under any such agreement as is referred to in Article 200 of the Order under or for which all the charges payable are in accordance with standard charges published or fixed by the Appointee;
- (3) charges payable where a discharge is made in pursuance of a consent given by the Appointee for the purposes of the Chapter III of Part VI of the Order under or for which all the charges payable are in accordance with standard charges published or fixed by the Appointee;
- (4) charges payable under or by virtue of Article 17(4) or 53 of the 1973 Order and which, by virtue of the Water and Sewerage Services (2006 Order) (Commencement No.1 and Transitional Provisions) Order (Northern Ireland) 2007, continue to be payable on and after the transfer date to the Appointee;
- (5) charges payable under or by virtue of any consent or direction granted or made under Part V of the 1973 Order and which, by virtue of the Water and Sewerage Services (2006 Order) (Commencement No. 1 and Transitional Provisions) Order (Northern Ireland) 2007, continue to be payable on and after the transfer date to the Appointee,

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

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

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

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

Weighted Average Charges Increase means the sum calculated as follows:

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

where:

W_t is the Weighted Average Charges Increase for the Charging Year;

i is an index identifying the two Unmeasured Basket Items;

j is an index identifying the three Measured Basket Items;

\sum_i requires summation over the two Unmeasured Basket Items;

\sum_j requires summation over the three Measured Basket Items;

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

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

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

$Bt-1(j)$ is the Weighting Year Revenue in respect of Measured Basket Item j for the Prior Year; and

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

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

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

3. [Not used.]

Part II. *Maximum Allowable Controlled Revenue and control of Standard Charges*

4. *Maximum Allowable Controlled Revenue*

[Removed]

5. *The Charges Limit*

5.1 During the PE Budget and Regulatory Price Control Period and the Regulatory Price Control Period, the Appointee shall ensure that the Weighted Average Charges Increase in any Charging Year when expressed as a percentage does not exceed the Charges Limit.

5.2 The Charges Limit is the percentage calculated as $RPI + K + S$, where:

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

K is the Adjustment Factor

S is the Subsidy Factor

5.3 The Adjustment Factor is, for each of the successive Charging Years commencing on 1st April 2010, such number (which may be a different number for any Charging Year and may be a positive or negative number or zero) as shall have been determined under this Condition or, if none, zero;

5.4 Subject to paragraph 5.4.1 if the Weighted Average Charges Increase in any Charging Year is less than the Charges Limit then the Charges Limit for the following Charging Year can be increased by the amount of such deficiency.

5.4.1 The Charges Limit for any particular Charging Year shall only be increased by virtue of subparagraph 5.4 in circumstances where (i) the deficiency is attributable to Charging Year starting after 1 April 2015; and (ii) the deficiency is attributable to a Charging Year which ended no more than three years prior to the start of, and within the same price control period as, that particular Charging Year.

5.5 Subject to subparagraphs 5.6, the Subsidy Factor is:

(1) for each of the two successive Charging Years commencing on 1st April 2010, zero;

- (2) for each of the successive Charging Years commencing on 1st April 2012 such number (which may be a positive number or zero but not a negative number) as shall be determined by the Authority on or before 30 April of the preceding Charging Year, and represents the difference (if any) between:
- (a) the amount which the Department for Regional Development had undertaken to pay under Article 213(1) of the Order in respect of the Charging Year commencing two years before the Charging Year to which the Subsidy Factor relates and which was relied on by the Authority for the purposes of determining the Adjustment Factor for that earlier Charging Year; and
 - (b) the amount in fact paid under Article 213(1) by the Department for Regional Development in respect of that earlier Charging Year

5.6 Where:

- (i) any determination is made by the Authority under subparagraph 5.5 above and the Appointee disputes the determination so made; or
- (ii) in relation to any Charging Year in respect of which the Department for Regional Development had undertaken to pay an amount under Article 213(1) of the Order, the Authority fails to make any determination under subparagraph 5.5 within 1 month of the end of that Charging Year

the Appointee may refer the matter to the Department for Regional Development for re-determination or, as the case may be, determination by it (or any person appointed by it for that purpose), in which event the Subsidy Factor shall be such number (which may be a positive number or zero but not a negative number) as may be determined by the Department for Regional Development to represent the difference (if any) referred to in subparagraph 5.5.

5A *End of the PE Budget and Regulatory Price Control Period*

5A.1 The final day of the PE Budget and Regulatory Price Control Period shall be the 31 March 2013 and the Regulatory Price Control Period shall begin on the 1 April 2013 or such other dates as the Authority may notify to the Appointee from time to time for these purposes (following such consultation as the Authority considers appropriate) and this Condition shall be modified by such change (if any) as is necessary in consequence of such notification and which is also so notified by the Authority.

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

6.1 Where the Appointee determines:

- (1) to make a material change (other than one which relates solely to the amount of a charge) to the basis on which it makes or calculates any Standard Charge, or Standard Charges taken as a whole (other than Excluded Charges) for the supply of water, the provision of sewerage services or the reception, treatment and disposal of trade effluent;
- (2) to make a material change to the scope of any such scheme, agreement or consent as is referred to in the definition of Standard Charges (insofar as such change relates to charges, other than Excluded Charges, for the supply of water, or the provision of sewerage services or the reception, treatment and disposal of trade effluent); or
- (3) to change the basis on which the Appointee treats supplies of water or provisions of sewerage services as separate supplies or provisions for the purpose of making Standard Charges (other than Excluded Charges) which affects the calculation of Average Charge Per Chargeable Supply

it shall:

- (i) notify the Authority; and

- (ii) furnish to the Authority such explanations and Information relating to such change as the Authority considers requisite or expedient having regard to the purposes of this Condition.
- 6.2 Where there is a material change to the basis of compiling the Retail Prices Index which affects the Maximum Allowable Controlled Revenue determined under this Condition or which is relevant to the calculation of the Charges Limit, this Condition may be modified in such manner as the Authority, after prior consultation with the Appointee, determines to be appropriate in order to take account of such change.

7. *Verification of Compliance with the Charges Limit*

7.1 Statements

The Appointee shall deliver to the Authority the following statements:

- (1) *[Removed]*
- (2) not later than two months before the start of each Charging Year commencing on or after 1 April 2010 a statement in writing (**a Principal Statement**) of:
 - (i) the revenue which accrued in the Weighting Year from all Standard Charges (including, in the case of Measured Basket Items, any Non-volumetric Charge), other than Excluded Charges, in respect of each Unmeasured Basket Item i and each Measured Basket Item j;
 - (ii) the aggregate revenue which accrued in the Weighting Year from all such Standard Charges; and
 - (iii) the amount of each and every type or category of charge for the supply of water, the provision of sewerage services or the reception, treatment or disposal of trade effluent which the Appointee proposes to impose of a kind specified in the definition of **Standard Charges** as at the commencement of that Charging Year which are not Excluded Charges (and for this purpose where the Appointee proposes to charge different prices per cubic metre of water supplied depending upon the volume of water supplied or the time of supply or the category of customer or any other variable factor then each such price shall be treated as a different type or category of charge);
- (3) not later than two months, or such later date as the Authority may allow, before the date during any Charging Year as from which the Appointee proposes to impose or fix a new Standard Charge (which is not an Excluded Charge) for the supply of water or the provision of sewerage services or the reception, treatment or disposal of trade effluent or to increase or decrease the amount of any such charge a statement in writing (**a Supplemental Statement**) of the new charge or the amount by which the Appointee proposes to increase or decrease the amount of that charge.

Any Principal Statement or Supplemental Statement shall be accompanied by the information necessary to calculate At(i) and At-1(i) and Bt(j) and Bt-1(j) in the definition of Weighted Average Charges Increase and a written statement of those calculations.

~~7.2 — Auditors Report~~

~~Any Principal Statement shall be accompanied by a report by the Auditors as to whether, in their opinion, the information (if any) included in that Principal Statement under subparagraphs 7.1(2)(i) and (ii) has been properly extracted from the relevant accounting statements prepared and delivered by the Appointee under paragraph 4 of Condition F and from the Appointee's accounting records and such other records of the Appointee as the Auditors consider relevant for the purpose of making their report and as to whether, in their opinion, the calculations delivered by the Appointee with that Principal Statement are in accordance with this Condition and with the Appointee's accounting and such other relevant records.~~

8. *[Removed]*

Part III. *Periodic Reviews*

9. *[Removed]*

10. *Periodic Reviews of the Appointed Business at Regular Intervals*

10.1 The Appointee shall furnish to the Authority such Information as the Authority may reasonably require to enable it to carry out a Periodic Review for the purpose of determining:

- (i) the Adjustment Factor for each of the three consecutive Charging Years commencing on 1st April 2010 or such other number of years as the Authority may notify to the Appointee from time to time for these purposes (following such consultation as the Authority considers appropriate); and
- (ii) the Adjustment Factor for each of the two consecutive Charging Years commencing on 1st April 2013 or such other date as the Authority may notify to the Appointee from time to time for these purposes (following such consultation as the Authority considers appropriate); and
- (iii) in relation to consecutive Charging Years in any successive period, the question whether the Adjustment Factor should be changed (and if so, what change should be made to it),

in each case having regard to all the circumstances which are relevant in the light of the principles which apply by virtue of Part II of the Order in relation to the Authority's determination, including, without limitation, any change in circumstance which has occurred since the transfer date or last Periodic Review (as appropriate) or which is to occur.

10.2 The Appointee shall furnish to the Authority such Information (including further detail about or explanation of Information previously supplied, whether or not under this subparagraph 10.2) as the Authority may by notice reasonably require to enable it to carry out the Periodic Review.

11. *[Removed]*

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

12.1 Where a Termination Notice has been given by the Department to the Appointee, the Appointee may refer to the Authority for determination by it the question, on the assumption that such a Termination Notice had not been given, of what the Adjustment Factor should be for the ten consecutive Charging Years starting with the Charging Year commencing on 1st April last before the Termination Notice is to expire.

12.2 A reference to the Authority under this paragraph 12 shall be made by notice given to the Authority not earlier than 1st July and not later than 14th July in the Charging Year next but one before that commencing on the said 1st April.

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

Subject to paragraph 12, if the Department for Regional Development shall have served a Termination Notice on the Appointee then this Condition shall have effect as though, in the case of the Appointment in respect of which the Termination Notice has been given, references to a Periodic Review being carried out in respect of an initial three consecutive charging years or subsequently a period of consecutive Charging Years for the duration of the said period where references to a Periodic Review being carried out in respect of the relevant Appointment in respect of a period of that number of consecutive Charging Years which is the lesser of:

- (1) In the case of a Termination Notice which is to expire on or before 31 March 2010, three years or in any other case for the total duration of the price control period; and
- (2) the number of consecutive Charging Years (including that in which the day on which the Termination Notice is to take effect falls) in the period starting on the first

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

Part IV. *Interim Determinations and other reviews*

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

14.1 In this Part of this Condition:

the Appropriate Discount Rate means such rate of return as, at the time at which the Appropriate Discount Rate falls to be applied from time to time under this Condition, investors and creditors would reasonably expect of a properly managed company holding the Appointments whose sole business consists of being a water undertaker and a sewerage undertaker and, without excluding other considerations which may also be relevant, having its equity share capital admitted to the Official List and to trading on the London Stock Exchange's market for listed securities, 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 Authority under paragraph 16 when it determines questions referred to it by the Appointee under paragraph 15);

equity share capital has the same meaning as in the 1986 Order;

Interim Determination means the determination by the Authority of the relevant questions the subject of a reference by the Appointee under paragraph 15 or pursuant to paragraph 16 or, as the case may be, the determination by the Competition Commission of the relevant questions or of the disputed determinations the subject of a reference to it pursuant to subparagraph 17(2) or 17(3), which relates to a reference by the Appointee under paragraph 15 or a determination pursuant to paragraph 16;

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

Net Present Value means the net present value calculated as at 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 15 but the Authority gives a notice to the Appointee under paragraph 16, as at 30 September in the year in which the 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 Authority to the Appointee (or, as the case may be, Water Service) as not having been allowed for (either in full or at all) in making a Relevant Determination; and for the purpose of this definition:

- (a) where any such item was not allowed for in full then it shall only be a Notified Item to the extent that it was not allowed for; and
- (b) where, in determining whether the Adjustment Factor, as the case may be, should be changed (and if so what change should be made to the Adjustment Factor), the Authority, or, as the case may be, the Competition Commission, allows for any such item as was previously so notified by the Authority (or, as the case may be, the Department for Regional Development) 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 Authority, or, as the case may be, the Competition Commission, allowed for it as aforesaid;

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

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

- (ii) 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) for any Charging Year in respect of which (i) no grant or subsidy is paid to the Appointee under Article 213(3) or 278 of the Order and (ii) the Authority, notified Water Service or, as the case may be, the Appointee that variations in value received or expected to be received from Relevant Disposals of Land shall constitute a Relevant Change of Circumstance, either of the following circumstances:
 - (a) where for that 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 Authority notified Water Service or, as the case may be, 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 that 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 Authority notified Water Service or, as the case may be, 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 Authority for purposes of this subparagraph (2) shall be relevant for the purposes of this subparagraph (2) to the exclusion of any earlier notification it for the purposes of this subparagraph (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 subparagraph (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 subparagraph (2) as being included in that notification;
- (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 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 subparagraph (2);
- (iv) **"protected land"** and **"disposal"** have the meanings respectively given to them in Article 2 of the Order;
- (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 Water Service or 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;
- (4) where:
- (i) in making a Relevant Determination an amount has been allowed for on account of capital expenditure to be incurred by the Appointee; and
 - (ii) for any Charging Year ended before the making of the relevant reference under paragraph 15, or, as the case may be, the giving of the relevant notice under paragraph 16, the Notified Index is at a different level from that which the Authority last notified the Appointee in connection with a Relevant Determination was the level which it had been assumed would pertain in that same Charging Year in which it was assumed for the purpose of assessing the amount allowed for as aforesaid that capital expenditure would be incurred by the Appointee.

For the purposes of this subparagraph (4) and subparagraph 15.2:

- (A) **the Notified Index** means the index of national construction costs notified by the Authority to the Appointee for the purposes of this condition, or such other index as the Authority, after consultation with the Appointee, determines to be appropriate and reasonable for those purposes as being the index which is to apply for the purposes of the relevant Charging Year;
- (B) where:
 - (x) the Notified Index is not available by 1 September in any year;
 - (y) there is a material change to the basis of compiling the Notified Index; or
 - (z) the level of the Notified Index is revised after the determination of the questions in respect of a Relevant Change of Circumstance falling within this subparagraph (4),

then the question as to how changes in construction costs in the relevant Charging Year should be allowed for as a Relevant Change of Circumstance shall be determined by the Authority in such a manner as the Authority in such manner as the Authority, after prior consultation with the Appointee, determines to be appropriate and this condition shall be modified accordingly; and

- (C) the **Indexed Capital Costs Amount** is the amount found by multiplying A by B, where:

A is the aggregate amount of capital expenditure which, for the purpose of assessing the amount allowed for as described in (i) above, it was assumed would be incurred by the Appointee in the relevant Charging Year; and

B is the percentage difference between the level of the Notified Index for the relevant Charging year and the level notified for that same Charging Year by the Authority, as described in (ii) above;

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

- (1) a Relevant Change of Circumstance (other than a Relevant Change of Circumstance falling within subparagraph (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 subparagraph (2) of the definition), a Notified Item or a Relevant Disposal of Land as the context may require.

14.2 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:
 - (i) 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 Article 30 of the Order, and any authorisation granted, approval given, or prohibition imposed, by the Department of the Environment under the Water Supply (Water Quality) Regulations (Northern Ireland) 2002;
 - (ii) any regulation made by the Council or the Commission of the European Communities 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;
 - (iii) any licence, consent or authorisation given or to be given by the Department for Regional Development, the Department of the Environment, the Authority or other body of competent jurisdiction to the Appointee, or given to the Department for Regional Development and transferred to the Appointee by virtue of a transfer scheme made under Article 270 of the Order, for the purpose of carrying on any of the functions of a water undertaker or sewerage undertaker;
 - (iv) any undertaking given by the Appointee to, and accepted by, the Department for Regional Development or, as the case may be, the Authority for the purposes of Article 31 of the Order;
 - (v) other than any such undertaking as is referred to in (iv), 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 (iii) above or agreeing not to withdraw the same;
 - (vi) the Conditions of these Appointments; and
 - (vii) 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 (i) to (vi) above to have effect in a way:
 - (i) different to that in which it previously had effect; or
 - (ii) different to that in which it was taken to have effect:
 - (A) for the purpose of determining the Adjustment Factor; or, as the case may be,
 - (B) in determining whether the Adjustment Factor should be changed (and if so what change should be made to the Adjustment Factor),
- but so that nothing in subparagraphs (i) to (vii) above shall apply so as to include:
- (i) any such legal requirement as is referred to in Article 11 or 21 of the Water (Northern Ireland) Order 1999 or in a scheme made under either of those Articles;
 - (ii) those Articles or any such scheme,
- 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.
- 14.3 In paragraph 15 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 subparagraph (1) above, **Operating Expenditure** in subparagraph 15.2(6) includes those items currently so identified in Ofwat's Regulatory Accounting Guidelines 3 and 4 and in the June Return 2006 Reporting Requirement, line 22 in table 21 and line 21 in table 22 or any substitute which the Authority may from time to time specify for the purposes of this Condition. 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.
- 14.4
- (1) For the purposes of subparagraphs 15.2(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 subparagraph 15.1, or the Authority gives notice under paragraph 16.1(1).
 - (2) In subparagraphs 15.2(8) and 15.2(9) and subparagraph (3) below at **Outturn Prices**, in relation to the amount of any Base Cash Flow or depreciation, means that amount as adjusted to take account of the actual or expected cumulative percentage change in the Retail Prices Index from that prevailing, or expected to

prevail, on 30 September in the year in which the Appointee gives notice under subparagraph 15.1 or the Authority gives notice under subparagraph 16.1, 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 subparagraph 15.2(8) **Current Value**, in relation to any Base Cash Flow or depreciation at Outturn Prices, means that amount, as adjusted to take account of the actual or expected cumulative percentage change in the Retail Prices Index from 30 September in the year in which that Base Cash Flow or depreciation occurred or is expected to occur, up to and including 30 September in the relevant year.
- 14.5 For the purpose of Article 20(5)(b) of the Order, the provisions of this Condition, to the extent that they relate to a Relevant Change of Circumstance falling with sub-paragraph (2) of that definition, are provisions of the Appointments which cannot be modified. This subparagraph shall cease to have effect if, but only if, this Condition ceases to contain any provision relating to changes to the Adjustment Factor to allow for Notified Items and Relevant Changes of Circumstance.
- 14A Application of Part IV*
- 14A.1 Paragraphs 15 and 16 of this Part IV of Condition B shall, save to any extent notified by the Authority to the Appointee from time to time for these purpose (following such consultation as the Authority considers appropriate), have no effect during the PE Budget and Regulatory Price Control Period.
- 14A.2 Paragraph 14B of this Part IV of Condition B shall, save to any extent notified by the Authority to the Appointee from time to time for these purposes (following such consultation as the Authority considers appropriate), have no effect during the Regulatory Price Control Period.
- 14B Reviews during the PE Budget and Regulatory Price Control Period*
- 14B.1 Subject to subparagraphs 14B.2 and 14B.10 the Appointee may from time to time refer to the Authority and the Department for Regional Development for determination by them (having considered the proposals of the Appointee) the questions set out in subparagraph 14B.6.
- 14B.2 The Appointee may only make a reference under subparagraph 14B.1 where such a reference relates to a request for an amount of at least the PE Budget and Regulatory Price Control Period Materiality Amount.
- 14B.3 For the purposes of this paragraph 14B:
- 14B.3.1 **'PE Budget and Regulatory Price Control Period Materiality Amount'** means the amount of £500,000 or more (calculated as provided in subparagraph 14B.3.2).
- 14B.3.2 The PE Budget and Regulatory Price Control Period Materiality Amount shall, in any Charging Year within which the Appointee makes a reference under subparagraph 14B.1, be calculated by deducting from the costs reasonably anticipated or reasonably incurred in relation to any particular event or events within that Charging Year, any receipts or savings received, made or reasonably anticipated in the said Charging Year through prudent management action or otherwise.
- 14B.3.3 whether action constitutes "**prudent management action**" shall be assessed by the Authority and the Department having regard to, amongst other things, the circumstances which were known or which ought reasonably to have been known to the Appointee at the relevant time.
- 14B.4 The Department for Regional Development may from time to time refer to the Authority the questions set out in subparagraph 14B.6, for determination by the said Department and the Authority together (having considered the proposals of the said Department).

- 14B.5 The Authority may from time to time refer the questions set out in subparagraph 14B.6 for determination by the said Authority and the Department for Regional Development together (having considered the proposals of the said Authority).
- 14B.6 The questions that the Appointee, the Department for Regional Development or the Authority as the case may be may refer for determination are:
- 14B.6.1 Whether the event or events that the Appointee has used as the basis of its calculation of the PE Budget and Regulatory Price Control Period Materiality Amount are such as to merit a review under this paragraph;
- 14B.6.2 Whether the Appointee's calculation of the PE Budget and Regulatory Price Control Period Materiality Amount is accepted by the Authority and the Department for Regional Development and, if not, what alternative amount they would assess; and
- 14B.6.3 Whether, having regard to any factors which the Authority and the Department for Regional Development consider relevant, they consider it reasonable for the Appointee to receive additional revenue or to be allowed less revenue and, if so, the appropriate amount of and timing for any such increase or reduction in revenue.
- 14B.7 The Authority and the Department shall consult with such other persons as they consider appropriate as to what determination, if any, it would be reasonable for them to make on the questions set out in subparagraph 14B.6, may agree such processes, factors or guidelines as to their performance of any such consultation and determinations as they consider appropriate and shall notify the Appointee promptly of any such determinations once made.
- 14B.8 Where the Authority and the Department for Regional Development have determined, under subparagraph 14B.6.3 that it would be reasonable for the Appointee to receive additional revenue or to be allowed less revenue, the Authority shall also determine whether, in light of such determination and having regard to any other factors the Authority considers relevant, it would be reasonable to change the Adjustment Factor already determined for any relevant Charging Year or Years and, if so, what change should be made to the Adjustment Factor for such relevant Charging Year or Years; and shall notify the Appointee promptly of any such determinations once made.
- 14B.9 In making a determination under subparagraph 14B.8 the Authority shall consult with such persons as it considers appropriate and shall have regard to any processes, factors or guidelines as to its determination of those questions as it considers appropriate including, without limitation, any such processes, factors or guidelines which it has agreed from time to time with the Department for Regional Development.
- 14B.10 The Appointee shall ensure that when any reference is made under this subparagraph 14B it shall, by such date as the Authority may specify from time to time, submit to the Authority a statement specifying (i) its calculation of the PE Budget and Regulatory Price Control Period Materiality Amount; (ii) any other information the Authority may specify from time to time; and (iii) any representations it wishes to make in relation to the questions set out in subparagraphs 14B.6.
15. *References to the Authority relating to Notified Items and Relevant Changes of Circumstance and circumstances having a substantial effect on the Appointed Business*
- 15.1 The Appointee may from time to time refer to the Authority for determination by him (having considered the proposals of the Appointee) the questions set out in subparagraph 15.2 or, as the case may be, subparagraph 15.3. Such reference shall be made by notice given to the Authority, which, in the case of the questions set out in subparagraph ~~15.2~~ shall be given in accordance with subparagraph 15.4. For the purposes of subparagraph 15.2 a single reference may be made in respect of any number of Notified Items and Relevant Changes of Circumstance and subparagraph 15.2 shall be construed accordingly.
- 15.2 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 subparagraph (2) of the definition, the costs, receipts and savings reasonably connected with the Relevant Disposal of Land. For this purpose, and without prejudice to the generality of the foregoing:
- (i) the costs reasonably attributable to a Relevant Change of Circumstance falling within subparagraph (1) of the definition by virtue of the revocation or non-renewal of an existing abstraction licence (or the failure to obtain, following due application by Water Service or the Appointee, an abstraction licence for an existing controlled activity (as defined in Schedule 4 to the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006)) or the grant of a new abstraction licence shall, for the avoidance of doubt, include the costs reasonably incurred by the Appointee, in the light of such revocation, non-renewal or grant, for the purpose of or in connection with developing a new source or exercising the power under Article 215 of the Order to abstract water; and
 - (ii) the costs reasonably attributable to a Relevant Change of Circumstance falling within subparagraph (4) of the definition shall be taken to be equal to the Indexed Capital Costs Amount;

- (2) except in the case of a Relevant Change of Circumstance falling with subparagraph (2) of the definition, to what extent:
- (i) are the costs determined under (1) reasonably recoverable through charges for services provided, functions carried out by, and other activities of, the Appointee in its capacity as a water undertaker or sewerage undertaker which are not Standard Charges for Basket Items (not being Excluded Charges);
 - (ii) in the case of receipts and savings (but specifically excluding any receipts from land or property sales), is the Relevant Item relevant to services provided, functions carried out by, and other activities of, the Appointee as a water undertaker or sewerage undertaker which are not Basket Items in respect of which the Appointee makes Standard Charges (not being Excluded Charges),

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

- (3) both of the following:
- (i) 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
 - (ii) 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 (i) and (ii), 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 such an extent that such amounts otherwise fall to be taken into account as amounts reasonably attributable to, or connected with, the Relevant Item under this subparagraph (3) and subparagraph (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 subparagraph (1) of the definition, regard shall be had to whether either:
- (a) the Department of the Environment or the Department for Regional Development has notified the Authority of any change of policy, concerning any environmental or water-quality standard, which has been made since the Adjustment Factor was last determined; or
 - (b) the Appointee has itself given notice to the Authority of the application to it of, or any change to, any legal requirement, before referring that legal requirement to the Authority under subparagraph 15.115.4;
- (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:
- (i) one half of the Base Cash Flows in respect of Relevant Changes of Circumstance falling within subparagraph (2) of that definition; and
 - (ii) 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 subparagraph 15.415.4 or paragraph 16;
- (6) (a) where any part of an annual aggregate derived under subparagraph (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 subparagraph (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**");

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- (7) is the Materiality Amount equal to or does it exceed 10% of the turnover attributable to the Appointed Business in the latest financial year for which accounting statements have been prepared and delivered to the 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),
- (i) 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 Base Cash Flows at Outturn Prices (save in respect of Relevant Changes of Circumstances falling within subparagraph (2) of that definition, where one half of the Base Cash Flow at Outturn Prices shall be used) attributable to the creation, acquisition or disposal of non-depreciable assets (**Allowable Infrastructure Asset Expenditure**);
- (iii) all other Base Cash Flows at Outturn Prices (**Other Allowable Expenditure**);
- (iv) the sum of the Current Value of all Allowable Capital Expenditure occurring up to and including the relevant year, divided by the weighted average expected life of the assets attributable to that Allowable Capital Expenditure at the time those assets were or are expected to be created or acquired (**Allowable Depreciation**);
- (v) the sum of the Current Value of all Allowable Capital Expenditure occurring up to and including the relevant year less the sum of the Current Value of all Allowable Depreciation occurring up to and including the relevant year (**Allowable Net Asset Value**);
- (vi) the sum of the Current Value of all Allowable Infrastructure Asset Expenditure occurring up to and including the relevant year (**Allowable Infrastructure Asset Value**);
- (vii) the Appropriate Discount Rate, adjusted so as to exclude any allowance for changes in the Retail Price 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
- (ii) what is the sum of:
- (i) Other Allowable Expenditure;
- (ii) Allowable Depreciation; and
- (iii) the Allowable Return;
- (the **Annual Allowable Amount**);
- (9) what change to:
the Adjustment Factor
over the period until the first of the Charging Years for which the next Periodic Review falls to be carried out (having regard to any Review Notice or Reference

Notice which has been given at the time when the reference is made) (the **Relevant Period**) is most likely to allow, or, as the case may be, require, the Appointee to make such charges over the Relevant Period (**Adjusted Charges**), in such a manner as to secure that the increase, or, as the case may be, decrease, in revenue attributable to the making of Adjusted Charges would, in each year of the Relevant Period, be equal to:

- (i) the Annual Allowable Amount for that year; and
- (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 admitted to the Official List and to trading on the London Stock Exchange's market for listed securities,
- (c) the revenue attributable to the making of Adjusted Charges over the relevant period shall not result in cash flow 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 creditors would reasonably expect to be sufficient for a properly managed company holding the Appointments, whose sole business consists of being a water and sewerage undertaker, to secure an investment grade credit rating for the company.

In this Condition:

cash flow interest cover means the ratio of earnings (revenue less operating expenditure as defined in paragraph 14.3(3) of Condition B) to net interest payable (gross interest payable less interest receivable).

15.3 All of the following:

- (1) whether any circumstance (other than a Relevant Change of Circumstance) has occurred which has or will have:
 - (i) 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
 - (ii) a substantial favourable effect on the Appointed Business, or on its assets, liabilities, financial position, or profits or losses, being one which is fortuitous and (ii) not attributable to prudent management action; and
- (2) if so, what change should be made to the Adjustment factor. For this purpose:
 - (i) what constitutes "prudent management action" shall be assessed by reference to the circumstances which were known or which ought reasonably to have been known to the Appointee at the relevant time;

- (ii) an effect shall not be regarded as a substantial adverse effect or a substantial favourable effect in any case unless, if the questions set out in subparagraph 15.2 were to be asked in relation to the circumstance giving rise to it, the answer to that in 15.2(7) (taking the reference in it to 10% as a reference to 20%) would be in the affirmative.
- 15.4 A Reference Notice given to the Authority in respect of subparagraph 15.2 shall contain or be accompanied by reasonable details of the Relevant Item in respect of which the Reference Notice is given and, unless the Authority otherwise consents, shall be given not later than:
- (1) the fifteenth day of September immediately preceding the first of the Charging Years in respect of which the Appointee wishes the change to the Adjustment Factor to take effect; or
 - (2) if later, where the Authority has given a notice to the Appointee under subparagraph 16.1 in respect of the same Charging Year, within 14 days from the receipt by the Appointee of that notice.
16. *Changes to the Adjustment Factor initiated by the Authority relating to Notified Items and Relevant Changes of Circumstance and circumstances within 15.3(1)(ii)*
- 16.1 In the case of a Notified Item or where any Relevant Change of Circumstance has occurred or is to occur, the Authority may, having given notice to the Appointee specifying the Notified Item or, as the case may be, the Relevant Change of Circumstance, of its intention so to do not later than:
- (1) the fifteenth day of September immediately preceding the first of the Charging Years in respect of which it proposes the change to the Adjustment Factor to take effect; or
 - (2) if later, where the Appointee has given a Reference Notice to the Authority in respect of subparagraph 15.2 and falling within subparagraph 15.4(1) in respect of the same Charging Year, within 14 days from the receipt by the Authority of that Reference Notice,
- determine the questions set out in subparagraph 15.2 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 subparagraph 16.1 in respect of any number of Notified Items and Relevant Changes of Circumstance and subparagraph 15.2 shall be construed accordingly.
- 16.2 Where subparagraph 15.4(2) or 16.1(2) applies, the questions set out in (5) to (9) inclusive of subparagraph 15.2 shall be determined in respect of all Notified Items and Relevant Changes of Circumstance in respect of which the Appointee and the Authority have given notice, taken as a whole.
- 16.3 In the case of subparagraph 15.3, the Authority shall give notice to the Appointee of its intention to determine the questions set out in subparagraph 15.3 (1)(ii) and (2).

Part V. References to the Competition Commission and Modification of this Condition

17. *References to the Competition Commission*

Where:

- (1) pursuant to paragraph 10 or following a reference under paragraph 12, the Authority has not given notice to the Appointee of its determination within one year from the Review Notice Date or, in the case of a reference under paragraph 12, within one year from the date of the relevant Reference Notice;
- (2) following a reference under paragraph 15, the Authority has not given notice to the Appointee of its determinations (including any determinations under paragraph 16 which fall to be taken into account in determining the questions the subject of the reference under paragraph 15) within three months from the date of the relevant Reference Notice;

- (3) the Appointee disputes any determination made by the Authority under Part III or Part IV of this Condition.

The Appointee may, by notice given to the Authority within:

- (i) 13 months from the Review Notice Date or, in the case of a reference under paragraph 12, from the date of the relevant Reference Notice (in the cases referred to in subparagraph (1));
- (ii) four months from the date of the relevant Reference Notice (in the case referred to in subparagraph (2)); or
- (iii) two months from the date on which the Authority gives notice of its determination to the Appointee (in the cases referred to in subparagraph (3)),

require the Authority to refer to the Competition Commission for determination by it:

- (i) in any case referred to in subparagraph (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 16); or
- (ii) in any case referred to in subparagraph (3), the disputed determination.

18. *Modification of this Condition following Periodic Reviews and references to the Authority or the Competition Commission*

18.1 Except in the case of a Periodic Review carried out under paragraph 12, this Condition shall be modified by the change (if any) to the Adjustment Factor (which may be a different number for any Charging Year and may be a positive or negative number, or zero) necessary to give effect to any determination made by the Authority or the Competition Commission under, or, as the case may be, following a reference under Part III, Part IV or Part V of this Condition.

18.2 Where the Appointee requires the Authority to make a reference to the Competition Commission under paragraph 17 in the case referred to in subparagraph (3) of that paragraph this Condition shall be modified by the change (if any) to the Adjustment Factor necessary to give effect to the Authority's determination but so that subparagraph 18.1 shall then apply to the determination made by the Competition Commission following such reference.

Part VI. *Provision of Information to the Authority*

19.

19.1 The Appointee shall furnish to the Authority:

- (1) [Removed]
- (2) not later than 30th September immediately following the date of the Reference Notice (in the case of a reference under paragraph 12);
- (3) at the time when it gives the relevant Reference Notice to the Authority (in the case of a reference under paragraph 15 falling within subparagraph 15.4(1));
- (4) as soon as reasonably practicable and in any event not later than the expiry of one month from the date of the Authority's notice to the Appointee under paragraph 16 (in case of such a notice, including the case of a reference under paragraph 15 falling within sub paragraph 15.4(2)),

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

19.2 The Appointee shall also furnish to the Authority from time to time when so requested by the Authority such Information as the Authority may reasonably require to decide whether or not to make determinations under paragraph 16.

19.3 Any Information furnished to the Authority under this paragraph 19 or under paragraph 10 shall, if the Authority so requires to make its determination, be reported on by a person appointed by the Appointee and approved by the Authority (such approval not to be unreasonably withheld) (the **Reporter**).

19.4 The Appointee shall enter into a written contract of engagement with the Reporter which shall:

- (1) where such a report is required by the Authority under subparagraph 19.3, require the Reporter to prepare and furnish to the Authority, and separately to the Appointee, a written report addressed jointly to the Authority and the Appointee in form and substance such as may be specified by, or consistent with any guidelines specified by, the Authority at the time when it requires the report to be furnished, the matters so specified being reasonably appropriate to enable the 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 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 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 Authority or as required by law, any Information which the Reporter obtains in the course of preparing his report.

19.5 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:
 - (i) to inspect and make photocopies of, and take extracts from, any books and records of the Appointee maintained in relation to the Appointed Business;
 - (ii) to carry out inspections, measurements and tests on or in relation to any such premises or Relevant Plant; and
 - (iii) 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.

19.6 Nothing in subparagraph 19.5 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).

19.7 In subparagraphs 19.4 and 19.5:

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

Condition C: Infrastructure Charges

Explanatory Note

1.

1.1 Article 206 of the Order introduced a power whereby a water and sewerage undertaker could levy a charge for the initial connection of premises to a water supply or to a public sewer for domestic purposes. These charges are termed 'infrastructure charges'. They relate to the additional capital expenditure costs incurred by an undertaker in extending the network of reservoirs, mains, sewers and treatment works, and developing other resources, to provide capacity for new customers.

1.2 This Condition places limits on the amount of infrastructure charges for each water or sewerage connection. It also contains provisions for adjusting charges. The Condition is structured as follows:

Paragraph 2 deals with matters of interpretation and contains definitions of terms used in this Condition. (Definitions of terms common to all Conditions are included in Condition A);

Paragraphs 3 to 8 deal with the level of infrastructure charges, and paragraphs 11, 12 and 14 contain general provisions for reviewing the levels of charge;

Paragraphs 9 and 13 are concerned with the provision of information;

Paragraph 10 provides for arbitration in specified circumstances.

The Condition applies only to the charges under Article 206 of the Order, and does not apply for example, to amounts recoverable under Article 77, 79 or 155 of the Order or any local enactment.

1.3 The intention of the Condition, in placing a limit on infrastructure charges levied in different situations, is to reflect broadly the expected additional load placed on the system by different categories of property. In the case of houses and flats with a common supply pipe and subject to a common billing agreement for water supply and sewerage services, and in the case of properties (other than houses and flats) served by pipes larger than the standard size, the standard charge set out in paragraph 3 is increased by a multiplier reflecting estimated loadings. The basis on which these loadings are to be calculated is set out in the Appendix to the Condition. Paragraph 3 also provides for the levels of charge to be adjusted annually by the change in the retail prices index.

1.4 Where a site is redeveloped or a building is converted paragraph 5 provides that credit shall be given for the number of premises on the site in the five years beforehand, in calculating the limit on infrastructure charges.

1.5 Paragraph 6 provides that, where infrastructure charges are calculated on the basis of the multiplier in cases where a Common Billing Agreement exists, and either they are not paid in full within 14 days of the date of the connection, or the agreement is terminated prematurely by the customer, charges can be recovered at the standard rate.

1.6 Under paragraph 11 the levels of infrastructure charges can be reviewed at the same time that the K factor specified in Condition B is reviewed. Paragraph 12 provides for interim determinations up to the first Periodic Review, to ensure that the average charge per connection remains at the level originally intended, taking account of fresh information about the mix of connections and their relative loadings.

1.7 Paragraph 10 provides for arbitration by the Authority where there is a dispute about the calculation of the multiplier in cases where one applies.

1.8 This Condition (and especially the three possible bases for calculating charges - see paragraph 1.3 above) will have the effect that individual charges should closely reflect the differing estimates of additional demand for new capacity upon the undertaker's systems, which arise from the domestic element of various types of development. In order to assess the extent to which this is achieved, the Authority will collect, from the undertaker(s), information about numbers and types of connections in each category.

2. Interpretation

In this Condition:

- 2.1 **Infrastructure Charge** means a Water Infrastructure Charge or a Sewerage Infrastructure Charge;
- 2.2 **House** means any building or part of a building which is occupied as a private dwelling house or which, if unoccupied, is likely to be so occupied and, accordingly, includes a flat;
- 2.3 **Common Billing Agreement** means an agreement between the Appointee and any other person under which that person has undertaken to pay, on terms agreed between them charges for water supply or sewerage services, or both, in respect of two or more Houses which have a common Supply Pipe and which, in any case where that agreement relates to one of those services only, are also subject to a similar agreement for common billing between that person and the undertaker providing the other service;
- 2.4 **Relevant Multiplier** means a number (which may be one or more or less than one) calculated in the manner set out in the Appendix to this Condition;
- 2.5 **Standard Amount**, in relation to any Infrastructure Charge, means the amount of that charge specified in subparagraph 3.1.3;
- 2.6 **Supply Pipe** means any part of a service pipe which a water undertaker could not be, or have been required to lay under Article 80(2) and (3) of the Order; and
- 2.7 references to a connection are to such a connection as is mentioned in Article 206 of the Order, and references to the Appointee include, where appropriate, references to Water Service.
- 3. *Level of Infrastructure Charges*
- 3.1 Subject to the following provisions of this Condition, in respect of each Charging Year, the amount of any Infrastructure Charge shall be:
 - 3.1.1 in the case of a House subject to a Common Billing Agreement, the Standard Amount multiplied by the Relevant Multiplier for that house;
 - 3.1.2 in the case of premises which do not consist in a House or Houses and to which water is provided by a Supply Pipe with an internal diameter larger than the standard size for the time being adopted by the Appointee for new connections of Houses, the Standard Amount multiplied by the Relevant Multiplier for those premises; and
 - 3.1.3 in the case of any other premises:
 - Water Infrastructure Charge £250.00
 - Sewerage Infrastructure Charge £250.00
- 3.2 In respect of each Charging Year starting on or after 1 April 2008:
 - 3.2.1 the amounts specified in subparagraph 3.1.3 shall be adjusted by the percentage of any change in the Retail Prices Index between that published for the month of November in the Prior Year and that published for November 2006; and
 - 3.2.2 subparagraph 6.2 of Condition B shall apply to this Condition as if the reference in it to the Charges Limit were a reference to the Standard Amount.
- 4. Where, prior to 1 April 2007 Water Service has entered into an agreement under which a person has agreed, or Water Service has imposed a term or condition under Article 17(3) of the 1973 Order under which a person is required, to pay an amount in respect of works referable to a connection and that amount is greater than the amount which would otherwise be charged by the Appointee pursuant to paragraph 3, nothing in this Condition shall preclude the Appointee (as successor to Water Service by virtue of a transfer scheme made under Article 270 of the Order) from recovering the greater amount.
- 5.1 Subject to subparagraph 5.2, where a site is developed or redeveloped (including by means of conversion of a building or buildings on it) the total amount of Water Infrastructure Charges or, as the case may be, Sewerage Infrastructure Charges which may be recovered in respect of Houses and other premises on the site resulting from the

development or redevelopment shall not exceed the Standard Amount multiplied by X, where X equals:

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

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

- (a) each premises to which subparagraph 3.1.3 applies shall be deemed to have a Relevant Multiplier of 1; and
- (b) where, by virtue of paragraph 4 of this Condition, the Appointee would be permitted to charge more in respect of any premises resulting from the development or redevelopment than the level otherwise applying under paragraph 3, the limit shall be increased by the amount of the excess.

6.1 Subject to subparagraph 6.2, where:

- (a) a person who has received a demand, or undertaken, to pay Infrastructure Charges in respect of 2 or more Houses subject to a Common Billing Agreement fails to pay them, or any part of them, within 14 days of the date of connection; or
- (b) a Common Billing Agreement is terminated otherwise than in accordance with its terms by the person who has undertaken to pay charges under it

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

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

7. Paragraph 3 does not apply to the interest element of any Instalment Amount payable in accordance with Condition D.

8.1 Nothing in this Condition precludes the Appointee from charging less in any particular case than the level of Infrastructure Charge applying under paragraph 3.

8.2 Nothing in this Condition restricts the recovery or amount of any expenses or charges recoverable otherwise than under Article 206 of the Order or restricts the recovery or level of any Infrastructure Charge by reference to any such amount.

9. *Notification to Sewerage Undertakers*

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

10. *Arbitration*

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

11. *Periodic Review of Level of Infrastructure Charges*

11.1 Where a Periodic Review is to be carried out under paragraph 10 of Condition B, the Appointee may, by notice given to the Authority in relation to water or sewerage connections or both, refer to the Authority, for determination by it, the question whether any (and if so, what) change to the Standard Amount or the manner of calculation of any

- Relevant Multiplier should be made for the consecutive Charging Years to which that review relates.
- 11.2 Where a Periodic Review is to be carried out under paragraph 10 of Condition B, the Authority may, after giving notice to the Appointee in relation to water or sewerage connections or both, determine the question specified in subparagraph 11.1.
- 11.3 Notice under subparagraph 11.1 or 11.2 shall be given not later than 30 days after the Review Notice Date for the Periodic Review concerned.
12. *Interim Review of Level of Infrastructure Charges*
- 12.1 The Appointee may, by notice given to the Authority in relation to water or sewerage connections or both, refer to the Authority, for determination by it, the question whether any (and if so, what) change to the Standard Amount or the manner of calculation of any Relevant Multiplier should be made, in respect of the Subsequent Period, in order to ensure that:
- (a) in each Charging Year in that period, the aggregate number of water, or as the case may be, sewerage connections made by the Appointee bears the same proportion to its aggregate revenue from Water Infrastructure Charges or, as the case may be, Sewerage Infrastructure Charges as the aggregate number of such connections assumed by the Department for Regional Development for that year in setting the initial level of those charges under this Condition bears to the aggregate revenue so assumed by that Department; and
 - (b) over the Subsequent Period any shortfall in (or excess of) revenue from Infrastructure Charges in any Charging Year in the Prior Period, compared with the revenue so assumed for that year, is recovered (or, as the case may be, carried forward as a credit) to the extent attributable to any difference in those proportions in respect of that year.
- 12.2 In subparagraph 12.1:
- (1) the **Subsequent Period** means the period from 1st April immediately following the Charging Year in which the reference is made until 31st March 2010, unless the reference is made after 1st January 2009, in which case the Subsequent Period means the period from 1st April immediately following the Charging Year in which the reference is made until 31st March 2013; and
 - (2) the **Prior Period** means the period from 1st April 2007 until the end of the Charging Year in which the reference is made.
- 12.3 The Authority may, after giving notice to the Appointee in relation to water or sewerage connections or both, determine the question specified in subparagraph 12.1.
- 12.4 Notice under subparagraph 12.1 or 12.3 may be given not more than once in any Charging Year and not later than 31st December.
13. *Information*
- 13.1 The Appointee shall furnish to the Authority, at the time when it gives notice to it under subparagraph 11.1 or 12.1, such Information as the Appointee reasonably believes is necessary to enable the Authority to make its determination. The Appointee shall also furnish to the Authority, after receipt by it of notice given under subparagraph 11.2 or 12.3 or this subparagraph, such further Information, specified in the notice, as the Authority may reasonably require to make its determination.
- 13.2 The Appointee shall also furnish to the Authority from time to time, when so requested by it, such Information as it may reasonably require, to decide whether or not to give notice under subparagraph 11.2 or 12.3.
- 13.3 Any Information furnished to the Authority under this paragraph shall, if the Authority so requires to make its determination, be reported on by a person (the **Reporter**) appointed by the Appointee and approved by the Authority (such approval not to be unreasonably withheld). The provisions of subparagraphs 19.4, 19.5(2), 19.6 and 19.7(1) of Condition B shall apply to the engagement and terms of reference of each Reporter appointed pursuant

to this Condition as they apply to those of each Reporter appointed pursuant to that Condition, save that the reference in subparagraph 19.4(1) to subparagraph 19.3 of that Condition shall be taken as a reference to this subparagraph.

14. *References to the Competition Commission*

Where:

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

the Appointee may, by notice given to the Authority within:

- (a) 13 months from the Review Notice Date (in the cases referred to in (1) above); or
 - (b) two months from the date on which the notice under subparagraph 12.1 or 12.3 is given (in the cases referred to in (2) above); or
 - (c) two months from the date on which the Authority gives notice of its determination to the Appointee (in the cases referred to in (3) above),
- require the Authority to refer to the Competition Commission, for determination by it:
- (i) in any case referred to in (1) or (2) above, the relevant question; or
 - (ii) in the case referred to in (3) above, the disputed determination.

15. *Modification of this Condition*

15.1 This Condition shall be modified by the change (if any) to the Standard Amount or the manner of calculation of any Relevant Multiplier, necessary to give effect to any determination made by the Authority or the Competition Commission under, or, as the case may be, following a reference under, this Condition.

15.2 Where the Appointee requires the Authority to make a reference to the Competition Commission under paragraph 14, this Condition shall be modified by the change (if any) to the Standard Amount or the manner of calculation of any Relevant Multiplier, necessary to give effect to the Authority's determination, but so that subparagraph 15.1 shall then apply to the determination made by the Competition Commission following that reference.

15.3 In this paragraph "this Condition" includes the Appendix to it.

APPENDIX

CALCULATION OF RELEVANT MULTIPLIER

1. To calculate the Relevant Multiplier for a House to which subparagraph 3.1 of Condition C applies:
 - 1.1 ascertain in respect of all the Houses subject to the Common Billing Agreement in question (e.g. all the flats in a block to which such an agreement applies) and all communal facilities shared by all or any of them, the total number of water fittings in all the categories specified in column 1 of the table below;
 - 1.2 calculate by reference column 2 of the table the aggregate loading units attributable to that total number of water fittings (and increase the aggregate, where necessary, to take account of the minimum for domestic appliances);
 - 1.3 divide that number of loading units by 24 and divide the resulting figure by the number of Houses subject to the Common Billing Agreement;
 - 1.4 the resulting number, will be the Relevant Multiplier.
2. to calculate the Relevant Multiplier for premises to which subparagraph 3.1 of Condition C applies, ascertain in respect of the premises the total number of water fittings in all the categories specified in column 1 of the Table below; calculate by reference to column 2 of the Table the aggregate loading units attributable to that total number of water fittings; divide the aggregate loading units by 24; and the resulting number will be the Relevant Multiplier, provided that if the resulting number is less than 1, the Relevant Multiplier will be 1.

TABLE

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

Notes to be read with the Table:

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

Condition D: Charges Schemes

1. In this Condition:

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

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

the reference to domestic purposes in relation to the drainage of premises is a reference to the purposes specified in Article 154(5)(a) and in Article 174 of the Order.
2. It shall be the duty of the Appointee to ensure that at all times on and after the transfer date there is in effect a charges scheme in accordance with Article 201 of the Order by which:
 - (1) It fixes the charges to be paid for supplies of water for domestic purposes and for the drainage for domestic purposes of premises, except where such charges are determined by or in accordance with such an agreement as is referred to in Article 200 of the Order; and
 - (2) It fixes the charges to be paid for such connections as are described in Article 206 of the Order.
3. Paragraph 2 shall not apply to charges payable under or by virtue of Article 53 of the 1973 Order as, by virtue of the Water and Sewerage Services (2006 Order) (Commencement No. 1 and Transitional Provisions) Order (Northern Ireland) 2007, continue to be payable to the Appointee on and after the transfer date.
4. Any such charges scheme as is required to be in effect by virtue of subparagraph 2(2) shall provide that in the case of a connection to a water supply or, as the case may be, to a public sewer of a building or part of a building which is occupied as a dwelling house immediately before the connection is made:
 - (1) The relevant charges shall be paid in full, within a reasonable period specified by the Appointee after the connection in respect of which those charges are payable is made; or, at the option of the person liable to pay the relevant charges,
 - (2) An amount equal to the Instalment Amount shall be paid in each of the 12 years following the relevant connection being made, subject only to that person giving such undertakings to that effect as the Appointee may reasonably require.
5. The Appointee shall:
 - (1) Inform persons who enquire about charges for such connections as are described in Article 206 of the Order that it is required to have in effect a charges scheme in respect of such charges and of the provisions required to be included in that charges scheme by virtue of paragraph 4; and
 - (2) send a copy of any such charges scheme in its latest form free of charge to any person requesting it.
6. Nothing in this Condition shall prevent the Appointee from entering into such an agreement as is referred to in Article 200 of the Order.

Condition E: Prohibition on Undue Discrimination and Undue Preference and Information on Charges

1. This Condition applies in relation to charges:
 - (1) fixed by the Appointee under any such charges scheme as is referred to in Article 201 of the Order, by which the Appointee fixes the charges to be paid:
 - (a) for any water supply or sewerage services provided by the Appointee in the course of carrying out its functions; or
 - (b) in any of the cases described in Article 201 of the Order;
 - (2) for any water supply or sewerage services provided by the Appointee in the course of carrying out its functions or in connection with the carrying out of the Appointee's trade effluent functions payable under any such agreement as is referred to in Article 200 of the Order which are in accordance with standard charges published or fixed by the Appointee;
 - (3) payable where a discharge is made in pursuance of a consent given by the Appointee or, as the case may be, Water Service for the purposes of Chapter III of Part VI of the Order which are in accordance with standard charges published or fixed by the Appointee;
 - (4) for any water supply or sewerage services provided by the Appointee in the course of carrying out its functions or in connection with the carrying out of the Appointee's trade effluent functions payable under any such agreement as is referred to in Article 200 of the Order, which are not in accordance with standard charges published or fixed by the Appointee;
 - (5) payable where a discharge is made in pursuance of a consent given by the Appointee or, as the case may be, Water Service for the purposes of Chapter III of Part VI of the Order which are not in accordance with standard charges published or fixed by the Appointee; and
 - (6) determined by agreement in respect of a supply of water for non-domestic purposes which are not in accordance with standard charges published or fixed by the Appointee.

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

2. It shall be the duty of the Appointee in fixing or agreeing charges falling within any of subparagraphs 1(1) to 1(3) inclusive to ensure that no undue preference is shown to, and that there is no undue discrimination against, any class of customers or potential customers.
3. It shall be the duty of the Appointee in fixing or agreeing charges falling within any of subparagraphs 1(4) to 1(6) inclusive to ensure that no undue preference is shown to, and that there is no undue discrimination against, any customer or potential customer, but so that nothing in this paragraph shall require the Appointee to have regard to any charges fixed or agreed by the Water Service prior to the transfer date.
4. The Appointee shall provide to the Authority such Information as the Authority may reasonably request in order to satisfy itself that the Appointee is complying with this Condition, it being acknowledged that Information with which the Authority is furnished from time to time under Condition F may not be sufficient or relevant of itself for this purpose.
5. The Appointee shall provide to the Authority such Information as the Authority may from time to time reasonably request about the nature of any supply, service or trade effluent function made, provided or carried out under any such agreement or consent as is referred to in subparagraphs 1(4), 1(5) and 1(6) and the terms and conditions on which that supply, service or trade effluent function is made, provided or carried out.

6. In determining whether there is undue preference or undue discrimination for the purpose of this Condition, no account shall be taken of any grant or subsidy paid to the Appointee by the Department for Regional Development under paragraph (1) or (3) of Article 213, or Article 278, of the Order and accordingly (but without limitation) nothing in this Condition shall prevent the Appointee from:
- (1) fixing charges to classes of persons referred to in regulations made under Article 202 of the Order that are lower than the charges payable by other customers; or
 - (2) reducing or discounting charges payable by any customers in a manner which takes account of any grant or subsidy paid to the Appointee by the Department for Regional Development under Article 213(3) or Article 278 of the Order for the purpose of defraying or contributing towards or otherwise in respect of the charges payable by such customers.
7. This Condition shall not apply:
- (1) so as to require the Appointee to contravene any local statutory provision;
 - (2) to:
 - (a) any such terms or conditions as are determined by the Authority (or by a person appointed by it) under Article 95 of the Order;
 - (b) any such terms or conditions of consents or agreements with respect to trade effluent as are imposed by the Department of the Environment or, as the case may be, the Authority under Chapter III of Part VI of the Order;
 - (3) to any Water Infrastructure Charge or Sewerage Infrastructure Charge the amount of which does not exceed the relevant amount specified in Condition C which applies from time to time for the purposes of that Condition;
 - (4) to any terms and conditions on which any supply of water in bulk is given by the Appointee to another water undertaker; or
 - (5) to any charging arrangements having effect immediately before the transfer date and which continue to have effect on and after the transfer date by virtue of Article 270 of the Order (and/or the transfer scheme made under it) or any transitional provision made under Article 1(5) or 306 or any other provision of the Order.

Condition F Accounts and accounting information

1. *Introduction*

The purposes of this Condition are to ensure that:

- (1) the financial affairs of the Appointed Business can be assessed and reported on separately from other businesses and activities of the Appointee, as if its sole business consisted of being a water undertaker having its equity share capital admitted to the Official List and to trading on the London Stock Exchange's market for listed securities;
- (2) information on revenues, costs, assets and liabilities attributable to specified activities of the Appointed Business can be provided and reported on;
- (3) transactions between the Appointed Business and any other business or activity of the Appointee or any Associated Company can be assessed and reported on;
- (4) there is no cross-subsidy between the Appointed Business and any other business of the Appointee or between the Appointed Business and any Associated Company;
- (4A) The transfer of assets (including the provision of financial support) to Associated Companies does not adversely affect the Appointee's ability to carry out its functions as a water and sewerage undertaker or to finance those activities;
- (5) the Authority is furnished with regular accounting and other information to enable it to compare the financial position and performance (including, without limitation, costs) of the Appointed Business and of so much of the respective businesses and activities of undertakers holding appointments in England and Wales made under Chapter I of Part II of the Water Act 1989 or in Northern Ireland made under Chapter I of Part III of the Order as consists of the carrying out of the Regulated Activities; and
- (6) the Appointee has at its disposal sufficient financial and managerial resources to carry out the Regulated Activities (including any investment programme necessary to fulfil its obligation under the Appointment(s)).

2. *Interpretation and Construction*

2.1 In this Condition and for the purposes of 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.

"**infrastructure assets**" means

- (1) Network Assets; and
- (2) all of the following:
 - (a) valves and hydrants forming part of the water and trunk main systems;
 - (b) impounding and pumped raw water storage reservoirs;
 - (c) dams;
 - (d) sludge pipe lines; and
 - (e) outfall pipes and other pipes for the conveyance of effluent from any sewage disposal works of the Appointee which discharge directly into the sea or coastal waters;

"**infrastructure renewals expenditure**" means expenditure on maintaining or restoring the original operating capability, qualitative performance and condition of infrastructure assets, other than expenditure which is capitalised and routine day to day maintenance expenditure which is charged as an operating cost to the profit and loss account;

"**Network Assets**" means

- (1) in respect of a water undertaker:
 - (a) water mains and trunk mains (other than any pumps, valves and hydrants);

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

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

"PPP contract" means:

- (i) any long-term arrangements with the Appointee under HM Government's private finance initiative; or
- (ii) broadly equivalent long-term arrangements with the Appointee involving the significant transfer of risk from the Appointee to the counterparty and the provision to the Appointee of capital works, both in relation to the performance by the Appointee of the Regulated Activities,

pursuant to which, in each case, the counterparty provides works (or, as the case may be, such works) whether or not together with facilities or services, which relate to the performance by the Appointee of the Regulated Activities;

"Principal Services" means

- (1) water supply; and
- (2) sewerage services,

and references to a Principal Service are to either and each of water supply and sewerage services;

"sewerage services" includes sewage treatment and disposal and reception, treatment and disposal of trade effluent.

2.2 Except where otherwise expressly provided, references in this Condition to costs or liabilities shall be construed as including taxation, and references to any profit and loss account shall be construed accordingly.

2.3 For the purposes of this Condition:

- (1) all forms of property shall be assets, whether situated in the United Kingdom or not, including:
 - (a) options, debts and incorporeal property generally; and
 - (b) any currency including sterling;
- (2) references to the supply of a service include references to anything (including the service of any employee) being made available; and
- (3) references to a transfer of an asset or liability include references to a part transfer of an asset or liability and, without limitation, there is a part transfer of an asset where an interest or right in or over the asset is created.

3. *Accounting Records*

The Appointee shall keep proper accounting records in a form which enables the revenues, costs, assets and liabilities of, or reasonably attributable to, the respective businesses and activities of the Appointee described in this Condition and the other matters mentioned in this Condition to be separately identified, having regard to the terms of any guidelines notified from time to time by the Authority to the Appointee under paragraph 5, 6, 7, or 8.

4. *Accounting Statements*

4.1 The Appointee shall prepare on a consistent basis in respect of each financial year ending after the transfer date accounting statements which shall comprise, and show separately in respect of each of:

- (1) the Appointed Business;
- (2) on an aggregated basis, all businesses and activities of the Appointee other than the Appointed Business; and
- (3) on an aggregated basis, all businesses and activities of the Appointee including the Appointed Business

a profit and loss account, a statement of assets and liabilities and a statement of source and application of funds, together with notes thereto, setting out the revenues, costs (including depreciation, where charged), assets and liabilities thereof, or reasonably attributable thereto.

4.2 Accounting statements prepared under subparagraph 4.1 shall:

- (1) so far as reasonably practicable having regard to the purposes of this Condition, have the same content as the annual accounts of the Appointee prepared under the 1986 Order and be prepared in accordance with the formats and the accounting policies and principles which apply to those accounts; and
- (2) state the principal accounting policies applied.

5. *Segmental Information*

5.1 Accounting statements prepared under paragraph 4 shall show or disclose separately:

- (1) an analysis of total operating costs (excluding interest and taxation) of the Appointed Business showing separately for each Principal Service:
 - (a) manpower costs
 - (b) other costs of employment
 - (c) power
 - (d) local authority rates
 - (e) water charges (including abstraction charges and amounts payable for taking supplies of water in bulk)
 - (f) local authority sewerage agencies
 - (g) materials and consumables
 - (h) hired and contracted services
 - (i) PPP contract costs;
 - (j) charges for bad and doubtful debts
 - (k) depreciation and amortisation (where charged)
 - (l) intangible assets written off
 - (m) infrastructure renewals expenditure
 - (n) exceptional items, and
 - (o) on an aggregated basis, all other operating costs.

The analysis shall include the details reasonably necessary to reconcile the operating costs shown in it with the total operating costs (excluding interest and taxation) of the Appointee shown in the accounting statements prepared under paragraph 4 in respect of the same period;

- (2) an analysis of total turnover of the Appointed Business showing separately turnover attributable to:
 - (a) water supply and, separately on an aggregated basis, sewerage and sewage treatment and disposal (excluding reception, treatment and disposal of trade effluent), distinguishing in each case between the

- provision of those services on a measured and unmeasured basis respectively;
- (b) on an aggregated basis, reception, treatment and disposal of trade effluent;
- (c) grants; and
- (d) on an aggregated basis, all other sources;
- (3) an analysis of total tangible fixed assets attributable to the Appointed Business showing separately:
 - (a) for each of the items included in the annual accounts of the Appointee prepared under the 1986 Order required to be disclosed under section B of Part I of Schedule 4 to the 1986 Order; or
 - (b) for each of the items included in such other analysis of tangible fixed assets by asset type as is disclosed in those annual accounts; and
 - (c) if not separately disclosed in those annual accounts, for infrastructure assets

amounts attributable to each Principal Service, and as a separate category, on an aggregated basis tangible fixed assets which are not attributable to either Principal Service.

The analysis shall include:

- (i) the details reasonably necessary to reconcile the tangible fixed assets shown in it with the tangible fixed assets shown in the analysis prepared under this subparagraph in respect of the immediately preceding financial year (including details of grants);
 - (ii) a statement of any assets which have been re-classified as current assets during the relevant financial year; and
 - (iii) to the extent that information is required to be given in respect of any of the items included in the annual accounts of the Appointee prepared under the 1986 Order referred to in this subparagraph 5.1(3) by virtue of Part III of Schedule 4 to the 1986 Order, the same information in respect of those items. In the case of the first analysis prepared under this subparagraph the reconciliation required to be included under (i) above shall be with the analysis prepared by the Water Service in respect of the financial year ended last before the transfer date; and
 - (4) details necessary to reconcile expenditure made or incurred in relation to infrastructure assets with the expenditure made or incurred in relation to Network Assets during the same financial year as shown (in relation to a financial year commencing on or after 1 April 2010) in the statement required to be delivered to the Authority under subparagraph 5.3 of Condition L.
- 5.2 Accounting statements prepared under paragraph 4 shall show separately for each item relating to sewerage services included in the analyses under subparagraphs 5.1(1) (operating costs) and 5.1(3) (tangible fixed assets) an analysis between amounts which are attributable to sewerage (including reception of trade effluent) and sewage treatment and disposal (including treatment and disposal of trade effluent).
- 5.3 The Authority may, after consulting with such bodies as are reasonably representative of undertakers holding appointments under Chapter I of Part III of the Order, or if none, the Appointee, from time to time by reasonable notice to the Appointee specify in such guidelines as are reasonable and appropriate for the purpose set out in subparagraph 1(5), variations of:
- (1) the matters required to be shown or disclosed under subparagraph 5.1(1) (but not so as to require separate analyses of matters comprised within any of the items listed in that subparagraph); and

- (2) the items in respect of which the analysis of total fixed assets is to be prepared under subparagraph 5.1(3),
and thereafter the Appointee shall show or disclose information under subparagraph 5.1(1) in respect of those matters or, as the case may be, shall prepare the analysis under subparagraph 5.1(3) in respect of those items, in each case as so varied from time to time.
6. *Transactions entered into by the Appointee or the Appointed Business with or for the benefit of Associated Companies or other businesses or activities of the Appointee*
- 6.1 The Appointee shall ensure that every transaction between the Appointed Business and any Associated Company (or between the Appointed Business and any other business or activity of the Appointee) is at arm's length, so that neither gives to or receives from the other any cross-subsidy.
- 6.2 Subject to subparagraphs 6.3 to 6.7, accounting statements prepared under paragraph 4 shall disclose in relation to each transaction of a description specified in the first column of the Appendix to this Condition which took place during the financial year to which those statements relate, the company or, as the case may be, the business or activity which was party to the transaction with the Appointee or, as the case may be, the Appointed Business or which otherwise benefited from the transaction and the information in relation to that transaction specified in the second column of that Appendix.
- 6.3 Subject to subparagraph 6.4, any amount required to be disclosed in relation to a transaction specified in paragraph 3, 4, 5, or 6 of the Appendix may be aggregated with any amount relating to any other transaction falling within the same paragraph with the same company or other business or activity of the Appointee.
- 6.4 Subject to subparagraph 6.7, if the amount to be disclosed under subparagraph 6.2 in respect of any single transaction between the Appointee and any Associated Company (or between the Appointed Business and any other business or activity of the Appointee) exceeds 0.5% of the turnover of the Appointed Business, or £100,000, whichever is the greater, then that transaction shall not be aggregated under subparagraph 6.3 and the Appointee shall include in any accounting statement prepared under paragraph 4 the information about that transaction which is specified in the Appendix in relation to a transaction of that kind and which complies with any guidelines issued by the Authority for this purpose.
- 6.5 The Appointee shall, when submitting accounting statements prepared under paragraph 4 to the Authority, report to it the turnover of any Associated Company with which the Appointed Business has undertaken any transaction of any kind specified in the Appendix.
- 6.6 Nothing in subparagraph 6.2 shall require the disclosure of any information if the aggregate of any amounts required to be disclosed under paragraphs 3, 4, 5, and 6 of the Appendix relating to transactions with the same company or other business or activity of the Appointee is not material to the Appointed Business as a whole. For the avoidance of doubt, if the aggregate of such amounts is material to the Appointed Business as a whole then information shall be disclosed in accordance with this paragraph and the Appendix in relation to each such transaction (subject always to subparagraph 6.3). For the purpose of this subparagraph the question whether an amount is material to the Appointed Business as a whole shall be determined by the Auditors by reference to whichever is the greater of:
- (1) The book value of the asset or liability the subject of, or affected by, the transaction; and
 - (2) The consideration or other charge given, paid or waived.
- 6.7 Nothing in this paragraph 6 or the Appendix shall require the disclosure of information which relates solely to a transaction wholly unconnected with the Appointed Business.
- 6.8 The Appointee shall not, in respect of any Charging Year make any payments to any Associated Company in respect of the services rendered to the Appointee by that company, which exceeds:

- (i) such prices in respect of the service in question which the Appointee has ascertained by market testing in accordance with such arrangements as the Authority may have approved for the purpose of this paragraph and as set out in any part of Ofwat's Regulatory Accounting Guideline 5 (Transfer Pricing in the Water and Sewerage Industry) or any substitute which the Authority may from time to time specify for the purposes of this Condition and which is notified to undertakers holding appointments under Chapter I of Part III of the Order, provided that those arrangements have no prejudicial effect upon the proper carrying out of the Appointee's functions or any of them; or
 - (ii) if, in the opinion of the Authority, the Appointee has demonstrated that market testing as described in (i) above is inappropriate, such proportion as the Authority may agree of the Associated Company's costs in providing to the Appointee the service in question (including a reasonable return to the Associated Company).
- 6.9 Without prejudice to paragraphs 6.1 to 6.7 above, the Appointee shall obtain from any Associated Company referred to in paragraph 6.8, such information about the latter's costs as the Authority may reasonably require.
- 6.10 The Appointee shall not, without the consent of the Authority and otherwise than in compliance with its directions concerning the valuation of the asset and the treatment of the consideration in the Appointee's accounts, transfer to any Associated Company to which paragraph 6.8 applies any right or asset to which paragraph 3 of Condition K applies.
- 6.11 (1) The Appointee shall not, without the consent of the Authority:
- (i) give any guarantee of any liability of any Associated Company; or
 - (ii) make to any such company any loan.
- (1A) The Appointee shall not, without the consent of the Authority, enter into an agreement or incur a commitment incorporating a cross-default obligation.
- (B)(2) For the purposes of this paragraph 6.11:
- (a) "**liability**" includes the creation of any mortgage, charge, pledge, lien or other form of security or encumbrance, the making of any loan and the undertaking of any other indebtedness;
 - (b) "**loan**" includes the transfer or lending, by any means, of any sum of money or of any rights in respect of that sum; and
 - (c) "**cross-default obligation**" means a term of any agreement or arrangement whereby the Appointee's liability to pay or repay any debt or other sum arises or is increased or accelerated by reason of a default of any person other than the Appointee.
- 6.12 Without prejudice to the application of paragraph 6.2, the Appointee shall declare or pay dividends only in accordance with a dividend policy which has been approved by the board of directors of the Appointee and which complies with the following principles:
- (i) the dividends declared or paid will not impair the ability of the Appointee to finance the Appointed Business; and
 - (ii) under a system of incentive regulation, dividends would be expected to reward efficiency and the management of economic risk.

Ring-Fencing

- 6A.1 (1) The Appointee shall at all times act in the manner best calculated to ensure that it has adequate:
- (i) financial resources and facilities;
 - (ii) management resources; and
 - (iii) systems of planning and internal control
- to enable it to secure the carrying out of the Regulated Activities including the investment programme necessary to fulfil its obligations under the Appointments. The above requirements must not be dependent upon the discharge by any other person of any obligation under, or arising from, any agreement or arrangement under which that other person has agreed to provide any services to, or carry out works for, the Appointee in its capacity as a Relevant Undertaker.
- (1A) For the purposes of subparagraph (1)(iii) above, the Appointee shall ensure that its systems of planning and internal control comply with such guidance as the Authority may, from time to time, specify in writing for the purposes of this Condition.
- (1B) Paragraph 10 in this Condition F (Reference of disputed matters to the Competition Commission) shall apply to the guidance referred to in subparagraph (1A) above, as it applies to the guidelines mentioned in subparagraph 10.1.
- 6A.2A The Appointee shall, at the same time as it complies with subparagraph 9.3 (submission of Accounting Statements) submit to the Authority a Certificate in the following terms:
- (1) that in the opinion of the directors the Appointee will have available to it sufficient financial resources and facilities to enable it to carry out, for at least the next 12 months, the Regulated Activities (including the investment programme necessary to fulfil the Appointee's obligations under the Appointments);
 - (2) that in the opinion of the directors the Appointee will, for at least the next 12 months, have available to it:
 - (i) management resources; and
 - (ii) methods of planning and internal control which are sufficient to enable it to carry out those functions as required by subparagraph (1) in 6A.1 above; and
 - (3) that in the opinion of the directors, all contracts entered into with any Associated Company include all necessary provisions and requirements concerning the standard of service to be supplied to the Appointee, to ensure that it is able to meet all its obligations as a water and a sewerage undertaker.
- 6A.2B (1) The Appointee shall, when it complies with paragraph 6A.2A, submit with each certificate a statement of the main factors which the directors have taken into account in giving that certificate.
- 6A.2B (2) Without prejudice to paragraph 6A.3 below, the directors shall inform the Authority in writing as soon as they become aware of any circumstances which causes them to believe that the most recent certificate under paragraph 6A.2A could not be repeated in the light of that circumstance.
- 6A.3 (1) Whenever the directors become aware that the Appointee or any Group Company is proposing to embark upon any activity which is not one of those described in subparagraph 6A.1 and which may be material in relation to the Appointee's ability to finance the carrying out of the functions mentioned in that subparagraph, they shall as soon as is practicable, having regard to the purposes of this Condition, notify the Authority about that proposal.
- 6A.3 (2) Not later than 14 days after the directors become aware that the Appointee or any Group Company has embarked upon any activity to which subparagraph 6A.3 (1)

applies, they shall submit to the Authority a Certificate in the terms specified in subparagraph 6A.2A.

6A.4 Each certificate under subparagraph 6A.2A, 6A.2B or 6A.3 shall be either:

- (1) signed by the directors of the Appointee for the time being; or
- (2) approved by a duly-convened meeting of the board of directors of the Appointee for the time being, signed (in confirmation of that approval) by a director or the secretary of the Appointee and have attached to it a certified copy of an extract of the minutes of the relevant meeting containing the resolution to approve it.
- (3)
 - (a) Each certificate under paragraph 6A.2A, shall be accompanied by a report prepared by the Appointee's Auditors and addressed to the Authority, stating whether they are aware of any inconsistencies between that certificate and either the statements referred to in paragraph 9.3 or any information which the Auditors obtained in the course of their work as the Appointee's Auditors and, if so, what they are.
 - (b) Each certificate under paragraph 6A.2A(2) shall be accompanied by a report prepared by the Appointee's Reporter and addressed to the Authority, setting out the Reporter's opinion about the extent to which the Appointee has, during the preceding 12 months complied with its obligation in subparagraph (1)(iii) and paragraph (1A) in 6A.1 of this condition.

6A.5A The Appointee shall, at all times, conduct the Appointed Business as if it were substantially the Appointee's sole business and the Appointee were a separate listed public limited company. The Appointee should have particular regard to the following in the application of this Condition:

- (a) the composition of the board of directors of the Appointee should be such that the directors, acting as such, are able to act independently of the parent company or controlling shareholder and exclusively in the interests of the Appointee;
- (b) the Appointee must ensure that each of its directors must disclose, to the Appointee and the Authority, conflicts between duties of the directors as directors of the Appointee and other duties;
- (c) where potential conflicts exist between the interests of the Appointee as a water and a sewerage undertaker and those of other Group Companies, the Appointee and its directors must ensure that, in acting as directors of the Appointee, they should have regard exclusively to the interests of the Appointee as a water and a sewerage undertaker;
- (d) no director of the Appointee should vote on any contract or arrangement in which he has an interest by virtue of other directorships although nothing in this subparagraph shall prevent any director of the Appointee from voting on the declaration, recommendation, payment or making of a dividend or other form of distribution. This arrangement should be reflected in the Articles of Association of the Appointee;
- (e) the Appointee should inform the Authority without delay when:
 - (i) a new director is appointed;
 - (ii) the resignation or removal of a director takes effect; or
 - (iii) any important change in the functions or executive responsibilities of a director occurs.

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

- (f) the dividend policy adopted by the Appointee and the implications of paragraph 6.12 of this Condition F; and

- (g) the Principles of Good Governance and Code of Best Practice (or any successor document having a similar purposes and content) as may from time to time be incorporated into or approved for the purposes of the Listing Rules of the Financial Services Authority.
- 6A.5B The Appointee shall, at such times and in such ways as may from time to time be required by the Listing Rules of the Financial Services Authority, publish such information about its annual interim and final results as is by those rules required to be announced by a company whose shares are for the time being admitted to the Official List and to trading on the London Stock Exchange's market for listed securities.
- 6A.6(1) The Appointee shall ensure that it, or any Associated Company as issuer of corporate debt on its behalf, obtains by 31st March 2008 a shadow rating and obtains by 30 June 2009, and thereafter maintains at all times, an issuer credit rating. The Appointee shall have as its objective the obtaining, and maintaining thereafter, of an investment grade rating by 30 June 2009.
- 6A.6(2) Once an issuer credit rating has been obtained in accordance with paragraph 6A.6(1), the Appointee shall not transfer, lease, license or lend any sum or sums, asset, right or benefit to any Associated Company save in accordance with paragraph 6A.6(3), if:
- (a) the Appointee does not hold an investment grade rating;
 - (b) where the Appointee holds more than one issuer credit rating, one or more of the ratings so held is not investment grade; or
 - (c) any issuer credit rating held by the licensee is BBB- by Standard & Poor's Ratings Group (or any of its subsidiaries) or Fitch Ratings Ltd or Baa3 by Moody's Investors Service, Inc. (or such higher issuer credit rating as may be specified by any of these credit rating agencies from time to time as the lowest investment grade credit rating), or is an equivalent rating from another reputable credit rating agency which has comparable standing in the United Kingdom and the United States of America and:
 - (i) is on review for possible downgrade; or
 - (ii) is on Credit Watch or Rating Watch with a negative designation;
 or, where neither (i) nor (ii) applies:
 - (iii) the rating outlook of the Appointee as specified by any credit rating agency referred to in subparagraph (c) which at the relevant time has assigned the lower or lowest investment grade issuer credit rating held by the licensee has been changed from stable or positive to negative.
- 6A.6(3) Where subparagraph 6A.6(2) applies, the Appointee may not without the prior written consent of the Authority (following disclosure of all material facts) transfer, lease, license or lend any sum or sums, asset, right or benefit to any Associated Company otherwise than by way of:
- (a) payment properly due for any goods, services or assets in relation to commitments entered into prior to the date on which the circumstances described in paragraph 6A.6(2) arise, and which are provided on an arm's length basis and on normal commercial terms;
 - (b) a transfer, lease, licence or loan of any sum or sums, asset, right or benefit on an arm's length basis, on normal commercial terms and where the value of the consideration due in respect of the transaction in question is payable wholly in cash and is paid in full when the transaction is entered into;
 - (c) repayment of, or payment of interest on, a loan not prohibited by Condition F and which was contracted prior to the date on which the circumstances in paragraph 6A.6(2) arise, provided that such payment is not made earlier than the original due date for payment in accordance with its terms; and
 - (d) payments 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 payments are not made before the date on which the amounts of tax thereby relieved would otherwise have been due.

6A.6(4) In this condition:

"Investment grade rating" means a stand alone rating not being a shadow rating recognised as investment grade by Standard and Poor's Rating Group (or any of its subsidiaries), by Moody's Investors Services Incorporated (or any of its subsidiaries) or by Fitch Ratings Limited, or any other reputable credit rating agency which has comparable standing in the United Kingdom and the United States of America.

"Issuer credit rating" means a credit rating assigned to an issuer of corporate debt by Standard and Poor's Rating Group (or any of its subsidiaries), by Moody's Investors Services Incorporated (or any of its subsidiaries) or by Fitch Ratings Limited, or any other reputable credit rating agency which has comparable standing in the United Kingdom and the United States of America.

"Shadow rating" means a credit rating (not being an issuer credit rating) assigned to the Appointee by any reputable financial institution or firm of accountants applying principles, methodology and standards that are analogous to and consistent with those adopted by reputable credit rating agencies.

"Stand alone rating" means, in relation to the Appointee, a rating that has been assigned to the Appointee on a basis that disregards the effect of any ownership or guarantee provided by the Department for Regional Development or any other government entity.

7. *Basis of allocations and apportionments*

7.1 The analyses of operating costs and tangible fixed assets prepared under subparagraphs 5.1(1) and 5.1(3) and 5.2 shall give a description of the bases of any apportionments or allocations of costs and assets and shall be prepared in accordance with any guidelines which may be issued from time to time by the Authority under subparagraph 7.3.

7.2 Accounting statements prepared under paragraph 4 and, where relevant, the description of transactions prepared under paragraph 6 shall:

- (1) describe the basis of any apportionment or allocation of revenues, costs, assets and liabilities between the Appointed Business and any other business or activity of the Appointee or between the Appointee and any Associated Company;
- (2) specify the nature of the revenues, costs, assets or liabilities which have been so apportioned or allocated; and
- (3) specify between which business, activity or Associated Company the revenues, costs, assets or liabilities have been so apportioned or allocated.

7.3 The Authority may, after consulting such bodies as are reasonably representative of undertakers holding appointments made under Chapter I of Part III of the Order, or if none, the Appointee, from time to time by reasonable notice to the Appointee issue such guidelines as are reasonable and appropriate for the purpose set out in subparagraph 1(5) as to the bases of allocations and apportionments to be adopted in preparing the analyses required under subparagraphs 5.1(1) and 5.1(3) and 5.2 and in making the allocations and apportionments referred to in subparagraph 7.2(1) and thereafter the Appointee shall prepare the analyses and make the allocations and apportionments in accordance with such guidelines as may apply from time to time.

8. *Current Cost Accounting Statements*

8.1 In addition to preparing accounting statements under paragraph 4, the Appointee shall prepare accounting statements, on the current cost basis in respect of the same period in accordance with such guidelines as are reasonable and appropriate for the purposes of this Condition as the Authority may from time to time, after consulting with such bodies as are reasonably representative of undertakers holding appointments made under Chapter I of Part III of the Act, or if none the Appointee, notify to the Appointee for the purposes of this paragraph.

8.2 Guidelines notified by the Authority to the Appointee under subparagraph 8.1 may:

- (1) specify the form and content of current cost accounting statements, including information on specified types of revenue, cost, asset or liability and information on the revenues, costs, assets and liabilities attributable to specified activities, provided that the guidelines may not require the Appointee to disclose information in such current cost accounting statements in respect of items in respect of which the Appointee is not required to give information in accounting statements prepared under paragraph 4 from time to time;
- (2) require any reconciliation that may be required with the annual accounts of the Appointee prepared under the 1986 Order;
- (3) specify the accounting principles and the bases of valuation to be used in preparing current cost accounting statements; and
- (4) specify the nature of the report by the Auditors required to be given in respect of accounting statements.

9. *Audit and publication of Accounting Statements*

9.1 The Appointee shall procure the following reports by the Auditors addressed to the Authority:

- (1) in respect of each set of accounting statements prepared under this Condition, a report stating whether in their opinion:
 - (a) proper accounting records have been kept by the Appointee as required by paragraph 3; and
 - (b) that set of accounting statements (including the information required to be shown or disclosed under paragraphs 5, 6 and 7) is in agreement with the Appointee's accounting records and complies with the relevant paragraphs (including any relevant guidelines) or, in the case of accounting statements prepared under paragraph 8, complies with the relevant guidelines;
- (2) in respect of each set of accounting statements prepared under paragraph 4, a report stating whether in their opinion that set of accounting statements represents a true and fair view of the revenues, costs, assets and liabilities of, or reasonably attributable to, the business and activities mentioned in paragraph 4; and
- (3) in respect of each set of accounting statements prepared under paragraph 8, a statement of opinion as to such other matters as may be specified in the guidelines applying to those accounting statements.

9.2 The Appointee shall enter into a contract of appointment with the Auditors which shall include a term that the Auditors will provide such further explanation or clarification of their reports, and such further Information in respect of the matters which are the subject of their reports, as the Authority may reasonably require.

9.3 The Appointee shall deliver to the Authority a copy of each set of accounting statements prepared under this Condition and of each report referred to in subparagraph 9.1 as soon as reasonably practicable and in any event not later than 15 July following the end of the financial year to which they relate.

9.4 Accounting statements prepared under this Condition (excluding the information required to be disclosed under subparagraphs 5.1(4) and 5.2, paragraph 6 and subparagraphs 7.1 and 7.2 and any information exempted from this subparagraph from time to time by the Authority by notice to the Appointee), together with the Auditors' reports delivered to the Authority under subparagraph 9.3 in respect of those accounting statements (but excluding any part of any such report to the extent that it relates specifically to any information excluded or exempted from this subparagraph as aforesaid), shall be published with the annual accounts of the Appointee prepared under the 1986 Order or, at the Appointee's option, with the annual accounts of its holding company prepared under the 1986 Order and copies thereof made available upon request to customers.

10. *Guidelines and references to the Competition Commission*

- 10.1 The Appointee may, by notice given to the Authority within one month of the date of any such notice or notification as is referred to in paragraphs 5, 6, 7 and 8, require the Authority to refer to the Competition Commission for determination by it the question whether the guidelines the subject of the relevant notice or notification are appropriate and reasonable for the purposes specified in the relevant paragraph.
- 10.2 Where the Appointee requires the Authority to make a reference to the Competition Commission under subparagraph 10.1 any guidelines issued by the Authority which are the subject of that reference shall not apply unless and until the Commission determines that they shall apply.

APPENDIX

COLUMN 1		COLUMN 2	
1.	<i>Any borrowings or sums lent:</i>	1.	<i>The principal of the amount borrowed or lent, the date on which or the dates between which repayment is to be made and the rate of interest payable.</i>
	<i>by or to the Appointed Business to or by any other business or activity of the Appointee; or</i>		
	<i>by or to the Appointee to or by any Associated Company.</i>		
1A	<i>Any dividend paid to any Associated Company.</i>	1A	<i>The basis on which the dividend has been established.</i>
2.	<i>The giving of any guarantee or any other form of security by the Appointee for or in respect of any obligations of any Associated Company.</i>	2.	<i>The form of the guarantee or other security given, the assets, the subject of the security, the amount of the obligation (including where relevant the rate of interest payable) and the date of maturity of the obligation.</i>
3.	<i>The transfer of any asset or liability:</i>	3.	<i>The asset or liability the subject of the transfer, the amount of the consideration for the transfer and the value attributed to the asset or liability in the accounting records kept by the Appointee.</i>
(a)	<i>to or by the Appointee by or to an Associated Company; or</i>		
(b)	<i>to or by the Appointed Business by or to any other business or activity of the Appointee.</i>		
4.	<i>The supply of any service by or to the Appointee to or by an Associated Company or by or to the Appointed Business to or by any other business or activity of the Appointee.</i>	4.	<i>The nature of the service supplied, the terms on which it was supplied and the total charge made for the service.</i>
5.	<i>The omission by the Appointee or any Associated Company to exercise a right as a result of which the value* of the aggregate assets less the aggregate liabilities (net assets) of the Appointee is decreased.</i>	5.	<i>The company omitting to exercise the right and the amount by which the value* of the net assets of the Appointee is decreased.</i>
6.	<i>The waiver by the Appointee or the Appointed Business of any consideration, remuneration or other payment owed to it by any Associated Company or other</i>	6.	<i>The amount or the consideration, remuneration of payment waived.</i>

	<i>business or activity of the Appointee.</i>		
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*For this purpose the value shall be taken to be the value attributed to the relevant items in the accounting records kept by the Appointee or, in case of an interest in land or buildings which is affected by the omission, the open market value of that interest.

Condition F1: Procurement of Services and Works

Purpose

1. This Condition is required to ensure that the Appointee achieves effective and fair competitive tendering of whatever services and works it may, from time to time, decide not to provide for or carry out itself in the performance of the Regulated Activities.

Obligations

2. All procurement of services and works by the Appointee must comply with all applicable laws – including without limitation the Transfer of Undertakings (Protection of Employment) Regulations 1981, the Utilities Contracts Regulations 2006 and the Competition Act 1998.
3. All procurement of services and works by the Appointee must be such as to ensure, as far as possible, that no existing contractor has any competitive advantage, by virtue of its status as such, over other prospective contractors.
4. (1) The Appointee's procurement of services and works must:
 - (a) have regard to the need to facilitate the development of a fully competitive market for the provision of outsourced services or (as the case may be) works necessary for the discharge of its functions as a water and a sewerage undertaker;
 - (b) demonstrate that it retains sufficient control of all its assets, and its ability at all times to discharge its functions as a water and a sewerage undertaker (including those occasions when a contractor's performance is in breach of its contractual obligations, or a change of contractor is required for any reason); and
 - (c) ensure that its contractors will give to the Appointee all such information as may be necessary to enable the Appointee to comply with the requirements of the Conditions of the Appointments.
5. (1) The Appointee shall submit to the Authority, not later than 1 September 2007, a Procurement Plan covering in detail at least the following three financial years. Thereafter the Appointee shall submit no less frequently than every 18 months a revised and updated Procurement Plan. The Procurement Plan shall set out how the Appointee intends to comply with the primary obligations in paragraphs 2 to 4 of this Condition during the following three financial years.
 - (2) Without prejudice to the second sentence in subparagraph (1), the Authority may at any time require the Appointee to submit a revised Procurement Plan if, following any reports submitted under paragraphs 7, 9 or 12 below, it appears to him that the Appointee's performance of its obligations in paragraphs 2 to 4 above is unsatisfactory.
6. The Procurement Plan shall include the following:
 - (1) an explanation of the Regulated Activities to which the plan relates;
 - (2) an assessment of the current contestability of market(s) associated with each of those activities, as they may be performed in different parts of its Water Supply Area or, as the case may be, its Sewerage Service Area;
 - (3) an explanation of the number, mix and type of contracts which are currently let or proposed to be let under the plan, which must be clearly linked to and consistent with the assessment required under subparagraph (2);
 - (4) details of the procurement process(es), terms and conditions of contract. These must be supported by an explanation of how the Appointee intends to ensure that it retains proper and effective control over the prospective contractor's operations. Particular attention must be paid to the regulatory requirements relating to the quality of drinking water (and associated matters), the protection of the environment, the provision of proper service to its customers and conformity with the guidance of the Authority;

- (5) details of how the Appointee will ensure that any of its assets, which are to be operated by any contractor, will be properly maintained to deliver stable or improving serviceability to customers.
7. The Reporter shall submit to the Authority at the same time as the Appointee submits the Procurement Plan to the Authority a report assessing the viability and completeness of the Procurement Plan in light of the purpose and general provisions of this Condition.
8. The Appointee will, at the request of any person or body, supply them with a copy of the current Procurement Plan and a summary of the report on the Plan prepared by the Reporter under paragraph 7.
9. ~~At the same time as the Appointee submits its Accounting Statements, and at other such times as the Authority may require, the Authority may request it must submit to the Authority~~ a written report on ~~the Appointee's~~ its procurement activities.
- ~~10.~~ The report, ~~if requested~~ required in paragraph 9, shall set out the extent of the Appointee's compliance with the Procurement Plan, together with a full schedule of the number and content of the contracts let or activities that have been brought in-house.
- ~~11.~~ In all cases of non-compliance with the Procurement Plan the ~~requested~~ report must set out a full explanation of the reasons and of the measures taken or proposed, to remedy it.
- ~~12.~~ Each ~~requested~~ report submitted under paragraph 9 to the Authority shall be reviewed by the Appointee's Reporter, who shall submit his or her written assessment to the Authority, copied to the Appointee.
- ~~13.~~ ~~The~~ Appointee must co-operate with the Reporter to enable him or her to carry out the activities required of the Reporter under this Condition.
- ~~14.~~ ~~13.~~ The Appointee shall not either:
- (i) make any arrangement (whether contractual or otherwise) whose effect (actual or intended) is that responsibility for its functions as a Relevant Undertaker is (or may be) whether wholly or in part, transferred or delegated to any other person; or
 - (ii) if it is prosecuted for any alleged offence contrary to any provision in the Order or the Water (Northern Ireland) Order 1999 or any regulations made thereunder, which is alleged to have been committed in relation to any of its functions as the Appointee whose performance was, at the relevant time, covered by any contract, agreement or arrangement with any other person, raise any defence of due diligence such as that in Article 110(3)(b) of the Order (or any provision to similar effect) solely on the grounds that responsibility for compliance rested with that other person by virtue of that contract, agreement or arrangement.

Condition G: Code of Practice for Customers and relations with the General Consumer Council

1. The Appointee shall within two months after the transfer date prepare and submit to the Authority for its approval a Code of Practice:
 - (1) describing the nature of the services to domestic customers provided by the Appointee in the course of the Appointed Business;
 - (2) describing the tariffs charged to domestic customers (including any subsidised or discounted tariffs) and such other terms on which those services are provided as the Appointee considers appropriate for inclusion;
 - (3) describing arrangements for the payment of bills by domestic customers including information about payment by instalments and budget plans;
 - (4) describing the procedure for handling complaints from domestic customers established by the Appointee under paragraph 7;
 - (5) setting out information as to the availability of, facilities for, and any amount payable in respect of, the testing of meters and describing the method of proof and effect of a meter reading, liability for charges after ceasing to occupy metered premises and the offences referred to in Article 237 of the Order (Offences of tampering with meters etc.);
 - (6) informing customers what they should do in cases of emergency and when making enquiries of the Appointee; and
 - (7) describing the functions of the General Consumer Council under the Order and informing customers where they can contact the General Consumer Council.
2. The Appointee shall, not less frequently than once every three years and if and whenever requested to do so by the Authority but not more frequently than once a year, review the Code and the manner in which it has operated, with a view to determining whether any modification should be made to it or to the manner of its operation.
3. In carrying out any review of, or making any substantive revision of, the Code or its operation (whether under paragraph 2 or otherwise) the Appointee shall consult the General Consumer Council and shall consider any representations made by it about the Code or the manner in which it is likely to be or, as the case may be, has been operated.
4. The Appointee shall submit to the Authority for its approval any revision of the Code which, after consulting the General Consumer Council if so required under paragraph 3, it wishes to make.
5. The Appointee shall make such modifications to the Code and any revision of the Code as the Authority, after prior consultation with the Appointee, may specify within two months after the date on which the Code or, as the case may be, the relevant revision is submitted to him under paragraph 1 or, as the case may be, under paragraph 4 as a condition of approving the Code under paragraph 1 or, as the case may be, approving any revision of the Code under paragraph 4, being such modifications as in the Authority's opinion are necessary to ensure that the Code complies with the requirements specified in paragraph 1. The Authority's approval shall be deemed to have been given if, within the said period of two months, it shall not have specified any such modifications to the Code or, as the case may be, the relevant revision.
6. The Appointee shall:
 - (1) send a copy of the Code and each revision of it (in each case in the form approved, or deemed approved, by the Authority) to the General Consumer Council;
 - (2) draw the attention of domestic customers to the existence of the Code and each substantive revision of it and how they may inspect or obtain a copy of the Code in its latest form;

- (3) send a copy of the Code in its latest form free of charge to any person requesting it;
 - (4) make a copy of the Code in its latest form available; and
 - (5) provide the information referred to in subparagraph (5) of paragraph 1 with every demand for payment of charges which are fixed by reference to metered volume.
7. The Appointee shall establish within two months after the transfer date a procedure for handling complaints from customers about the manner in which the Appointee carries out the Appointed Business, which shall include particulars of the training to be given to staff in the handling of complaints.
 8. The Appointee shall provide special means of identifying officers authorised by the Appointee when they visit customers' premises.
 9. Subject to paragraph 10, the Appointee shall at the request of the General Consumer Council meet the General Consumer Council not less frequently than twice in each Charging Year and on such other occasions as the General Consumer Council may reasonably request.
 10. At not less than one meeting in each Charging Year held pursuant to paragraph 9 the Appointee shall be represented by at least one Director of the Appointee.
 11. The Appointee shall in due time consult with the General Consumer Council in relation to:
 - (a) its policies for the conduct of its business activities relating to the supply of water and the provision of sewerage services insofar as they may affect consumers; and
 - (b) the general arrangements for their implementation.
 12. The Appointee shall:
 - (a) give to the General Consumer Council reasonable notice of any significant change in such policies or the general arrangements for their implementation in so far as they may affect consumers and consult with the General Consumer Council on any such change prior to its implementation; and
 - (b) give to the General Consumer Council as the General Consumer Council may reasonably request an explanation of any significant change in such policies or the general arrangements for their implementation.
 13. Nothing in this Condition shall require the Appointee to disclose any information the non-disclosure of which is required by:
 - (a) any order of any court of competent jurisdiction or any competent judicial, governmental or regulatory body; or
 - (b) the rules of any listing authority or stock exchange on which the shares of the Appointee or any Group Company are listed or traded; or
 - (c) the laws or regulations of any country or jurisdiction to which the Appointee or any Group Company or their affairs are subject.

Condition H: Code of Practice and Procedure on Debt Recovery

1. The Appointee shall within two months after the transfer date prepare and submit to the Authority for its approval a Code of Practice which shall:
 - (1) give guidance to domestic customers who have difficulty in paying their bills;
 - (2) describe the range of procedures which may be adopted by the Appointee to collect outstanding debt from domestic customers; and
 - (3) contain such other information as the Appointee considers appropriate.
2. The Appointee shall, not less frequently than once every three years and if and whenever requested to do so by the Authority but not more frequently than once a year, review the Code and the manner in which it has been operated, with a view to determining whether any modification should be made to it or to the manner of its operation.
3. In carrying out any review of, or making any substantive revision of, the Code or its operation (whether under paragraph 2 or otherwise) the Appointee shall consult the General Consumer Council and shall consider any representations made by it about the Code or the manner in which it is likely to be or, as the case may be, has been operated.
4. The Appointee shall submit to the Authority for its approval any revision of the Code which, after consulting the General Consumer Council if so required under paragraph 3, it wishes to make.
5. The Appointee shall make such modifications to the Code and any revision of the Code as the Authority, after prior consultation with the Appointee, may specify within two months after the date on which the Code or, as the case may be, the relevant revision is submitted to him under paragraph 1 or, as the case may be, paragraph 4 as a condition of approving the Code under paragraph 1 or, as the case may be, approving any revision of the Code under paragraph 4, being such modifications as in the Authority's opinion are necessary to ensure that the Code complies with the requirements specified in subparagraph 1(1) and 1(2). The Authority's approval shall be deemed to have been given if, within the said period of two months, it shall not have specified any such modifications to the Code or, as the case may be, the relevant revision.
6. The Appointee shall:
 - (1) send a copy of the Code and each revision of it (in each case, in the form approved, or deemed approved, by the Authority) to the General Consumer Council;
 - (2) with every demand for payment of charges made after the expiry of the period of two months after the Authority has given the approval referred to in subparagraph 1, draw the attention of domestic customers to the existence of the Code in its latest form and how they may inspect or obtain a copy and with every final demand for payment of charges made after such expiry, send to domestic customers a copy of the Code in its latest form;
 - (3) make a copy of the Code in its latest form available; and
 - (4) send a copy of the Code in its latest form free of charge to any person requesting it.

Condition I: Code of Practice and Procedure on Leakage

1. In this Condition "supply pipe" means that part of the service pipe for which the owner is responsible.
2. The Appointee shall within two months after the transfer date prepare and submit to the Authority for its approval a Code of Practice concerning liability for charges of domestic customers occupying metered premises where there is an unidentified leak on the supply pipe. The Code shall contain information as to the procedures described in paragraph 8 and such other information as the Appointee considers appropriate.
3. The Appointee shall, not less frequently than once every three years and if and whenever requested to do so by the Authority but not more frequently than once a year, review the Code and the manner in which it has been operated, with a view to determining whether any modification should be made to it or the manner of its operation.
4. In carrying out any review of, or making any substantive revision of, the Code or its operation (whether under paragraph 3 or otherwise) the Appointee shall consult the General Consumer Council and shall consider any representations made by it about the Code or the manner in which it is likely to be or, as the case may be, has been operated.
5. The Appointee shall submit to the Authority for its approval any revision of the Code which, after consulting the General Consumer Council if so required under paragraph 4, it wishes to make.
6. The Appointee shall make such modifications to the Code and any revision of the Code as the Authority, after prior consultation with the Appointee, may specify within two months of the date on which the Code or, as the case may be, the relevant revision is submitted to him under paragraph 2 or, as the case may be, under paragraph 5 as a condition of approving the Code under paragraph 2 or, as the case may be, approving any revision of the Code under paragraph 5, being such modifications as in the Authority's opinion are necessary to ensure that the Code contains the information required by paragraph 2. The Authority's approval shall be deemed to have been given if, within the said period of two months, it shall not have specified any such modifications to the Code or, as the case may be, the relevant revision.
7. The Appointee shall:
 - (1) send a copy of the Code and each revision of it (in each case in the form approved, or deemed approved, by the Authority) to the General Consumer Council;
 - (2) with every demand for payment of charges which are fixed by reference to volume, draw the attention of domestic customers to the existence of the Code in its latest form and how they may inspect or obtain a copy;
 - (3) make a copy of the Code in its latest form available; and
 - (4) send a copy of the Code in its latest form free of charge to any person requesting it.
8. The Appointee shall follow the procedures described in this paragraph in relation to domestic customers.
- 8.1 At the time when a meter is installed, the Appointee shall check the supply pipe between the meter and the customer's tap to establish if there are significant leaks in that pipe. Where as a result of that check a leak is detected in the supply pipe which can be repaired without additional excavation at the time the meter is installed the Appointee shall repair the leak at the Appointee's expense. Where as a result of that check a leak is detected which cannot be repaired without additional excavation, the Appointee shall notify the customer of the leak and ask the customer to repair it at the customer's expense. If the customer then fails to repair the leak, the Appointee shall be entitled to treat any subsequent loss of water as consumption by the customer and to charge the customer accordingly.

- 8.2 Subject to subparagraph 8.1, where, after a meter has been installed, a subsequent meter reading indicates that a customer has an abnormally high consumption which could be due to an undetected leak in the supply pipe, then if a leak is subsequently discovered the Appointee shall make an adjustment to the customer's measured charges provided that the customer (or the owner responsible for the supply pipe) carries out the necessary remedial work at the customer's, or as the case may be, the owner's direction and expense within a reasonable period of time specified by the Appointee. The Appointee shall not be required to make such an adjustment in the event of a subsequent leak or where a leak has been caused through the negligence of the customer (or the owner responsible for the supply pipe) or their respective agents or where the customer knew or ought to have known that there was a leak and failed to repair it.
- 8.3 Where the Appointee is required to make an adjustment to the customer's measured charges under subparagraph 8.2, the adjustment shall be based upon the customer's past normal consumption. Where there is no record of past consumption, the adjustment shall be based upon typical usage for property of a similar type and the customer's measured charges shall be further adjusted if the customer's subsequent actual usage is significantly different.
- 8.4 Where the Appointee is required to make an adjustment to a customer's measured charges for water supply under this paragraph it shall make a similar adjustment to the customer's measured charges for sewerage services, provided that where sewerage services are provided in relation to the same premises by a different undertaker then the Appointee shall inform that undertaker as soon as reasonably practicable that the Appointee is required to make such an adjustment to the customer's measured charges for water supply and of the basis on which the adjustment has been, or will be, made.
- 8.5 Where the Appointee is informed by any water undertaker that it is required to make an adjustment to a customer's measured charges for a supply of water to any premises in relation to which the Appointee provides sewerage services the Appointee shall make an adjustment to the customer's measured charges for sewerage services on a basis similar to that made by that water undertaker.

Condition J: Levels of Service Information and Service Targets

Part I. *Levels of Service Information*

1. *Provision of Information*

1.1 The Appointee shall in respect of each Charging Year furnish Information to the Authority once in each Charging Year in respect of the matters specified in, and otherwise in accordance with, Appendix A to the letter entitled "Levels of Service" from the Department for Regional Development to Northern Ireland Water Limited of even date with the date of these Appointments ("the Levels of Service Letter").

1.2 Where the Authority is satisfied that the provision of Information in respect of the matters specified in Appendix A to the Levels of Service Letter is inadequate to enable it properly to keep the quality of the services provided by the Appointee in the course of the Appointed Business ("Services") under review the Authority may, subject to prior consultation with the Appointee, by notice to the Appointee vary the matters specified in that Appendix in respect of which Information is to be furnished under subparagraph 1.1 in a manner which is reasonable having regard to the Authority's duties under Article 60 of the Order and thereafter the Appointee shall in respect of each Charging Year furnish Information to the Authority in respect of those matters as so varied. The Authority may, subject as aforesaid, make variations from time to time under this subparagraph and references in this subparagraph to the matters specified in Appendix A to the Levels of Service Letter shall be read and construed as though they were references to the matters specified in Appendix A as varied from time to time.

1.3 Where the Authority considers it requisite or expedient for the purpose of deciding whether to make an application to the Department for Regional Development under Article 69 or 152 of the Order (and, if so, what provisions should be set out in the application) or to require the Appointee to notify a Service Target under subparagraph 3.2, the Appointee shall furnish to the Authority:

- (1) such further Information as the Authority reasonably requires in respect of the quality of Services; and
- (2) Information in respect of the quality of Services in respect of any reasonable period other than a Charging Year and/or more frequently than once in a Charging Year (but not more frequently than is reasonable) as may be specified by the Authority. Such Information, at the Appointee's option, may consist of updating Information previously furnished to the Authority under subparagraph 1.1, 1.2 or 1.3(1).

1.4 In this Condition references to the quality of Services shall include references to the manner in which the Appointee carries out the Regulated Activities.

2. *Reports, Certificates etc*

2.1 Information furnished to the Authority by the Appointee under paragraph 1 (other than under subparagraph 1.3) and, where the Authority so requires, Information furnished to it by the Appointee under that subparagraph, ("**Levels of Service Information**") shall be accompanied by:

- (1) a report, signed by or on behalf of the Appointee, containing such information as the Authority may reasonably specify as to the methods used, and the steps taken, by the Appointee for the purpose of monitoring, assessing and reporting on the matters in respect of which Levels of Service Information has been furnished; and
- (2) a statement, signed by or on behalf of the Appointee, of the reasons why, and the extent to which, (if such be the case) the quality of any Services shall have been such that any standard by reference to which Levels of Service Information has been furnished shall not have been met. The statement shall include, without limitation, information as to the categories of persons to whom those Services have been so provided or who have been affected by the carrying on of the Appointed Business in that manner and their geographical distribution.

Part II. *Service Targets*

3. *Setting of Service Targets by the Appointee*

3.1 The Appointee shall once in each Charging Year notify the Authority of its intentions as to the quality of such Services as are specified in Appendix B to the Levels of Service Letter in respect of each Charging Year falling within the period beginning at the start of the Charging Year in which the notification falls to be given and ending on the expiry of such number of Charging Years as is specified in that Appendix and otherwise in accordance with the procedures specified in that Appendix.

3.2 Where the Authority considers it requisite or expedient for the purpose of enabling it properly to keep the quality of Services under review the Authority may require the Appointee to notify it of its intentions as to the quality of such other Services in accordance with such requirements as the Authority may reasonably specify.

3.3 The Appointee's intentions shall be expressed in any notification under subparagraph 3.1 or 3.2 as a target (a "Service Target") for achievement by such date or over such period or at such times during such period as may be specified in Appendix B to the Levels of Service Letter or, as the case may be, as the Authority may have specified when it requires the Appointee to notify it of its intentions under subparagraph 3.2 and in respect of the whole or such part of the Area as may be specified in the said Appendix B or, as the case may be, as the Authority may have so specified and so as to be capable of verification in accordance with this Condition.

4. *Monitoring of Service Targets*

The Appointee shall keep under review during each Charging Year the quality of Services as compared with any relevant Service Target notified by it to the Authority under paragraph 3 as a target for achievement during that Charging Year or by a date or at a time during that Charging Year or over a period including that Charging Year. For this purpose the Appointee shall take such steps to monitor and assess the quality of Services as may be necessary to enable such comparison to be made and to enable the Appointee to make the report referred to in paragraph 5.

5. *Reporting on Service Targets*

5.1 The Appointee shall furnish to the Authority a written report (a "Service Target Report") as to the quality of Services as compared with any relevant Service Target.

5.2 A Service Target Report shall include:

- (1) all such Information as in the opinion of the Appointee is necessary to provide a proper explanation of the Report and of the quality of Services as compared with any relevant Service Target;
- (2) a statement of the methods used by the Appointee to keep the quality of Services under review in accordance with paragraph 4 and the steps taken by it to monitor and assess the quality of Services in accordance with that paragraph; and
- (3) if a Service Target in respect of foul flooding has been notified by the Appointee to the Authority relating to the Charging Year in respect of which the relevant Service Target Report is furnished, a statement as to the Appointee's practice in dealing with claims arising out of loss or damage alleged to have been caused by foul flooding.

5.3 Without prejudice to the generality of subparagraph 5.2, a Service Target Report may include a statement of:

- (1) any matters which, in the opinion of the Appointee, will or may result in the Appointee being unable to achieve any Service Target or which have resulted in the Appointee being unable to achieve any Service Target to the extent that it was expressed in the notification to the Authority under paragraph 4 to be a target for achievement during the relevant Charging Year or by a date or at a time during that Charging Year;

- (2) any matters which have made it impossible for the Appointee to ascertain, either at all or with reasonable accuracy, whether or not any Service Target has been, or is likely to be, achieved; and
 - (3) any exceptional matters or matters out of the ordinary course and in each case outside the reasonable control of the Appointee which have affected the quality of any Services and which could fairly be said to render or to have rendered the achievement of any Service Target substantially more onerous.
- 5.4 The Appointee may also specify in a Service Target Report any revision of any Service Target which the Appointee has determined to make having regard to any matters included in that Service Target Report, including, without limitation, such matters as are referred to in subparagraph 5.3. Such revision may be, without limitation, as to the date by, or the period over, or the times at, which during any period the relevant Service Target was intended to be achieved, or the part of the Area in respect of which the relevant Service Target was intended to be achieved. Any such revised Service Target is hereinafter referred to as a "Revised Service Target". Paragraphs 4, 5 (including this subparagraph) and 6 to 13 inclusive shall apply mutatis mutandis to any Revised Service Target.
- 5.5 The Appointee shall once in each Charging Year furnish a Service Target Report to the Authority in respect of that Charging Year, provided that, if the Authority considers it requisite or expedient for the purpose of deciding whether to make an application to the Department for Regional Development under Article 69 or 152 of the Order (and, if so, what provisions should be set out in the application) the Appointee shall furnish a Service Target Report more frequently (but not more frequently than is reasonable).
6. *Measures to achieve Service Targets*
- 6.1 Where, following receipt by the Authority of any Service Target Report, it considers it requisite or expedient for the purpose of deciding whether to make an application to the Department for Regional Development under Article 69 or 152 of the Order (and, if so, what provisions should be set out in the application), the Appointee shall furnish to the Authority in writing within such reasonable period as the Authority may specify such further Information as the Authority may reasonably require, including, but not limited to, Information as to:
- (1) the respective measures required to be taken to achieve any Service Target and the respective costs of such measures (and, where more than one measure is available, whether or not subject to the expenditure of money, the Appointee shall give details of the alternative measures); and
 - (2) the measures being taken or proposed to be taken to achieve any Service Target.

Part III. *Certification and Verification of Information*

~~7. Levels of Service Information and Service Target Reports required to be furnished once in each Charging Year shall be accompanied by a certificate, signed by the Auditors (or by such other person as the Authority may approve, such approval not to be unreasonably withheld) stating whether, in their opinion, the relevant Levels of Service Information and Information contained in the relevant Service Target Report has been ascertained by the use of the methods and the taking of the steps which the Appointee has informed the Authority it has used and taken and whether, in their opinion, the methods used and the steps taken are adequate for the purpose of ascertaining that Levels of Service Information and the Information contained in that Service Target Report. To the extent that Levels of Service Information and a Service Target Report contain the same Information and are furnished at the same time only one certificate need be provided under this paragraph. Levels of Service Information and Service Target Reports furnished in accordance with any requirement of the Authority under subparagraph 1.3 or subparagraph 5.5 shall also be accompanied by a like certificate if the Authority so requires.~~

~~8-7.~~ The Appointee shall co-operate fully with the Authority in any investigation of:

- (1) the accuracy and sufficiency of any Information furnished by the Appointee to the Authority under this Condition;
 - (2) the methods used and steps taken by the Appointee to ascertain any such Information; and
 - (3) whether any Service Target has been achieved
- which the Authority may carry out for the purpose of deciding whether to make an application to the Department for Regional Development under Article 69 or 152 of the Order.

~~9.8.~~ Such co-operation shall include, without limitation:

- (1) subject to reasonable prior notice to the Appointee, giving to the Authority access at reasonable hours to any Relevant Plant and to any premises occupied by the Appointee in relation to carrying out the Regulated Activities; and
- (2) subject to reasonable prior notice to the Appointee, allowing the Authority 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 or in to any such premises or Relevant Plant such other persons and such equipment as may be necessary for the purpose of such investigation.

~~10.9.~~ Nothing in paragraphs 8 and 9 shall require the Appointee:

- (1) to do anything which is outside its reasonable control; or
- (2) to do, or to allow the Authority to do, anything which would materially disrupt the Appointee's business (unless it is essential for the purposes of the investigation that that thing be done).

~~11.10.~~ The Appointee shall not be liable to the Authority for any loss or damage to persons or property which arises out of the Authority having such access or doing any such thing as is mentioned in paragraphs 8 and 9 except to the extent that such loss or damage is caused by the Appointee's negligence or wilful default.

~~12.11.~~ In paragraphs 9, 10 and 11:

- (1) references to the Authority include references to its employees and agents; and
- (2) "Relevant Plant" means any plant used by the Appointee for the purpose of the Appointed Business including, without limitation, water mains, sewers and other pipes and their accessories.

Part IV. *Publication of Information*

~~13.12.~~ Unless the Authority otherwise consents in writing (such consent not to be unreasonably withheld) pursuant to an application to it in that behalf by the Appointee when the relevant Information and Reports are furnished to the Authority under this Condition, the Appointee shall:

- (1) draw the attention of customers to the existence of Levels of Service Information (excluding any report or statement furnished under paragraph 2) and Service Target Reports furnished to the Authority under this Condition in respect of a Charging Year;
- (2) make a copy of the most recent Levels of Service Information (excluding any report or statement furnished under paragraph 2) and Service Target Report available; and

- (3) send a copy of the most recent Levels of Service Information (excluding any report or statement furnished under paragraph 2) and Service Target Report to any person requesting it.

Condition K: Ring Fencing, and Disposals of Land

1. Introduction

The purposes of this Condition are to ensure:

- (1) that the Appointee retains sufficient rights and assets for the purpose described in subparagraph 3.1;
- (2) that the Appointee obtains the prior approval of the Authority to any disposal of land to which this Condition applies subject to the exceptions described in subparagraph 4.2; and
- (3) that the Appointee produces and maintains an Estate Management Plan and produces an Annual Land Disposal Return.

2. Interpretation and Construction

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

the Materiality Amount for the purpose of any disposal of land is £500,000 or, in the case of a disposal of land to an Associated Company is £250,000, or, in either case, such greater amount as may from time to time be determined by the Authority;

a **proposed disposal** is any such disposal to which paragraph 4 applies;

protected land and **disposal** have the meanings respectively given to them in Article 2 of the Order and cognate expressions shall be construed accordingly;

Short term Disposal means a disposal which consists of the creation of any interest or right in or over protected land which the Appointee has an unconditional right to terminate without penalty at any time and from time to time by not more than 30 months' notice or which expires or otherwise ceases in accordance with its terms within 30 months of the date of its creation without any other interest or right arising on such expiry or cessation; and

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

3. Ring Fencing

3.1 The Appointee shall at all times ensure, so far as is reasonably practicable, that if a special administration order were made in respect of the Appointee, the Appointee would have available to it sufficient rights and assets (other than financial resources) to enable the special administrator so to manage the affairs, business and property of the Appointee that the purposes of such order could be achieved, provided that this paragraph shall not require the Appointee to seek to re-negotiate the terms of any contract or obligation which, in accordance with a scheme under Article 270 of the Order, is transferred to the Appointee.

3.2 The Appointee shall publish with its audited accounts for each financial year a statement as to whether the Appointee was in compliance with subparagraph 3.1 as at the end of that financial year.

3.3 Where any such rights and assets as are mentioned in subparagraph 3.1 are provided or made available by any Group Company, the Appointee's obligations under subparagraph 3.1 in respect of such rights and assets shall be such as they would be if the words "so far as reasonably practicable" and the proviso were omitted from that subparagraph.

3.4 The state, condition and capacity of assets used by the Appointee in the Appointed Business are the subject of Conditions J and L and accordingly subparagraph 3.1 shall not apply thereto.

4. Disposals of protected land

4.1 Subject to subparagraph 4.2, the Appointee shall not make any disposal of any protected land, without the prior written consent of the Authority, such consent not to be

unreasonably withheld or delayed, and in any event to be given (or notification to be given that consent is to be withheld) not later than the date of expiry of 2 months from the date of the Appointee's notice to the Authority under subparagraph 4.3, or such later date as the Appointee and the Authority may agree.

4.2 Subparagraph 4.1 shall not apply:

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

does not exceed the Materiality Amount;

- (3) to any disposal of any protected land made pursuant to any obligation entered into by Water Service prior to the transfer date; or
- (4) to any lease or licence of any protected land to any PPP Contractor in relation to the provision by the PPP Contractor of services and/or works to the Appointee in connection with the Appointee's Regulated Activities provided that such lease or licence provides for its expiry or termination at or before the time that, or in circumstances where, the PPP Contractor ceases to provide such services or completes such works, or the contract under which they are provided is terminated by the Appointee,

provided that sub-paragraphs (3) and (4) shall not apply in the case of a disposal to an Associated Company.

4.3 The Appointee shall:

- (1) prior to the Appointee entering into an obligation (whether unconditional or subject to conditions) which requires or might require it to make the proposed disposal, furnish to the Authority a notice which:
 - (a) identifies the protected land the subject of the proposed disposal both by written description and by a plan showing such protected land;
 - (b) describes the interest or right in or over the protected land to be disposed of;
 - (c) sets out the terms of the proposed disposal;
 - (d) describes the consideration to be received or expected to be received or, if the appointee proposes to make the disposal by auction or formal tender, the reserve price (if any); and
 - (e) states whether or not the proposed disposal is to an Associated Company;
- (2) prior to entering into the relevant obligation, furnish to the Authority in writing such further Information regarding the proposed disposal which the Authority may reasonably request.

5. Estate Management Plan and Annual Land Disposal Return

5.1 The Appointee shall prepare and not later than 1 April 2009 furnish to the Authority an Estate Management Plan:

- (i) identifying land which the Appointee considers likely to be surplus to its operational requirements within the period commencing 1 April 2010 and ending on 31st March 2018.

- (ii) setting out the Appointee's proposals in respect of the disposal or development of Surplus Land; and
 - (iii) providing the Appointee's estimate, to be prepared with reasonable diligence and with the benefit of such professional advice as is appropriate in the circumstances, of the likely proceeds of disposal or return on development (as the case may be) of Surplus Land.
- 5.2 The Appointee shall keep the Estate Management Plan prepared under subparagraph 5.1 under review and shall prepare a revised Estate Management Plan from time to time and in any event by each Review Date and shall furnish to the Authority any such revised Estate Management Plan. Revised Estate Management Plans should cover a period of ten years from the beginning of the first Charging Year of each review period, or such other date as the Authority may specify.
- 5.3 The Appointee shall prepare and not later than 30 June 2007 furnish to the Authority an Annual Land Disposal Return identifying land which the Appointee proposes to dispose of during the Charging Year beginning 1 April 2007. The Appointee shall prepare and not later than 1 April in each subsequent Charging Year furnish to the Authority a revised Annual Land Disposal Return in relation to that Charging Year.
- 5.4 For the purposes of this paragraph, "Review Date" shall have the same meaning as in Condition L; and, for the avoidance of doubt, nothing in this paragraph shall prohibit the disposal in accordance with paragraph 4 of any land not identified for disposal pursuant to this paragraph.

Condition L: Regulated Asset Management Plans

1. *Interpretation and Construction*

In this Condition:

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

"**Regulated Assets**" means

(1) in respect of a water undertaker:

- (a) reservoirs and other water storage facilities;
- (b) water treatment plants;
- (c) water mains and trunk mains;
- (d) resource mains and discharge pipes; and
- (e) so much of any service pipe as is vested in the water undertaker;

(2) in respect of a sewerage undertaker:

- (a) waste water treatment works;
- (b) public sewers;
- (c) any outfall pipe or other pipe for the conveyance of effluent from any sewage disposal works of the sewerage undertaker; and
- (d) any pipe vested in the sewerage undertaker and used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilage

including any such assets owned or operated by a PPP Contractor and made available under the terms of its contract with the Appointee exclusively (i) to the Appointee or (ii) for the purposes of the Regulated Activities, but excluding any pipe which discharges directly into the sea or coastal waters;

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

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

- (1) in the case of the Regulated Asset Management Plan required to be furnished under subparagraph 2.1, 1 April 2010;
- (2) in the case of any revised Regulated Asset Management Plan required to be furnished under subparagraph 2.4, the date of such revised Regulated Asset Management Plan or, in the case of a revised Regulated Asset Management Plan prepared for the purposes of a Periodic Review, the start of the relevant Review Charging Year;

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

2. *Duty to Furnish Information*

2.1 The Appointee shall prepare and furnish to the Authority a regulated asset management plan (a "**Regulated Asset Management Plan**") showing separately:

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

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

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

2.2 The Relevant Purposes referred to in subparagraph 2.1 are:

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

but so that, unless the context otherwise requires, references in this Condition to the Relevant Purposes shall be read and construed subject to any assumptions as may be specified by the Appointee in the Regulated Asset Management Plan as to the nature and scope of the Regulated Activities or, as the case may be, the Appointment Obligations and as to the effect of any provision of the Order or any other enactment or subordinate legislation relating to the Regulated Activities.

2.3 Where the Appointee has specified any such assumptions as are referred to in subparagraph 2.2, the Appointee shall also furnish an estimate and other Information as described in subparagraphs 2.1(1) and (2) on the basis of such other assumptions as to the matters referred to in subparagraph 2.2 as may be specified by the Authority.

2.4 The Appointee shall keep the Regulated Asset Management Plan prepared under subparagraph 2.1 under review and shall prepare a revised Regulated Asset Management

Plan in respect of the Plan Period from time to time and in any event by each Review Date, to the extent that such revision is necessary having regard to the Relevant Purposes, this Condition and Condition B and shall furnish to the Authority any such revised Regulated Asset Management Plan. Sub-paragraph 2.3 shall apply to any such revised Regulated Asset Management Plan and references in this Condition to a revised Regulated Asset Management Plan shall include references to any estimate and other Information which the Appointee is required to furnish under subparagraph 2.3 in respect of that revised Regulated Asset Management Plan.

2.5 For the purposes of subparagraphs 2.1 and 2.4:

- (1) due allowance shall be made for Regulated Assets ceasing to be required for the Relevant Purposes during the Plan Period;
- (2) the Appointee shall include in any Regulated Asset Management Plan furnished to the Authority under this paragraph a description of any agreement or arrangement under which the Appointee uses Regulated Assets which are owned by, or used in conjunction with, another water undertaker, sewerage undertaker or any PPP Contractor (including, without limitation, a description of any arrangements, as between the Appointee and the other undertaker or PPP Contractor, as the case may be, for the repair, renewal, maintenance and improvement of any such Regulated Assets) and an estimate and other Information in respect of any expenditure required to be made or incurred by the Appointee during the Plan Period in respect of such Regulated Assets for the Relevant Purposes; and
- (3) there shall be taken into account any changes in the nature of the Regulated Activities and the Appointment Obligations which the Appointee knows have occurred or will occur or which the Appointee reasonably believes will, or are likely to, occur (including, without limitation, any change in demand for the provision by the Appointee of any services provided by it in the course of carrying out the Regulated Activities).

3. *Information Systems*

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

- (1) keeping under review, collecting Information in respect of, and carrying out surveys of, the state, condition, capacity and performance of Regulated Assets; and
- (2) preparing, keeping under review and revising from time to time the Regulated Asset Management Plan for the purposes of:
 - (a) providing Information to the Authority in accordance with Condition B to enable it to carry out Periodic Reviews; and
 - (b) providing Information to the Authority in accordance with paragraph 19 of Condition B.

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

4. *Reports*

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

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

- (1) where such a report is required by the Authority under subparagraph 4.1, require the Assessor to prepare and furnish to the Authority, and separately to the Appointee, a written report addressed jointly to the Authority and the Appointee:
 - (a) in the case of a revised Regulated Asset Management Plan, stating whether, in his opinion, the estimate included in the revised Regulated Asset Management Plan has been prepared in accordance with the methods and procedures established and maintained by the Appointee under subparagraph 3.1 at the date at which the revised Regulated Asset Management Plan has been prepared and if the action to be taken as described in the other Information included in the Regulated Asset Management Plan were taken it would be sufficient for the Relevant Purposes, in so far as Regulated Assets are necessary for, or relevant to, the Relevant Purposes, (both on the basis of any assumptions specified by the Appointee and on the basis of any assumptions specified by the Authority) and, if not, what other action would need to be taken; and
 - (b) in the case of a revision of the methods and procedures referred to in paragraph 3, stating whether, in his opinion, the methods and procedures (as so revised) are sufficient for the purposes described in subparagraph 3.1 and if not, what changes would need to be made to those methods and procedures so that they were sufficient for those purposes; and
- (2) include a term that the Assessor will provide such further explanation or clarification of his report as the Authority may reasonably require and that where, by reason of anything in the Assessor's report, it appears to the Authority:
 - (a) that the state or condition or capacity of Regulated Assets is such that they are or may be materially inadequate for the Relevant Purposes, in so far as Regulated Assets are necessary for, or relevant to, the Relevant Purposes, (either on the basis of the assumptions specified by the Appointee or on the basis of the assumptions specified by the Authority, if any); or
 - (b) that the methods and procedures are insufficient for the purposes described in subparagraph 3.1 and that as a result information as to the state, condition, capacity of performance of Regulated Assets is or may be materially inaccurate or incomplete

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

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

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

- (1) subject to reasonable prior notice to the Appointee, giving to the Assessor access at reasonable hours to any Regulated Assets used by the Appointee and to any premises occupied by the Appointee in relation to the carrying out of the Regulated Activities; and
- (2) subject to reasonable prior notice to the Appointee, allowing the Assessor at reasonable hours:

- (a) to inspect and make photocopies of, and take extracts from, any books and records of the Appointee maintained in relation to the carrying out of the Regulated Activities;
 - (b) to carry out inspections, measurements and tests on or in relation to any such premises or Regulated Assets; and
 - (c) to take on to such premises or on to on in to any Regulated Assets such other persons and such equipment as may be necessary for the purposes of preparing and completing his report.
- 4.4 Nothing in subparagraph 4.3 shall require the Appointee:
 - (1) to do anything which is outside its reasonable control; or
 - (2) to do, or to allow the Assessor to do, anything which would materially disrupt the Appointee's business (unless it is essential that that thing be done to enable the Assessor to prepare his report).
- 4.5 In subparagraphs 4.3 and 4.4 references to the Assessor include references to his employees and agents.
- 5. *General*
- 5.1 The Regulated Asset Management Plan and the written description of the Appointee's relevant methods and procedures required to be furnished to the Authority by the Appointee under subparagraphs 2.1 and 3.2 and shall be furnished not later than 1 September 2009 and if accepted by it shall be deemed to satisfy the obligations of the Appointee under those subparagraphs (insofar as subparagraph 3.2 requires the Appointee to furnish a written description of the methods and procedures established by it).
- 5.2 Any other Information required to be furnished by the Appointee to the Authority under this Condition shall be furnished within three months of the revision which gives rise to the requirement to furnish Information.
- 5.3 The Appointee shall deliver to the Authority, at the same time as it delivers to it accounting statements in respect of a financial year (other than one commencing before 1 April 2010) prepared under paragraph 4 of Condition F, a statement of the expenditure made or incurred in relation to Regulated Assets during that financial year, distinguishing between amounts which have been expended and amounts which have been capitalised, together with the details necessary to explain any difference between that expenditure and the expenditure which the Appointee had informed the Department for Regional Development or, as the case may be, the Authority under this Condition it intended to make or incur in relation to Regulated Assets during that financial year.

Condition M: Provision of Information to the Authority

1. Subject to paragraphs 3, 4 and 5 the Appointee shall furnish the Authority with such Information as the Authority may reasonably require for the purpose of carrying out any of its functions under the Order.
2. Information required to be furnished under this Condition shall be furnished in such form and manner and at such times and be accompanied or supplemented by such explanations as the Authority may reasonably require.
3. This Condition shall not require the Appointee to furnish the Authority with Information in respect of any function of the Authority under Articles 21, 60 and 259 of the Order but the Appointee shall, if requested by the Authority, give reasoned comments on the accuracy and text of any information or advice which the Authority proposes to publish pursuant to Article 259 of the Order and, subject always to Article 265 of the Order, nothing in this paragraph shall prevent the Authority from using or disclosing any Information with which it has been furnished under this Condition or any other Condition of this Appointment for the purpose of carrying out its functions under the Order (including, without prejudice to the generality, under Articles 21, 60 and 259 of the Order).
4. Neither this Condition nor any other Condition of this Appointment shall require the Appointee to furnish any Information for any such purpose as is referred to in Article 261 of the Order, which it could not be compelled to produce or furnish under that Article.
5. Neither this Condition nor any other Condition of these Appointments shall require the Appointee to furnish any Information which it would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court.
6. Where, under any other Condition of these Appointments, the Appointee is or can be required to furnish Information to the Authority there shall be a presumption that the furnishing of that Information in accordance with that Condition is sufficient for the relevant purposes of that Condition but this presumption shall be rebutted, and shall not limit the right of the Authority to call for further Information under paragraph 1, if it states in writing that in its opinion such Information is or is likely to be necessary for the purpose of carrying out any of its functions under the Order.

Condition N: Fees

1. Interpretation and Construction

In this Condition a "**Periodic Review Year**" means the Charging Year starting on 1st April immediately preceding the start of a Review Charging Year.

2. Fees

The Appointee shall render the following payments to the Authority at the times stated:

- (1) [Not used];
- (2) on 1 April 2008 and at the start of each subsequent Charging Year an amount equal to the costs estimated by the Authority (in consultation with the Commission) as having been incurred in the preceding Charging Year by the Competition Commission following:
 - (a) references under Article 21 of the Order which mention the Appointments (or either of them) only; and
 - (b) references under Condition B or Condition C;
- (3) within thirty days of the date on which the Authority notifies the Appointee of the amount payable under this subparagraph, an amount equal to the costs determined by the Authority as having been or likely to be incurred by it in respect of any reference by the Appointee under paragraph 15 of Condition B and any determination by the Authority under paragraph 16 of Condition B made in the Charging Year in which the Authority's notification for the purposes of this subparagraph is given;
- (4) on 1 July 2007 and on 1 July of each subsequent Charging Year (or such other dates as the Appointee and the Authority may agree) a renewal fee, which shall represent the costs estimated by the Authority and notified to the Appointee on or before the preceding 1 April as being likely to be incurred in that Charging Year by it in the regulation and enforcement of the Appointments and in the carrying out of its other functions under the Order;
- (5) on 1 July of the first Charging Year after the announcement by the Authority of its intention to carry out a Periodic Review, and at the start of each Charging Year up to but not including the Periodic Review Year, an additional fee, which shall represent the additional costs estimated by the Authority and notified to the Appointee on or before the preceding 1 April as being likely to be incurred in that Charging Year by it in the preparation for or the carrying out of a Periodic Review, over and above the costs estimated by the Authority as being likely to be incurred in that Charging Year under paragraph 2(4) above;
- (6) where the Authority so determines, on 1 January in any year, a special fee, which shall represent the amount, if any, by which the aggregate of the costs estimated by the Authority to have been already incurred in that Charging Year and to be incurred in the remainder of that Charging Year by the Authority in the regulation and enforcement of the Appointments and in the carrying out of its other functions under the Order exceeds the aggregate of:
 - (a) the renewal and additional fees payable at the start of that Charging Year under the Appointments; and
 - (b) all amounts (if any) payable in that Charging Year under subparagraph 2(3);

subject to it apportioning the special fee, according to the nature of the costs intended to be covered by it, between the renewal fee, the additional fee and the amounts referred to in paragraph (b); and
- (7) Within thirty days of the date on which the Authority notifies the Appointee of the amount payable under this subparagraph, an amount equal to the estimate of costs notified to the Authority by the Department of Enterprise, Trade and

Investment as likely to be incurred by the Consumer Council in respect of the current Charging Year in the carrying out of its functions under Chapter III of Part III of the Order.

Condition O: Circumstances in which a replacement appointment may be made

For the purposes of Article 14(4)(d) of the Order, the only circumstances in which an appointment or variation may be made, in relation to the area for which the Appointee holds the Appointment as water undertaker or, as the case may be, sewerage undertaker under this instrument, are where the Department for Regional Development has given the Appointee at least 25 years' notice to terminate the relevant Appointment in relation to the whole of its area and that period of notice has expired.

Condition Q: Interruptions in Supply because of Drought

1. *Explanatory Note*

The Authority has indicated that when deciding whether to require the Appointee to make a payment under paragraph 5 of Condition Q it will, while not being able to anticipate all relevant circumstances, take account of the following:

- (a) the resources available to the company and its management of those resources, including the exploration of new resources;
- (b) the promotion by the company of the efficient use of water by its customers;
- (c) The company's ability to prohibit or restrict the use of water by the exercise of its powers under Article 116 of the Order (hosepipe bans) or by obtaining a drought order containing the provision authorised by Article 138(1)(b) (non-essential use); and
- (d) the maintenance of the company's assets, including the management by the company of leakage

2. *Interpretation*

"**business customer**" means the person who is liable to pay the Appointee's charges in respect of a supply of water to premises other than domestic premises;

"**drought order**" means an order made under Article 137 of the Order;

"**household customer**" means the person who is liable to pay the Appointee's charges in respect of a supply of water to domestic premises.

3. *Liability and Amounts of Payments*

3.1 Where a supply of water to premises is interrupted or cut off under the authority of a drought order the Appointee shall, subject to subparagraph 3.2, pay to the customer (or credit to its account) whichever of the amounts referred to in paragraph 4 is applicable.

3.2 The Appointee shall not be liable to make any payments under this Condition where the circumstances were so exceptional that it would have been unreasonable to have expected the interruption or cut-off to have been avoided.

4. *Amounts Payable to Household and Business Customers*

4.1.1 The Appointee shall pay to a household customer £10 for each day during which (or during part of which) the supply is interrupted or cut off.

4.1.2 The amount payable to any household customer in any Charging Year shall not exceed:

- (a) in relation to household customers who benefit from special provision by virtue of Regulations made under Article 202(2)(d)(i) of the Order ("**Vulnerable Customers**"), the average amount of water charges payable to the Appointee by Vulnerable Customers for the Charging Year preceding that in which the interruption or cut-off happens;
- (b) in relation to household customers who are not Vulnerable Customers, the average amount of water charges payable to the Appointee by household customers who are not Vulnerable Customers for the Charging Year preceding that in which the interruption or cut-off happens.

4.1.3 The Appointee shall pay to a business customer £50 for each day during which (or during part of which) the supply is interrupted or cut off.

4.1.4 The amount payable to any business customer in any Charging Year shall not exceed:

- (a) the amount of water charges payable by that customer for the supply of water to those premises for the Charging Year preceding that in which the interruption or cut-off happens or

(b) if that customer was not liable to pay those charges, £500.

- 4.1.5 When calculating the charges payable by a business customer for the supply of water services, amounts payable in respect of any separate supply which was provided solely for purposes other than domestic purposes shall be excluded.
- 4.2 If, when a payment becomes due under this Condition, a customer owes money to the Appointee and the debt has been outstanding for more than 6 weeks, any payment from the Appointee to which the customer is entitled under this Condition shall, to the extent that it does not exceed the amount so owed, be made by way of credit to that customer's account.
5. *Determination of Disputes*
- 5.1 Where any dispute arises between the Appointee and a customer as to the right of that customer to a payment or credit under this Condition, the matter may be referred to the Authority by either party for determination.
- 5.2 Any determination under this Condition shall be final and, if the Appointee fails to give effect to the determination, the customer may set off the amount in question against any payment which is due to the Appointee.
6. *Cessation or Modification of this Condition*
- 6.1 This Condition shall cease to have effect in relation to any interruptions or cut-offs occurring on or after the commencement date of any Regulations made by the Department for Regional Development pursuant to Article 66 of the Order, implementing the recommendations made to them by the Authority for the making of payments to customers for interruptions or cut-offs because of drought.
- 6.2 If the Regulations referred to in subparagraph 6.1 relate to either household customers or business customers only, this Condition shall cease to have effect in so far as it relates to those customers.

Guide to Defined Terms

1. The words and expressions set out in Column (1) below, which are used principally in the Conditions referred to in Column (2) below, are defined in the provision referred to in Column (3) below:

(1)	(2)	(3)
The Appointed Business	Throughout	Condition A
The Appointee	Throughout	The Appointments
The Appointments	Throughout	The Appointments
The Auditors	B, F and J	Condition A
Basket Items	B	Condition B, Part I
Charging Year	Throughout	Condition A
Excluded Charges	B	Condition B, Part I
The General Consumer Council	G, H and I	Condition A
Information	Throughout	Condition A
Legal requirement	B	Condition B, Part IV
Measured Basket Items	B	Condition B, Part I
Notified Item	B	Condition B, Part IV
Periodic Review	B, C, L and N	Condition A
Prior Year	B and C	Condition A
The Regulated Activities	B, F, J, K and L	Condition A
Relevant Change of Circumstance	B	Condition B, Part IV
The Retail Prices Index	B and C	Condition A
Review Charging Year	L and N	Condition A
Standard Charges	B and E	Condition B, Part I
Unmeasured Basket Items	B	Condition B, Part I
The Water Service	B, C, E, F, J, K and Q	Condition A
Weighted Average Charges Increase	B	Condition B, Part I

Guide to Defined Terms cont.

2. The definitions of other words and expressions used in the Conditions may be found either in this instrument or, by virtue of paragraph 1 of Condition A, in the Order, in the Interpretation Act (Northern Ireland) 1954, in the 1986 Order or the Competition Act 1998. The words and expressions set out in Column (1) below, which are used principally in the Conditions referred to in Column (2) below, are defined in the provision of the Order or of the Interpretation Act (Northern Ireland) 1954 or of the 1986 Order or of the Competition Act 1998 referred to in Column (3)(A) or, as the case may be, Column (3)(B) below:

(1)	(2)	(3)(A)	(3)(B)
		Relevant provision of the Order	Relevant provision of the Interpretation Act, the 1986 Order or the Competition Act 1998
Accessories	B and J	Art. 2(2)	
Competition Commission	A, B, C, F and N		Para. 45 and Sch. 7 of the Competition Act 1998
customer or potential customer	B, E and F	Art. 2(2)	
discharge pipe	L	Art. 252(1)	
Functions	A, B, E, F, M and N	Art. 2(2) and Art. 304	
holding company	A and F		Art. 4 of the 1986 Order
Information	A, B, C, E, F, J, K, L and M	Art. 2(2)	
new appointee	B	Art. 16(5)	
Notice	Throughout	Art. 2(2)	
public sewer	C, D and L	Art. 2(2)	
Records	A, B, F, J and L	Art. 2(2)	
resource main	L	Art. 2(2)	
service pipe	C, I and L	Art. 2(2) and Art. 90(3)	
sewerage services	B, C, D, E, F, G and I	Art. 2(2)	
sewerage undertaker	Throughout	Art. 13	
special administrator	K	Sch. I, para. 1(4)	
special administration order	K	Art. 41	
subordinate legislation	B and L		s. 1(a) of the Interpretation Act
Subsidiary	A	Art. 268 (1)	Art. 4 of the 1986

			Order
successor company	A	Art. 268(1) and Art. 269(1)	
transfer date	Throughout	Art. 270(2)	
trunk main	F and L	Art. 2(2)	
water mains	B, J and L	Art. 2(2)	
water undertaker	Throughout	Art. 13	
Writing	B, J, M and N		s. 46(1) of the Interpretation Act

3. The lists of words and expressions under in the Conditions in paragraph 1 and 2 above are not exhaustive lists of all the words and expressions used in the Conditions which are defined in this instrument, the Order, the Interpretation Act (Northern Ireland) 1954, the 1986 Order or the Competition Act 1998.
4. This guide to defined terms is for ease of reference only and shall not affect the construction of any provision of this instrument