

DATED the \_\_\_ day of \_\_\_\_\_ 20\_\_

**BETWEEN:**

**(1) NORTHUMBRIAN WATER LIMITED**

- And -

**(2) Company Name**

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**BULK SUPPLY AGREEMENT FOR WHOLESALE SERVICES**

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(1) Northumbrian Water Limited a company incorporated in England and Wales (Registered No. 02366703) whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham DH1 5FJ

(2) **Company Name** a company incorporated in England and Wales (Registered No. **number**) whose registered office is at **registered address**

**WATER UK BULK SUPPLY AGREEMENT**  
**GENERAL CONDITIONS (FIRST EDITION)**

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## **PART I: CORE CLAUSES**

### **1. General**

- 1.1. In these General Conditions, terms identified in the Special Conditions are in italics and defined terms have capital initials.
- 1.2. The parties to this agreement are the *Water Company* and the *New Appointee*
- 1.3. These General Conditions are to be used in the following circumstances:
  - 1.3.1. where the *Water Company* is the water undertaker for the Water Supply Area;
  - 1.3.2. where the *New Appointee* has applied to the Authority to become the water undertaker for an area, which includes the *Site*, and which falls within the Water Supply Area; and
  - 1.3.3. the *Water Company* has agreed to make a supply of water to the *New Appointee* in accordance with the terms of this agreement.
- 1.4. Accordingly, this agreement is made under section 40 of the Act.
- 1.5. The text of Part I of these General Conditions is not intended to be amended but the effect of any part or parts of it may be disapplied, supplemented or altered by the terms of the Special Conditions. In the case of any inconsistency between Part I of the General Conditions and the Special Conditions, the latter shall prevail in construing this agreement.

### **2. Acknowledgements**

- 2.1. The parties acknowledge that the *Water Company's* primary duty is to ensure a reliable supply of water to the customers within its Water Supply Area and that this agreement is subject at all times to this primary duty. The *New Appointee* acknowledges that the *Water Company* shall not allow the bulk supply of water to the *New Appointee* under this agreement in any way to prejudice the fulfilment of the *Water Company's* primary duty to its customers, including the *New Appointee*.
- 2.2. The parties further acknowledge that the availability of water resources may alter over time due to climatic change and other factors outside the control of the parties. As a consequence, it may be necessary for the *Water Company* to adjust the volumes of water made available to the *New Appointee*, the *New Appointee* to adjust the volumes of water supplied from the *Water Company*, and/or the

pricing of the water supplied, under this agreement and that any potential adjustments shall be dealt with in accordance with clause 16.

### 3. Definitions and Interpretation

3.1. The terms set out below shall have the meanings hereby assigned:

Act	Water Industry Act 1991, and any re-enactment or amendment of the same whether made before or after the date of this agreement and any regulations, orders, directives, directions, requirements or delegated or secondary legislation made under it.
Additional Capital Contribution	an additional capital contribution that may be required in respect of Network Re-inforcements as a consequence of the <i>Maximum Demand</i> or <i>Maximum Rate of Flow</i> being exceeded.
Assistance Supply	a supply by the <i>Water Company</i> to the <i>Site</i> by bowser, temporary Water Main, bottled water or otherwise where there is an event on the New Appointee's Distribution Network.
Assistance Supply Charge	such charges for any Assistance Supply (provided as a piped supply or by other means or both) as the NAV Charging Arrangements shall provide.
Authorised Departure	a departure authorised under regulation 22 or 23 the Water Supply (Water Quality) Regulations 2016 (SI 614).
Authority	the Water Services Regulation Authority (Ofwat).
Charges	Any sum or charge by the <i>Water Company</i> to the <i>New Appointee</i> comprised within the NAV Charging Arrangements or, in the event of a Material Change, such Charges as are re-negotiated or determined in accordance with clause 14.2 below.
Charging Period	the period beginning on the relevant <i>Charging Date</i> and ending the day before the next <i>Charging Date</i>
Charging Rules	rules made by the Authority regarding the Additional Capital Contribution or the Charges.
Connection	the connection of the New Appointee's Distribution Network to the Water Company's Distribution Network at the <i>Supply Point</i> .

Dispute	any disagreement, dispute, controversy or claim arising out of or relating to this agreement or any related document.
Emergency	any circumstances beyond the reasonable control of the <i>Water Company</i> whereby the water supply to the <i>New Appointee</i> is limited or unavailable because of burst, plant or process breakdown, drought, pollution contamination or otherwise.
Emergency Supply	a supply by the <i>Water Company</i> to the <i>Site</i> by bowser, temporary Water Main, bottled water or otherwise in case of an Emergency.
Force Majeure	any circumstances beyond the reasonable control of either-party, namely, strikes, lock-outs, act of God, war, riot, civil commotion, terrorist activity, radioactive contamination, malicious damage, compliance with any law or governmental order, rule, regulation, fire, drought or an Emergency.
Local Off-Site Mains	such new Water Mains between the <i>Water Company's</i> Distribution Network and the <i>Supply Point</i> as the <i>Water Company</i> reasonably considers are necessary in order to provide a Supply at the <i>Supply Point</i> .
Material Change	a change in the Authority's charging policy issued after the date of this agreement which applies to the charges payable in respect of these or similar bulk supplies.
Meter	means a meter complying with the Measuring Instruments (Cold Water Meters) Regulations 2006 and includes the box housing the meter, and any logger, out-reading or other apparatus associated with such a meter.
NAV Charging Arrangements	any statement, schedule or publication of tariffs or charges that the <i>Water Company</i> may impose upon the <i>New Appointee</i> in consideration of any of the <i>Water Company's</i> activities or expenses in relation to this agreement.
Necessary Works	as defined in section 93 of the Act.

Network Re-inforcements	such infrastructure on the Water Company's Distribution Network as the Water Company reasonably considers is necessary in order to provide the Supply.
New Appointee's Distribution Network	the water supply network vested in the <i>New Appointee</i> , including any apparatus vested in or operated by a licensed water supplier or a water undertaker (other than the Water Company's Distribution Network), which is connected to the New Appointee's Distribution Network.
Reporting Period	the period beginning on the relevant <i>Reporting Date</i> and ending the day before the next <i>Reporting Date</i>
Service Standards	any of the <i>Water Company's</i> guaranteed levels of service to its customers under the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008.
Supply	the supply of water by the <i>Water Company</i> to the <i>New Appointee</i> at the <i>Supply Point</i> .
Surrogate Reference Pressure	Not used.
Water Company's Distribution Network	the water supply network vested in the <i>Water Company</i> , including the source of the water, its treatment works and any pipes or other apparatus vested in or operated by a licensed water supplier or a water undertaker (other than the New Appointee's Distribution Network) which is connected to the Water Company's Distribution Network.
Water Fittings Regulations	the Water Supply (Water Fittings) Regulations 1999.
Water Main	where the context so requires, includes "accessories" as defined in section 219 of the Act and any tanks, service reservoirs and pumping stations required in connection with the Supply.
Water Quality Regulations	the Water Supply (Water Quality) Regulations 2016.

Water Supply Area	the area set out in the <i>Water Company's</i> Instrument of Appointment, which takes effect under the Act.
Working Day	a day not including Saturdays, Sundays, Bank or other public holidays.

- 3.2. Except where a contrary definition is given, words and expressions used in this agreement shall be given the meaning set out in the Act.
- 3.3. A reference to the Act and any statute, statutory provision, enactment, order, regulation, guidance, code of practice or other similar instrument shall be construed as a reference to the Act, statute, enactment, order, regulation, guidance, code of practice or instrument as amended by or under any subsequent statute, statutory provision, enactment, order, regulation, code of practice or instrument or as contained in any subsequent re-enactment thereof.
- 3.4. A reference to the Act and any other statute, statutory provision or enactment or order shall include regulations, codes of practice or guidance made or issued thereunder.
- 3.5. Headings are included in this agreement for ease of reference only and shall not affect the interpretation or construction of this agreement.
- 3.6. References to clauses and appendices are, unless otherwise provided, references to clauses and appendices to this agreement.
- 3.7. References to this agreement are to this agreement together with the Appendices, as amended or supplemented. Any such amendment or supplement must be in writing and signed in accordance with clause 30.
- 3.8. Words importing one gender includes all other genders and words importing singular include the plural and vice versa.

**4. Management of Demand**

- 4.1. The *Water Company* will from the date of the Connection (or such other date as may be agreed) supply water to the *New Appointee* at the *Supply Point* up to the volume specified as the *Maximum Demand* provided that (with the exception of the liability set out in clause 11.10) no liability shall rest upon the *Water Company* if, acting reasonably and in good faith, it is prevented from doing so due to an Emergency or Force Majeure event.
- 4.2. The *New Appointee* shall not take any water at the *Supply Point* for any purpose in excess of the volume specified as the *Maximum Demand*.

- 4.3. The *Water Company* may take such steps as may be practicable to restrict the Supply to the *New Appointee* at the *Supply Point* to the *Maximum Demand*.
- 4.4. If the water taken by the *New Appointee* at the *Supply Point* as a volume exceeds the *Maximum Demand* per day or per annum, the *New Appointee* shall pay to the *Water Company* an Additional Capital Contribution as reasonably determined by the *Water Company* towards any further Network Re-inforcements or Local Off-Site Mains that the *Water Company* considers are required to the *Water Company's* Distribution Network as a consequence.
- 4.5. Where the *Supply Point* comprises more than one point of connection, the provisions of this clause shall apply separately to each point and to each *Maximum Demand* assigned to them.

## **5. Flow, Pressure and Use**

- 5.1. The *Water Company* will supply water to the *New Appointee* at the *Supply Point* at such pressure complying with section 65 Water Industry Act 1991 and provided that no liability shall rest upon the *Water Company* if it is prevented from supplying water at such pressure due to an Emergency or Force Majeure event.
- 5.2. The *New Appointee* shall not take any water at the *Supply Point* for any purpose in excess of the rate of flow specified as the *Maximum Rate of Flow* and, so far as reasonably practicable, shall ensure that the rate of flow of the Supply (whether for commissioning any Water Mains on the *New Appointee's* Distribution Network or otherwise) is taken:
  - 5.2.1. at a reasonably steady and constant rate of flow; and
  - 5.2.2. not increased suddenly in such a way that it may cause discolouration or other problems within the *Water Company's* Distribution Network.
- 5.3. The *Water Company* may take such steps as may be practicable to restrict supplies to the *New Appointee*:
  - 5.3.1. at the *Supply Point* to the *Maximum Rate of Flow*; or
  - 5.3.2. at the *Supply Point* to the pressure complying with section 65 Water Industry Act 1991.
- 5.4. If the water taken by the *New Appointee* at the *Supply Point* at a rate that exceeds the *Maximum Rate of Flow*, it shall:
  - 5.4.1. notify the *Water Company* of the existence and cause of the excess use as soon as practicable after the same have come to its attention;



- 5.4.2. keep the *Water Company* notified of the steps being taken to reduce its use to levels less than the *Maximum Rate of Flow*;
- 5.4.3. take such additional or alternative steps as the *Water Company* may reasonably direct to reduce its use to levels less than the *Maximum Rate of Flow*; and/or
- 5.4.4. pay to the *Water Company* an Additional Capital Contribution as reasonably determined by the *Water Company* towards any further Network Re-inforcements or Local Off-Site Mains that the *Water Company* considers are required to the *Water Company's* Distribution Network as a consequence.
- 5.5. Notwithstanding the above, the *Water Company*, acting reasonably and in good faith, reserves the right to supply water at different rates of flow or pressures where this results from changes in the availability of water, Necessary Works, changes in the *Water Company's* Distribution Network or if, in the due discharge of its statutory duty to supply water to customers generally, it considers it is necessary or desirable to do so provided that the *Water Company* will notify the *New Appointee* before making any long term change to the *Water Company's* Distribution Network which will materially affect the rate of flow or pressure of the Supply.
- 5.6. Where the *Supply Point* comprises more than one point of connection, the provisions of this clause shall apply separately to each point and to each *Maximum Rate of Flow* assigned to them.
- 5.7. The *New Appointee* undertakes to use the Supply solely for the purposes of fulfilling its statutory duty to maintain an efficient and economical system of water supply within the area for which it holds an appointment as a water undertaker under the Act for the *Site* on the date this agreement commences and for no other purpose save where it is under a statutory duty or obligation to make water available in the *Water Company's* Water Supply Area.

## **6. Water Fittings**

- 6.1. The *New Appointee* shall ensure at all times that all water supply systems and water fittings within the *Site* comply with the Water Fittings Regulations and all other relevant laws.

## **7. Measurement of consumption**

- 7.1. The *Water Company* shall ensure that a Meter vested in the *Water Company* and capable of accurately measuring both the volume and the rate of flow of the Supply is fitted at the *Supply Point* and shall maintain such Meter so that it is capable of accurately measuring the

Supply provided that if it becomes necessary or desirable to replace a Meter because of variations to the volume or rate of flow of the Supply in excess of the *Maximum Demand* or *Maximum Rate of Flow*, the *New Appointee* shall pay the *Water Company* the reasonable cost of such replacement.

- 7.2. If, at any time, a Meter is not in use, whether for maintenance or other reasons, the *Water Company* shall notify the *New Appointee* within a reasonable time of it coming to the *Water Company's* notice.
- 7.3. The *New Appointee* may ask for a Meter to be tested by the *Water Company* to prove that it is measuring the Supply correctly within the prescribed limits of error in the Measuring Equipment (Cold-water Meters) Regulations 1988' that if the Meter is found to be measuring correctly within the relevant limits of deviation the *New Appointee* shall reimburse the *Water Company* for the cost incurred in undertaking that test.
- 7.4. Subject to clause 10, such Meter shall be used by the *Water Company* for monitoring the *Maximum Demand*, *Maximum Rate of Flow* and for charging purposes. Accordingly, it shall use reasonable endeavours to take a reading of the Meter within 21 days of the *Meter Reading Date*.
- 7.5. The *New Appointee* shall not, without the *Water Company's* consent (such consent not to be unreasonably withheld or delayed, but may be granted subject to such conditions as the *Water Company* considers appropriate), fit any Meter of its own to any pipe vested in the *Water Company* and shall only fit its own Meter to its own pipes provided always that any Meter fitted by the *New Appointee* shall be for the *New Appointee's* purposes only and shall not be used for monitoring the *Maximum Demand*, the *Maximum Rate of Flow* or for charging purposes.

## **8. Water Quality**

- 8.1. The Supply shall comply with the quality standards imposed by the Act and the Water Quality Regulations, PROVIDED ALWAYS that where a particular standard is the subject of a legal instrument accepted or issued by the Secretary of State or the Chief Inspector of Drinking Water under the provisions of the Act or the Water Quality Regulations, compliance with the terms of the relevant legal instrument shall be deemed to be compliance with the relevant quality standard imposed by the Act or the Water Quality Regulations (as the case may be), in which case the *Water Company* shall provide the *New Appointee* with a certified copy of any such authorised departure or undertaking. Each party undertakes to keep the other party fully informed of any discussions which take place at any time hereafter with the Secretary

of State for the proposed issue of a legal instrument and of the outcome thereof.

8.2. The *Water Company* shall act as a reasonable and prudent operator to ensure that the Water Company's Distribution Network does not cause any contamination of the water in the New Appointee's Water Distribution Network including suspending the Bulk Supply and, in any event, shall:

8.2.1. notify the *New Appointee* of the existence and cause (if known) of any contamination that it considers (acting as a reasonable and prudent operator) could affect the New Appointee's Water Distribution Network as soon as practicable after the same have come to the *Water Company's* attention; and

8.2.2. keep the *New Appointee* notified of the steps being taken to remedy the contamination.

8.3. Without prejudice to clause 8.1, the *Water Company* reserves the right to supply water of a different nature and composition or with different characteristics from that previously supplied where this results from the characteristics of the source or sources from which the Supply is taken, or the Water Company's Distribution Network, beyond the reasonable control of the *Water Company* or if, in the due discharge of its statutory duty to supply water, it considers it necessary or desirable to do so acting reasonably and in good faith.

8.4. In addition, both parties agree to be bound by the provisions of the *Water Quality Protocol* or such modified version of such *Water Quality Protocol* as may from time to time be agreed in writing by the parties.

**9. Planned and Un-planned Works, Emergencies and other incidents**

9.1. Both parties agree to abide by the *Contact Protocol* for the purposes of informing the other party about planned and un-planned works, emergencies and other incidents in accordance with this clause.

9.2. In respect of work or Necessary Works to the Water Company's Distribution Network or Meter which the Water Company plans to undertake more than 22 Working Days in advance and which may (in the *Water Company's* reasonably held opinion) affect the Supply:

9.2.1. the *Water Company* shall give the *New Appointee* 22 Working Days' notice;

9.2.2. the *Water Company* shall keep the *New Appointee* updated as any information previously provided changes and as further information becomes available;

- 9.2.3. the *New Appointee* may make comments on the *Water Company's* plan within 5 Working Days of its date of issue, whereupon the *Water Company* shall:
- 9.2.3.1. reasonably consider them;
  - 9.2.3.2. where it reasonably considers it appropriate do so, incorporate the *New Appointee's* comments into its plan; and
  - 9.2.3.3. reissue the plan at least 10 Working Days in advance of carrying out the planned work;
- 9.2.4. where the *Water Company* is unable to complete work within the time designated in the plan for reasons outside of its control, then it may reschedule the proposed start date provided it notifies the *New Appointee* at least 48 hours in advance; and
- 9.2.5. the *Water Company* may amend the plan at any time with the consent of the *New Appointee* (such consent not to be unreasonably withheld or delayed).
- 9.3. In respect of any work which may (in the *Water Company's* reasonable held opinion) *affect* the Supply but does not fall within the description set out in clause 9.2, the *Water Company* shall (where reasonably practicable) notify and update the *New Appointee* of specific activities 48 hours in advance of the time chosen to commence such activities, the nature of the work, the time when the Supply is planned to be restored and the likely impact on the Supply
- 9.4. The *Water Company* shall, whilst seeking to avoid unduly discriminating against the *New Appointee* in allocating priority in remedying breakdowns, endeavour to remedy breakdowns affecting the Supply within 12 hours if it is a minor burst or within 48 hours if the burst is on a strategic Water Main.
- 9.5. In the event of an Emergency, which may (in the *Water Company's* reasonable opinion) materially affect the Supply, the *Water Company* shall as soon as reasonably practicable after the circumstances constituting the Emergency have come to the *Water Company's* attention, notify the *New Appointee* of the Emergency and of the causes (if known). In addition, the *Water Company* shall keep the *New Appointee* briefed throughout the Emergency of the steps being taken to continue or, as the case may be, to restore the Supply.
- 9.6. Without prejudice to clause 9.5, if the *Water Company* issues a boil notice notifying its customers to boil their water before drinking the water or using it for food preparation or for other purposes or issues other precautionary advice to its customers due to water quality

concerns, the *New Appointee* shall immediately take steps to notify its customers to take the same precautions.

- 9.7. The *New Appointee* acting reasonably and in good faith shall ensure that any planned work to the New Appointee's Distribution Network does not lead to, and shall take such action as is necessary to prevent, any contamination of the water in the Water Company's Distribution Network including, if necessary, asking the *Water Company* to suspend the Supply and, in any event, shall notify the *Water Company* immediately of any contamination or material risk of contamination to water in the Water Company's Distribution Network or the New Appointee's Distribution Network, including the cause (if known) and the steps being taken to deal with the incident.
- 9.8. If either party (the "notifying party") becomes aware of any contamination or risk of contamination to water within its Distribution Network which could have arisen from the other party's (the "notified party") Distribution Network, the notifying party must inform the notified party requiring it to take such action (including for the avoidance of doubt, any necessary investigation and monitoring and, if deemed necessary by the notifying party, suspending the Supply) in respect of the notified party's Distribution Network or the Supply to prevent the contamination or risk of contamination as the notifying party may require within or over such period as the notifying party may specify in the notice and, if the notified party fails to comply with such notice and fails to the reasonable and good faith satisfaction of the notifying party to demonstrate that all necessary steps are being taken to prevent contamination or the risk of contamination, the notifying party may carry out the steps specified in the notice and recover the costs of doing so from the notified party, including any costs incurred as a result of having to carry out additional sampling, analyses and monitoring.
- 9.9. Both parties shall co-operate in good faith to ensure that any Emergency does not affect supplies to either party's customers. To that end, during an Emergency the *Water Company* will use reasonable endeavours to provide to the *New Appointee* an Emergency Supply provided that in the reasonable opinion of the *Water Company* none of the conditions set out in clause 9.12 are met at the time of the request by the *New Appointee* or would be met if the *Water Company* provided the Emergency Supply
- 9.10. In the event of an Emergency having occurred, the parties shall co-operate with any investigation into the causes of that Emergency and shall share any lessons learned so far as they relate to issues associated with the Supply in order to prevent a recurrence.

- 9.11. Where there is an operational incident on the New Appointee's Distribution Network that prevents the use of the Supply or that would or would be likely to affect the quality of the water from the Supply, the *Water Company* shall if requested by the *New Appointee* (provided that the confirmation required under clause 9.13 has been provided to the *Water Company* by the *New Appointee*), provide an Assistance Supply as soon as reasonably practicable following the request from the *New Appointee* at the location within the *Site* as may be agreed between them, provided that in the reasonable opinion of the *Water Company* none of the conditions set out in clause 9.12 are met at the time of the request by the *New Appointee* or would be met if the *Water Company* provided the Assistance Supply.
- 9.12. The conditions referred to in clauses 9.9 and 9.11 are the following:
- 9.12.1. that the Emergency Supply or Assistance Supply will or is likely to cause the *Water Company* to breach any of its statutory obligations or fail to meet any of its Service Standards;
- 9.12.2. that the Emergency Supply or Assistance Supply will or is likely to create a risk that any supply of water does not remain wholesome or fit for water consumption;
- 9.12.3. that the Emergency Supply or Assistance Supply will or is likely to affect the ability of the *Water Company* to manage any planned event or to respond to any actual or potential unplanned event;
- 9.12.4. that there is a risk of contamination of the *Water Company's* Distribution Network; or
- 9.12.5. that there is insufficient capacity in the *Water Company's* Distribution Network.
- 9.13. the *New Appointee* shall confirm to the *Water Company* every year no later than on 31 March whether or not it wishes to rely on the right to request an Assistance Supply under this agreement for the twelve months following in order to allow the *Water Company* to include this requirement into its planning and operational arrangements.
- 9.14. If the *Water Company* concludes that any of the conditions referred to in clause 9.12 are met and that it is not able to provide the Emergency Supply or Assistance Supply (as the case may be) or is only able to meet part of the requirements of the *New Appointee*, it shall inform the *New Appointee* as soon as reasonably practicable and where the *Water Company* is able to meet part of the requirements of the *New Appointee*, the *Water Company* shall provide the Emergency Supply or Assistance Supply to the extent it is able to and the parties shall continue to coordinate their response until the event has ended.

- 9.15. In the event that the *Water Company* considers it necessary to make a temporary ban or other restrictions on the use of water as may from time to time be applied to the *Water Company's* customers in the area surrounding the *New Appointee's* area of appointment as a water undertaker, the *New Appointee* shall take all steps necessary to impose upon its customers a hosepipe ban or other restrictions. The *Water Company* shall give such notice to the *New Appointee* as is reasonable in the circumstances where it proposes to introduce such restrictions.
- 9.16. Where the *Water Company* is proposing to apply for an ordinary or emergency Drought Order that will restrict the use of water in the area surrounding the *New Appointee's* area of appointment as a water undertaker it shall notify the *New Appointee* of its intention. The *New Appointee* shall take all necessary steps to apply for an ordinary or emergency Drought Order in equivalent or at its option more stringent terms to that applied for by the *Water Company* and impose restrictions on the use of water by its customers no less than those applied by the *Water Company* to its customers. The *Water Company* shall give such notice to the *New Appointee* as is reasonable in the circumstances where it proposes to apply for an ordinary or emergency Drought Order and the terms sought.

## **10. Charging and Payment**

- 10.1. Where the NAV Charging Arrangements provide for any form of Charges based on connection of properties to the New Appointee's Distribution Network, the *New Appointee* shall inform the *Water Company* on each *Reporting Date* of the addresses of properties connected during the previous Reporting Period to the New Appointee's Distribution Network and, if relevant for the purposes of calculating the Relevant Multiplier, the number and type of water fittings and the *Water Company* shall thereupon calculate any Charges consequent upon such connections.
- 10.2. Where the NAV Charging Arrangements provide for any form of volumetric Charges:
- 10.2.1. not used.
- 10.2.2. subject to clause 10.2.3, the amount of water supplied by the *Water Company* to the *New Appointee* shall be taken to be that shown by the readings taken from the Meter at the *Supply Point* and, in respect of the accuracy, testing, method of proof and effect of such Meter readings the provisions of the Measuring Equipment (Cold-water Meters) Regulations 1988 shall apply; but
- 10.2.3. if for any reason the *Water Company* is unable to obtain a Meter reading for any period or the Meter is not in use or is not operational for any

reason the *Water Company* may, acting reasonably and in good faith, estimate the volume supplied to the *New Appointee* for that period and calculate Charges accordingly until a Meter reading becomes available after which the *Water Company* shall calculate any reconciliation of Charges as may be fair and equitable and thereafter rely upon the actual Meter reading or representative sample.

- 10.3. If water is taken by the *New Appointee* in excess of the *Maximum Demand* or *Maximum Rate of Flow*, Charges may be calculated according to such enhanced rate as may be set out in the NAV Charging Arrangements.
- 10.4. Where NAV Charging Arrangements provide for negative charges resulting in a credit in favour of the *New Appointee* or a credit in favour of the *New Appointee* arises under clause 11.10, such credit shall be settled by deducting the credit from any positive Charges made within the same payment period. To the extent that any credits exceed the positive Charges made within the same payment period they shall be carried forward for settlement in the next payment period (for as many iterations as shall be necessary).
- 10.5. Where NAV Charging Arrangements provide for Assistance Supply Charges and an Assistance Supply is made, the *New Appointee* must pay to the *Water Company* such Assistance Supply Charges.
- 10.6. Save as provided in clause 10.4 payment of charges by the *New Appointee* shall be made without conditions attached and without deduction (except to the extent required by law), whether by way of set off or otherwise.
- 10.7. Where any such charges are required by the NAV Charging Arrangements to be paid by the *New Appointee*, the *New Appointee* shall pay the *Water Company* the charge within such period of receipt of an invoice from the *Water Company* and by such method as NAV Charging Arrangements shall require.
- 10.8. If payment is not made within that time, interest shall be added to the outstanding amount at the rate of 4% per annum above the base rate from time to time in force of Barclays Bank Plc (or such other bank as the *Water Company* may reasonably and in good faith nominate) from the date of non-payment of the invoice until the date of payment.
- 10.9. The *Water Company* shall submit an invoice in respect of Charges for the relevant Charging Period within a reasonable time after the next *Charging Date*. Where the invoice includes volumetric Charges based on a Meter reading, the invoice shall state the date upon which the reading took place.



- 10.10. In the event of a Material Change, either party may propose an alternative price which reflects the Material Change. If not agreed, within 6 months of such proposal, either or both parties may refer the matter to the Authority for determination. Until agreed or determined, the *New Appointee* shall continue to pay the Charges as if there had been no Material Change. Any alternative price shall take effect from the date agreed or determined, as the case may be.
- 10.11. The *New Appointee* shall remain liable for all charges payable in respect of the Supply until this agreement has expired or has been validly terminated in accordance with clause 13. Upon expiry or termination of this agreement, the *Water Company* shall pay any credits due to the *New Appointee* that cannot be settled against positive Charges
- 10.12. All payments due under this agreement shall be exclusive of Value Added Tax and all other taxes now or in the future payable in respect of the Supply which shall be added accordingly.
- 10.13. Where clause E has not been adopted, if the *New Appointee* breaches the provisions of this agreement or has been caused to remedy such breach after receiving notice from the *Water Company* specifying the breach and requiring the breach to be rectified more than twice in any rolling period of 12 months, without prejudice to any other rights or remedies which the *Water Company* may possess, the *New Appointee* shall if so required by notice given by the *Water Company* promptly provide a security instrument which satisfies the security and credit rating requirements set out in clause G.
- 10.14. Provided that there are no material changes to the layout of the *Site* and provided the *New Appointee* complies in all respects with the terms of this agreement, unless this agreement otherwise requires, there will be no charge for any Local Off-Site Mains or Network Re-inforcement required to facilitate the Supply at the *Supply Point*.

## **11. Liability**

- 11.1. Neither party shall be under any liability to the other for loss or damage arising from or in the course of or due whether directly or indirectly or in whole or in part to the provision of the Supply except to the extent that such act or omission is unlawful or negligent or is in breach of an express provision of this agreement.
- 11.2. Without prejudice to the generality of clause 11.1, the *Water Company* shall not be liable for any interruption, suspension or reduction of the Supply or because of any variation in the quantity, quality, flow or pressure of the Supply except to the extent that such event is occasioned by the unlawful or negligent act or omission of the *Water Company* or is a breach of an express provision of this agreement.

- 11.3. Without prejudice to clause 11.1, neither party shall be liable to the other either under this agreement or generally under the law of negligence for loss of use, profits, contracts, production or of revenue, for breach of contract to a third party, for increased costs of working or business interruption or for any consequential loss of any kind howsoever caused arising out of or in connection with the provision of or the failure to provide the Supply.
- 11.4. Any liability under this agreement or otherwise on the part of either the *Water Company* or the *New Appointee* shall be reduced to the extent that the other party has itself caused or contributed to the breach or the loss or damage occasioned thereby and, in the event of liability to any third party by a party arising from that party's breach of this agreement, the party who has caused or contributed to the breach or the loss or damage occasioned thereby shall indemnify the other to the same extent.
- 11.5. Either party shall notify the other as soon as reasonably practicable following any matter coming to the attention of the other party which may constitute or give rise to a breach by that party of any of its obligations under this agreement. In such event, the other party shall use all reasonable endeavours to mitigate any loss, damage or injury in any way resulting therefrom.
- 11.6. This clause shall be in substitution for and to the exclusion of all other claims or remedies for damages or other relief under this agreement but shall not exclude any compensation which may be payable under and in accordance with the Act, or any other Act of Parliament or either party's Instrument of Appointment as a water undertaker and in respect of which the amount of compensation is fixed by the Act, regulations or the Instrument of Appointment, as the case may be.
- 11.7. Each of the sub-clauses of this clause shall survive termination of this agreement and shall be construed as a separate and severable contract term, so that if one or more such sub-clauses is held to be invalid, unlawful, or otherwise unenforceable, the remaining sub-clauses shall remain in full force and effect and shall continue to bind the parties.
- 11.8. Nothing in this clause seeks to exclude or limit either party's liability to the other for death or personal injury or any other liability that cannot as a matter of law be excluded or limited.
- 11.9. Subject to clause 11.8, and excluding the *New Appointee's* obligation to pay Charges, in any period of 12 months the aggregate liability of each Party (including all of their respective employees, servants, agents or sub-contractors) howsoever arising under or in connection with this Agreement shall be limited to £5,000,000 (five million pounds).

- 11.10. Notwithstanding the provisions of clause 4.1 and this clause 11, where the *New Appointee* makes any payment to any of its customers under the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 then to the extent that the *New Appointee* was obliged to make such payments were caused by the *Water Company's* failure to supply water in accordance with clause 4.1, the *Water Company* shall reimburse the *New Appointee* by way of a credit dealt with in accordance with clause 10.4. Likewise, to the extent that the *Water Company* was obliged to make such payments were caused by the *New Appointee* failure to operate the Site Network in accordance with clause 4.1 and 5.2, the *New Appointee* shall reimburse the *Water Company* by way of a debit. Such debit shall be settled by adding it to the Charges made within the same payment period.
- 11.11. This agreement (including this clause 11) shall be without prejudice to any liability which may arise under any standards of performance which may apply at any time under any statute, statutory provision, enactment, order, regulation, guidance, code of practice or other similar instrument or which may be agreed in writing by an addendum to this agreement at any time.

## **12. Force Majeure**

- 12.1. If either party shall be unable to carry out any of its obligations under the Agreement because of Force Majeure, the Agreement shall continue to have full effect but both parties' obligations (other than their payment obligations) shall be suspended without liability for a period equal to the period during which the Force Majeure operates provided that that suspension is of no greater scope and of no longer duration than that which is required by the Force Majeure.

## **13. Confidentiality**

- 13.1. In this agreement, "Confidential Information" shall collectively mean any and all information, materials or data which is marked confidential or is confidential by its nature received by one party from the other party or by a third party on behalf of that party including commercial, financial, marketing, technical, environmental, or other information, materials or data of whatever nature relating to the other party's business or affairs (including data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information including those concerning this agreement in any form or medium whether disclosed in writing or by any other means) and, for the avoidance of doubt, any reproductions of Confidential Information, in any form or medium or whether in whole or in part, shall constitute Confidential Information.
- 13.2. Each party undertakes with the other that it shall preserve the confidentiality and secrecy of, and not directly or indirectly reveal,

report, publish, disclose, or transfer or use for its own purposes Confidential Information except to the extent otherwise permitted by the Agreement or with the prior consent in writing of the party to whose affairs such Confidential Information relates or in the circumstances and to the extent set out in this clause.

- 13.3. The exceptions referred to in clause 13.2 are where the information:
  - 13.3.1. enters the public domain or otherwise comes to the attention of the other party without any breach of clause 13.2 having occurred;
  - 13.3.2. is disclosed to any employee, director, agent, contractor, consultant or professional advisor of the party who needs to have access to such confidential information and who has been made fully aware of the obligations under this clause; and/or
  - 13.3.3. is required to be disclosed in compliance with the Act or any other legal obligation other than a contractual obligation.
- 13.4. In addition, the parties acknowledge that, in the interpretation of the Environmental Information Regulations 2004 (or any other Legal Requirement which gives any discretion to the party as to whether disclosure should be made) the presumption will be in favour of disclosure and the disclosure will be entirely at the discretion of the party receiving the request for information acting reasonably and in good faith.
- 13.5. This clause 13 shall continue to bind a person for a period of 5 years after the expiry of this agreement or the date on which the Supply is terminated for whatever reason.

#### **14. Onward Sales and Future Competition**

- 14.1. It is hereby declared that nothing within this agreement precludes the *Water Company* or any other party from offering to supply water to any owner or occupier of premises within the *Site* either by means of a supply from the *New Appointee* or the *Water Company* or any third party, provided that such a supply is permitted by English law.
- 14.2. In the event of changes being made to the Act or the Competition Act 1998 so as to extend competition within the water industry, if such changes are relevant to the Supply either party may make a Change Request under clause 16.

#### **15. Term**

- 15.1. Subject to the remainder of this clause, this agreement will commence on the date hereof and continue until terminated in accordance with clause 15.2
- 15.2. Termination may take place in the following circumstances:

- 15.2.1. the *New Appointee* may terminate this agreement at any time during the term by serving not less than six months' notice on the *Water Company*;
- 15.2.2. the *Water Company* may terminate this agreement if the Authority has not confirmed the appointment of the *New Appointee* as the water undertaker for an area, which includes the *Site*, within 6 months of the date of this agreement;
- 15.2.3. the *Water Company* may terminate this agreement on 10 years' notice to the *New Appointee*;
- 15.2.4. the *Water Company* may terminate this agreement in the case of any material breach of it by the *New Appointee* where the *Water Company* has given to the *New Appointee* two months' prior notice (such notice to include the details set out in clause 15.3) and the breach has not been remedied within that time; or
- 15.2.5. this Agreement will be terminated automatically if the *New Appointee's* appointment referred to in clause 1.3.2 has come to an end and is not subject to a transfer scheme under clause 17.
- 15.3. A notice under clause 15.2.4 shall only be considered validly given if it includes:
  - 15.3.1. a statement that it is a notice given under clause 15.2.4 of this agreement;
  - 15.3.2. details of the obligation that is breached;
  - 15.3.3. details of how that obligation has been breached; and
  - 15.3.4. a statement that the *New Appointee* must remedy the breach within two months otherwise this agreement will terminate.
- 15.4. If termination takes place under clause 15.2, the *Water Company* shall be entitled forthwith:
  - 15.4.1. to take such steps as it may deem appropriate to disconnect the *New Appointee's* Water Main and terminate the Supply with effect from expiry or termination; and
  - 15.4.2. to recover from the *New Appointee* all reasonable costs, expenses and liabilities incurred as a consequence of such expiry or termination in addition to all outstanding charges and liabilities.
- 15.5. Termination or expiry of this agreement shall not affect any rights or obligations which may have accrued prior to its termination or expiry.

## **16. Change Management**

- 16.1. Where either party wishes to seek a variation to this agreement (a "Change") then that party (the "Requesting Party") shall submit a change request as specified in this clause (a "Change Request") to the

other (the "Recipient") and the provisions of this clause shall apply in respect of the Change. All Changes shall be made in accordance with this clause.

- 16.2. A Change Request can be signed only by an authorised signatory of the Requesting Party.
- 16.3. A Change Request signed by the authorised signatory of the Recipient is an agreed Change to this Agreement.
- 16.4. Until such time as a Change Request is signed by both parties in accordance with this clause, the Agreement shall not be varied by the proposed Change and each party shall, unless otherwise agreed in writing, continue to fulfil its obligations as if the proposal for a Change had not been made. Any discussions which may take place between the parties in connection with a proposed Change before the agreement of the Change Request shall be without prejudice to the rights of each Party.
- 16.5. Each Change Request shall be raised by providing in writing the following information to the Recipient, clearly stating that the document is a Change Request in accordance with this clause of this agreement:
  - 16.5.1. a Change Request reference number;
  - 16.5.2. the author and submission date of the Change Request;
  - 16.5.3. the requested implementation date (which shall be no less than 20 working days from the date of the Change Request);
  - 16.5.4. the reason for the Change;
  - 16.5.5. full details of the Change including an assessment on all aspects of the Agreement and Services;
  - 16.5.6. any proposed changes in the Charges;
  - 16.5.7. the consequential amendments, if any, to this Agreement (including the Schedules) necessitated by the Change; and
  - 16.5.8. the date of expiry of validity of the Change Request which, unless agreed otherwise, shall be for twenty (20) Working Days after the date the Change Request.
- 16.6. For the avoidance of doubt, any written notice that contains all of the information set out in clause 16.5 shall be considered a valid Change Request, and the Recipient shall be obliged to comply with the terms of this clause.
- 16.7. On receipt of a valid Change Request, the Recipient shall, within the period of validity of the Change Request, evaluate the Change Request and:

- 16.7.1. decide to approve, sign and return the Change Request to the Requesting Party;
- 16.7.2. decide to reject the Change Request, giving reasons for such rejection; or
- 16.7.3. require the Requesting Party to amend the Change Request and/or provide the Recipient with additional information about the Change Request as soon as it is reasonably able to do so.
- 16.8. For the avoidance of doubt, the Recipient shall not be required to agree to any Change Request proposed by the Requesting Party.
- 16.9. Where a Change Request has not been signed and returned by the Recipient within twenty (20) working days then, unless the Requesting Party has either withdrawn the Change Request or agreed to amend it, the Requesting Party shall be at liberty (but not obliged) to make an application to the Authority under section 40A(1) of the Act.

## **17. Assignment**

- 17.1. In the event that either party ceases to be a water undertaker under the Act, this agreement may be assigned by means of a Transfer Scheme under Schedule 2 of the Act, but not otherwise.

## **18. Entire Agreement**

- 18.1. This agreement contains all the terms and conditions between the parties and replaces all previous terms and conditions between the *Water Company* and the *New Appointee* relating to the Supply.
- 18.2. Neither party shall be entitled to rely upon any warranty or representation made by the other unless such warranty or representation is given and set out expressly in this agreement.

## **19. Notices**

- 19.1. Any notice to be sent by either party under this agreement shall be in writing and shall be sent by first class post, fax or e-mail to the Company Secretary at the registered office of that party together with a copy to any other designated person at the same or another address as notified by either party to the other.

## **20. Severance**

- 20.1. If any provision (or part thereof) of the Agreement is or becomes invalid, unenforceable or illegal or, without prejudice to the generality of the foregoing, is found to be in breach of the Competition Act 1998 such invalidity, unenforceability, illegality or breach shall not prejudice the remainder of the Agreement which shall continue to have effect subject to clause 15.

## **21. Contracts (Rights of Third Parties) Act 1999**

- 21.1. For the purposes of the Contracts (Rights of Third Parties) Act 1999 this agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

## **22. Anti-bribery and Anti-Slavery Provisions**

- 22.1. Both parties shall:
  - 22.1.1. comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
  - 22.1.2. have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
  - 22.1.3. promptly report to the other any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this agreement; and
  - 22.1.4. on request from the other party (the "Requesting Party") but not more frequently than once a year, certify to the Requesting Party in writing signed by an officer of the party receiving the request (the "Receiving Party"), compliance with this clause by the Receiving Party.
- 22.2. In performing their obligations under this agreement, the parties shall:
  - 22.2.1. comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force including the Modern Slavery Act 2015; and
  - 22.2.2. have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance and enforce them where appropriate; and
  - 22.2.3. include in its contracts with its direct contractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause.
- 22.3. Each party shall notify the other as soon as it becomes aware of:
  - 22.3.1. any material breach of its anti-slavery policies and procedures; or
  - 22.3.2. any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.

## **23. Dispute Resolution**

- 23.1. Save to the extent that any dispute, application, determination, arbitration, appeal or equivalent right of referral to a third party is expressly provided for in:
  - 23.1.1. the Water Industry Act 1991 or the Water Act 2014; or



- 23.1.2. either the *Water Company's* or the *New Appointee's* Instruments of Appointment; or
- 23.1.3. the rights, powers, duties, functions or obligations of the Authority or the Secretary of State under the Act, the Water Act 2014, any other Law, any Appointment, Licence or otherwise howsoever,  
any Dispute will be resolved in accordance with clauses 23 to 27.
- 23.2. Disputes may be escalated as follows
  - 23.2.1. Subject to clause 23.1 above, where a Dispute arises a party that wishes to commence a Dispute (the "Claimant") shall notify the other party in writing of the existence and subject matter of the Dispute.
  - 23.2.2. The Claimant shall organise a meeting in person or by conference call or video-conference of representatives of the parties. Representatives who have authority to resolve the Dispute will meet within ten (10) Business Days of receipt of the written notice referred to in Clause 1.2.1 ("Initial Meeting"). At such Initial Meeting the parties shall negotiate in good faith and shall use their respective reasonable endeavours to resolve such Dispute.
  - 23.2.3. Any Dispute that cannot be resolved within twenty (20) Business Days of receipt of the written notice referred to in clause 23.2.1 shall be referred by either party to a senior manager of each party who has authority to bind the party he or she respectively represents. The Claimant shall organise a meeting (in person or by conference call or video-conference) of senior managers of each of party. Such senior managers shall meet within thirty (30) Business Days of receipt of the notice referred to in clause 23.2.1 and negotiate in good faith and shall use their reasonable respective endeavours to solve amicably the Dispute within forty (40) Business Days of receipt of the notice referred to in clause 23.2.1.
  - 23.2.4. Any Dispute that cannot be resolved by the parties within forty (40) Business Days of receipt of the written notice referred to in clause 23.2.1 shall be referred by any party to a director of each of party who has authority to bind the party they respectively represent. Each party shall advise the Authority promptly upon referring any dispute their respective directors in accordance with this clause 23.2.4. The Claimant shall organise a meeting (in person or by conference call or video-conference) and such directors shall meet within fifty (50) Business Days of receipt of the notice referred to in clause 23.2.1 and negotiate in good faith and shall use their reasonable respective endeavours to solve amicably the Dispute within sixty (60) Business Days of receipt of the written notice referred to in clause 23.2.1.
  - 23.2.5. If the parties have not resolved a Dispute to the satisfaction of both parties within sixty (60) Business Days of receipt of the notice referred

to in clause 23.2.1 then the Dispute may be referred to arbitration in accordance with clause 24.

**24. Reference to and conduct of arbitration**

- 24.1. If the parties have not resolved a Dispute to the satisfaction of both parties in accordance with Clause 22 above, Disputes shall be referred to arbitration pursuant to the arbitration rules of The London Court of International Arbitration ("LCIA" and "LCIA Rules") in force from time to time. The arbitration tribunal shall be constituted in accordance with the LCIA Rules.
- 24.2. Each party shall advise the Authority promptly upon referring any dispute to arbitration pursuant to clause 24.1.
- 24.3. The arbitration tribunal shall consist of a sole arbitrator appointed in accordance with the LCIA Rules subject to the provisions of this clause 24. Within fifteen (15) Business Days of the filing of the response pursuant to Article 2 of the LCIA Rules (the "Response"), the parties shall jointly nominate an agreed proposed arbitrator to the LCIA in writing with a copy to both parties.
- 24.4. In the event that the parties fail to agree upon a sole proposed arbitrator within ten (10) Business Days of the filing of the Response, either party may apply in writing, with a copy to the other party, to the Panel Chairman for the nomination of a sole arbitrator (the "Panel Request"). The Panel Chairman shall nominate a sole arbitrator in writing to the LCIA with a copy to both parties within ten (10) Business Days of receipt of the Panel Request.
- 24.5. If the Respondent to the arbitration proceedings should fail to file a Response, the Arbitration Claimant shall within ten (10) Business Days of the date on which the Response was due to be filed nominate an agreed proposed arbitrator to the LCIA in writing with a copy to all Disputing parties.
- 24.6. If no nomination is transmitted to the LCIA under clause 24.5 within twenty (20) Business Days of the filing of the Response pursuant to Article 2 of the LCIA Rules, the LCIA shall appoint the sole arbitrator in accordance with the LCIA Rules. Such arbitrator shall have expertise in the provision of retail services in one or more utilities markets.
- 24.7. Whatever the nationality, residence or domicile of either party and wherever the dispute arose the Laws of England and Wales shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the seat of any such arbitration shall be England or Wales, as the case may be, and the provisions of the Arbitration Act 1996 shall apply to any such arbitration wherever the same or any part of it shall be conducted. The language of the arbitration shall be English.

## **25. Arbitration decisions and related Disputes**

- 25.1. The decision of the arbitration tribunal pursuant to a reference under clause 24.1 shall be final and binding on both parties and the parties shall comply with such decision provided that (for the avoidance of doubt) the arbitration tribunal shall not have the power to modify the terms of this agreement.
- 25.2. The disputing parties hereby waive any right to challenge or appeal any award of the arbitration tribunal to the full extent permitted by Law.
- 25.3. The arbitration tribunal appointed in accordance with clause 24 shall have the powers referred to in section 35 of the Arbitration Act 1996 in relation to the consolidation of related proceedings.
- 25.4. If a Dispute has been referred to an arbitration tribunal pursuant to clause 24 and a related Dispute has also been so referred to an arbitration tribunal for determination either party (or the Authority) may request the relevant arbitration tribunals to consolidate the related Disputes.
- 25.5. Within ten (10) Business Days of receiving the request referred to in clause 25.4, the first arbitration tribunal appointed in respect of any Related Dispute may, if it considers it appropriate, order consolidation of some or all of the related Disputes and shall in such circumstances have the authority and power referred to in clause 25.3. Any dispute between arbitration tribunals shall be referred to the LCIA for resolution.
- 25.6. In the event of the arbitration tribunal ordering consolidation of the Related Disputes in accordance with clause 25.5, the arbitration tribunal shall have the authority and power to direct that all matters arising in the relevant Related Disputes are consolidated in whatever manner the arbitration tribunal determines and the Disputing parties shall thereafter abide by and implement such consolidation and any such direction.
- 25.7. In the event that the related Disputes are consolidated the arbitration tribunal shall determine all the consolidated related Disputes at the same time.

## **26. Notification of arbitration determinations**

- 26.1. Each party shall ensure that the Authority receives notification of the outcome of the determination by an arbitration tribunal of any Dispute.

## **27. Interim judicial relief**

- 27.1. By agreeing to arbitration, the parties do not intend to deprive the courts of England and Wales of their jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies as may be available under the jurisdiction of the courts of England and Wales, the arbitration tribunal shall have full

authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any party to respect the arbitration tribunal's orders to that effect. In any such judicial action:

- 27.1.1. each of the parties irrevocably and unconditionally consents to the exclusive jurisdiction of the courts of England and Wales for the purpose of any interim injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings, and to the non-exclusive jurisdiction of such courts for the enforcement of any judgment on any award;
- 27.1.2. each of the parties irrevocably waives, to the fullest extent they may effectively do so, any objection, including any objection to the jurisdiction based on the grounds of *forum non conveniens* on account of its place of incorporation or domicile or otherwise, which it may now or hereafter have to the bringing of any such action or proceeding in any courts in England or Wales; and
- 27.1.3. each of the parties irrevocably consents to service of process to its registered office or, if its registered office is not in England, Wales or Scotland, to the address provided for the party on the Authority's website at the time of service.

## **28. Governing Law**

- 28.1. This agreement shall be governed by the law of England and shall be subject to the jurisdiction of the English courts.

## **29. Change of Law**

- 29.1. If any provision (or part thereof) of this agreement is or becomes invalid, unenforceable or illegal such invalidity, unenforceability or illegality shall not prejudice the remainder of the agreement which shall continue to have effect subject to the remainder of this clause.
- 29.2. If any party considers that its respective obligations are adversely affected to a material extent by a change in any relevant Legal Requirement, the party so affected may propose a variation to the terms of this agreement which, if not agreed, shall be dealt with as a dispute under the terms of clause 22 above.

## **30. Form of Agreement**

- 30.1. This agreement is not a deed and may be signed under hand by any authorised signatory.
- 30.2. Either party (or both) may sign this agreement by electronic signature (whatever form the electronic signature takes including covering email or submission via internet or intranet portal) and this method of signature is as conclusive of the parties' intention to be bound by this agreement as if signed by manuscript signature.



## **PART II: OPTIONAL CLAUSES**

1. All, some or none of the following optional clauses shall apply depending on whether they have been incorporated into this agreement by the Special Conditions
2. The text of these optional clauses (where incorporated) is not intended to be amended but the effect of any part or parts of them may be disapplied, supplemented or altered by the terms of the Special Conditions. In the case of any inconsistency between these optional clauses forming Part II of the General Conditions and the Special Conditions, the latter shall prevail in construing this agreement.
3. In the case of any inconsistency between these optional clauses forming Part II of the General Conditions and Part I of the General Conditions, the former shall prevail in construing this agreement.
  - A. Previous Agreement Superseded
    - A1. This agreement replaces the Phase 1 Agreement, which is hereby revoked subject to any rights or obligations which may have accrued thereunder prior to the date of this agreement,
    - A2. This agreement also replaces and revokes any other agreement or understanding between the parties.
  - B. Temporary Supply Points
    - B1. Unless otherwise agreed between the parties, the *Temporary Connection* may be disconnected from the Water Company's Distribution Network and removed at any time after the *Temporary Connection End Date* following which the term "Supply" and "*Supply Point*" shall no longer apply to the *Temporary Connection*.
  - C. Demand Forecasts
    - C1. The *New Appointee* shall furnish the *Water Company* free of charge within a reasonable time of request its projected demands for water consumption at the *Supply Point* to enable the *Water Company* to undertake asset management and water resource planning in accordance with the *Water Company's* regulatory obligations.
  - D. Alternative Supply Point
    - D1. Where there is an *Alternative Supply Point*, the *Water Company* may, having first consulted the *New Appointee*, choose in its absolute discretion to provide and Emergency Supply or Assistance Supply or part of it as a piped supply through the *Alternative Supply Point*, but

the *Water Company* shall have no obligation to do so without prejudice to any obligation the *Water Company* may have to provide an Emergency Supply or Assistance Supply by other means.

D2. When the *Water Company* provides an Emergency Supply or Assistance Supply or part of it as a piped supply through an *Alternative Supply Point*, it shall determine in its reasonable opinion the quantity and pressure that is available and can be provided (taking into account the needs of the other persons to whom the *Water Company* provides supplies and the need to ensure that the Emergency Supply or Assistance Supply and any other supply of water remains wholesome and fit for human consumption and complies with the requirements of the Water Quality Regulations) and shall have no obligation to provide any minimum quantity, flow or pressure and shall be able to reduce or interrupt the piped Emergency Supply or Assistance Supply to meet its own operational and compliance requirements. Where the *Water Company* determines in accordance with this agreement that it will not provide or will reduce or discontinue a piped Emergency Supply or Assistance Supply it shall still if requested by the New Appointee comply with any obligations it may have in this agreement by other means.

E. Security

E1. The *New Appointee* shall provide to the *Water Company* a guarantee from its ultimate holding company to guarantee the performance of the New Appointee's obligations under this Agreement. The guarantee shall be in the form and on such reasonable terms as may be directed by the *Water Company*.

E2. Where a guarantee has been given under clause E1 and at any time the long term debt obligations of its ultimate holding company is reduced to a lower credit rating than all three of the ratings shown against their respective agencies being: BBB- from S&P, Baa2 from Moody or BBB- from Fitch the *New Appointee* shall obtain and provide to the *Water Company* a letter of credit or deposit agreement at the *New Appointee's* cost.

E3. Such security instruments shall be:

E3.1. provided through a reputable financial institution with a credit rating of not less than each of; A- from S&P, A2 from Moody or A- from Fitch, it being the case that failure to meet this credit rating shall be assessed against the lowest rating;

E3.2. in aggregate an amount representing 45 calendar days of the Charges, which amount shall be calculated to be equal to 45/365th (rounded to

the nearest £1,000) of the sum of the Charges payable in the most recent year of the term of this agreement;

- E3.3. provided within ten (10) Business Days of the date of the request by the *Water Company*;
- E3.4. with an expiry date being no earlier than the date falling six years from the date that the *New Appointee* is appointed as a water undertaker; and
- E3.5. is in a form acceptable to the *Water Company* acting reasonably.
- E4. If the New Appointee shall fail to procure the security instruments as aforesaid then, without prejudice to any other rights or remedies which the Water Company may possess, the Water Company may treat the failure as a material breach of contract. Without prejudice to the foregoing, if at any time the credit rating of the financial institution providing such security cover falls below the rating specified of not less than each of; A- from S&P, A2 from Moody or A- from Fitch, it being the case that failure to meet this credit rating shall be assessed against the lowest rating above, the New Appointee shall within ten (10) Business Days promptly provide replacement security instruments which satisfy the aforementioned credit rating requirements.
- F. Logger Data Sharing
- F1. The *Water Company* will provide to the *New Appointee* data from the logger forming part of the Meter in such form, on such terms and at such times as may be from time to time be agreed between them.
- G. Volumetric Estimation
- G1. The *Water Company* will, acting reasonably and in good faith, estimate the volume of water supplied to the *New Appointee* for the period beginning on the date of a Meter reading in accordance with clause 7.4 and ending at the end of the appropriate Charging Period.
- G2. The *Water Company* will calculate Charges accordingly and include them within the invoice given under clause 10.9 for the appropriate Charging Period.
- G3. The *Water Company* will calculate any reconciliation of Charges as may be fair and equitable against the Meter reading and invoice for the following Charging Period.



**AS WITNESS** the hands of the duly authorised representatives of the parties  
hereto the day and year first before written

SIGNED BY

Signature .....

Name .....

Position .....

duly authorised for and on behalf of

**COMPANY NAME**

in the presence of: .....

Signature .....

SIGNED BY

Signature .....

Name .....

Position .....

duly authorised for and on behalf of

**NORTHUMBRIAN WATER LIMITED**

in the presence of: .....

Signature .....