

# **WATER UK BULK DISCHARGE 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 incumbent sewerage undertaker for the Sewerage Services Area;
  - 1.3.2. where the *New Appointee* has applied to the Authority to become the sewerage undertaker for an area, which includes the *Site*, and which falls within the Sewerage Services Area; and
  - 1.3.3. the *Water Company* has agreed to make a supply of sewerage services to the *New Appointee* in accordance with the terms of this agreement.
- 1.4. Accordingly, this agreement is made under section 110A 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 sewerage services to the customers within its Sewerage Services 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 sewerage services 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 sewerage and treatment capacity 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 it may accept from the *New Appointee*, the *New Appointee* to adjust the volumes of water discharged to the *Water Company*, and/or

the pricing of sewerage services under this agreement and that any potential adjustments shall be dealt with in accordance with clause 15.

### 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 Volume</i> or <i>Maximum Rate of Discharge</i> being exceeded.
Assistance Services	<u>Not used.</u>
Authority	the Water Services Regulation Authority (Ofwat).
Biosolids	sludge arising from the treatment of the Discharge which is to be used in agriculture in accordance with the Sludge (Use in Agriculture) Regulations 1989 or such higher standards as the <i>Water Company</i> may from time to time deem appropriate or is otherwise to be recycled (eg. through land reclamation) in accordance with the Environmental Permitting (England and Wales) Regulations 2010 or such higher standards as the <i>Water Company</i> may from time to time deem appropriate.
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 13.2 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 Sewerage Network to the Water Company's Sewerage Network at the <i>Discharge Point</i> .
Discharge	the discharge of <u>foul sewage effluent</u> , <u>infiltration and Trade Effluent</u> by way of the <i>Discharge Point</i> complying with all of the following limits: <ul style="list-style-type: none"> <li>• the <i>Development Limit</i></li> <li>• the <i>Maximum Volume</i>; and</li> <li>• the <i>Maximum Rate of Discharge</i>.</li> </ul>
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> (acting reasonably and in good faith) whereby the capacity within the Water Company's Sewerage Network to receive, treat and dispose of the <u>foul sewage Discharge comprising the Discharge</u> is reduced because of a blockage or break in any pipe forming part of the Water Company's Sewerage Network, plant or process breakdown or if the <i>New Appointee</i> discharges <u>waste water the Discharge</u> in breach of the terms of this Agreement.
Emergency Services	sewerage services by the <i>Water Company</i> to the <i>Site</i> by temporary sewer, tanker 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.
Foul Sewage Water	any discharge within paragraphs (a) and (b) of the definition of "domestic sewerage purposes" of section 117(1) of the Act which includes, for the avoidance of doubt, water flushed from a toilet no matter what water is used to flush the toilet and whether or not that comes from a mains supply.
Highway Drainage	drainage from any <u>public</u> road or footpath.

<del>Retail Market</del>	<del>the non-household retail market, construed widely so as to encompass (without limitation) the market operating system, market arrangements code and wholesale retail contract</del>
Local Off-Site Sewers	such new sewers between the Water Company's Sewerage Network and the <i>Discharge Point</i> as the <i>Water Company</i> reasonably considers are necessary in order to accept effluent at the <i>Discharge 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	a meter certified under the Environment Agency's Monitoring Certification Scheme (M-Certs) 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	works carried out, in exercise of any power conferred by or under any enactment, by any person.
Network Re-inforcements	such infrastructure on the Water Company's Sewerage Network as the Water Company reasonably considers is necessary in order to provide sewerage services under this agreement
<u>New Appointee's Sewerage Network</u>	<u>the sewerage network vested in the <i>New Appointee</i>, including any apparatus vested in or operated by a sewerage licensee or a sewerage undertaker (other than the Water Company's Sewerage Network), which is connected to the <i>New Appointee's</i> Sewerage Network.</u>
Reporting Period	the period beginning on the relevant Reporting Date and ending the day before the next Reporting Date
<del>Retail Market</del>	<del>the non-household retail market, construed widely so as to encompass (without limitation) the market</del>

	<u>operating system, market arrangements code and wholesale retail contract.</u>
<del>New Appointee's Sewerage Network</del>	<del>the sewerage network vested in the New Appointee, including any apparatus vested in or operated by a sewerage licensee or a sewerage undertaker (other than the Water Company's Sewerage Network), which is connected to the New Appointee's Sewerage Network.</del>
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. <del>any enhanced guaranteed levels of service and any of the <i>Water Company's</i> performance commitments under any relevant price control.</del>
Sewerage Services Area	the area set out in the <i>Water Company's</i> Instrument of Appointment, which takes effect under the Act.
Surface Water	water from roofs and from any tarmac or <u>impermeable</u> hard surface, not being Highway Drainage.
TE Decision Criteria	<ul style="list-style-type: none"> <li>• the capacity of the <i>Water Company's</i> Sewerage Network or receiving <u>waste water</u> sewage treatment works to deal with the trade effluent discharge,</li> <li>• any restraints or conditions imposed by the Environment Agency in respect of the discharge from the treatment works receiving the relevant trade effluent, or disposal <u>or re-use</u> of the Biosolids or other waste arising as a consequence of the trade effluent discharge</li> <li>• the catchment management strategy or policy adopted by the <i>Water Company</i> in respect of the <i>Water Company's</i> Sewerage Network to deal with any such restraint</li> <li>• any other consideration material to the ability or suitability of the <i>Water Company's</i> Sewerage Network or the receiving treatment works to convey, deal with, and treat the trade effluent</li> </ul>
<u>Trade Effluent</u>	<u>as defined by section 141 of the Water Industry Act 1991.</u>
Water Company's	the sewerage network vested in the <i>Water Company</i> , including its treatment works and any pipes or other

Sewerage Network	apparatus vested in or operated by a sewerage licensee or a sewerage undertaker (other than the New Appointee's Sewerage Network) which is connected to the Water Company's Sewerage Network.
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 29.
- 3.8. Words importing one gender includes all other genders and words importing singular include the plural and vice versa.

#### **4. Management of Capacity**

- 4.1. The *Water Company* will from the date that Discharge is permitted under this agreement (or otherwise agreed) provide capacity to the *New Appointee* for the Discharge provided that (with the exception of the liability set out in clause 9.10) 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 ensure that no discharge is made in excess of:
  - 4.2.1. the volumes specified as the *Maximum Volume*;
  - 4.2.2. the rate of discharge specified as the *Maximum Rate of Discharge*; or
  - 4.2.3. that originating from the *Development Limit*.
- 4.3. The *Water Company* may take such steps as may be practicable to restrict the Discharge by the *New Appointee* to the volumes specified as the *Maximum Volume* and the rate of flow specified as the *Maximum Rate of Discharge*.
- 4.4. The *New Appointee* shall ensure that all of or any part of the Discharge effluent is not held back in the New Appointee's Sewerage Network so that it becomes septic or creates a surge or peak or otherwise causes an odour which constitutes a nuisance or is capable of constituting a nuisance either to the *Water Company*, its assets, employees, contractors or agents or to any member of the public.
- 4.5. If the Discharge by the *New Appointee* at the *Discharge Point* as a volume exceeds the *Maximum Volume* or *Maximum Rate of Discharge*, shall:
  - 4.5.1. 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;
  - 4.5.2. keep the *Water Company* notified of the steps being taken to reduce its use to levels less than the *Maximum Volume* or *Maximum Rate of Discharge*;
  - 4.5.3. take such additional or alternative steps as the *Water Company* may reasonably direct to reduce its use to levels less than the *Maximum Volume* or *Maximum Rate of Discharge*; and/or
  - 4.5.4. 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 Sewers that the *Water Company* considers are required to the *Water Company's* Sewerage Network as a consequence.
- 4.6. Where the *Discharge Point* comprises more than one point of connection, the provisions of this clause shall apply separately to each point and to each *Maximum Volume* and *Maximum Rate of Discharge* assigned to them.

## 5. **Nature of Effluentthe Discharge**

- 5.1. Subject to clause 5.3, the *New Appointee* shall ensure at all times that there is excluded from the Discharge anything other than Foul Water which has been discharged pursuant to the Act to the New Appointee's Sewerage Network and, without prejudice to the generality of the foregoing, shall ensure that groundwater infiltration is properly managed in order to ensure that it is not excessive (and so that when the *Site* becomes established it does not exceed 2510% of flow) at any time and there is excluded from the Discharge:
- 5.1.1. all liquid from trade premises ~~any factory~~, other than foul domesticsewage, or Trade Effluent; ~~any liquid~~
- 5.1.2. all liquid or other matter the discharge of which is prohibited by or under any enactment, including without prejudice to the generality of the above any liquid or other matter prohibited under section 111 of the Act;
- 5.1.3. any substances of a nature, composition or quantity likely, either alone or in combination with the contents of the Water Company's Sewerage Network, to:
- 5.1.3.1. injure, damage or compromise the operation of the Water Company's Sewerage Network into which it is discharged or by which it is conveyed;
- 5.1.3.2. interfere with the free flow of the contents of the Water Company's Sewerage Network;
- 5.1.3.3. injure, damage or compromise the operation of any sewage pumping station or the receiving sewage treatment works or any machinery or equipment installed thereat;
- 5.1.3.4. ~~interfere with any sewage treatment processes of purification of sewage or trade effluent or other effluent;~~
- 5.1.3.4.5.1.3.5. ~~\_\_\_\_\_~~ result in an odour, physical or visual nuisance within the Water Company's Sewerage Network or treatment assets;
- 5.1.4. all Highway Drainage;
- 5.1.5. all Surface Water;
- 5.1.6. for the avoidance of doubt, all water from any rainwater harvesting plant that has not been used for domestic purposes or from any Surface Water sewers or drains
- 5.2. Without prejudice to any other provision in this Agreement, the *New Appointee* shall ensure at all times that the strength of the Discharge does

not exceed 0.1 mg/l of soluble sulphide when measured at the *Discharge Point*.

- 5.3. If the *New Appointee* receives an application or consents to any discharge of trade effluent into the New Appointee's Sewerage Network or if any discharge of trade effluent is, or is to be, made to the New Appointee's Sewerage Network and thereby to the Water Company's Sewerage Network as part of the Discharge, the provisions of the Schedule to this Agreement shall take effect and come into force immediately with respect to such trade effluent.
- 5.4. If so required by the *Water Company* at any time, the *New Appointee* shall provide or the *Water Company* may undertake any monitoring, including temporary flow monitoring, or such ~~sampling of es of~~ the Discharge as the *Water Company* may reasonably require in order to demonstrate that the Discharge complies with the parameters set out in clauses 5.1 and 5.2.
- 5.5. If the *Water Company* reasonably believes that the Discharge does not comply with the parameters set out in clauses 5.1 and 5.2 then it may serve notice on the *New Appointee* requiring it to take such action (including, for the avoidance of doubt, any reasonable investigation and monitoring) in respect of the New Appointee's Sewerage Network as the *Water Company* may reasonably require within or over such period as the *Water Company* may specify in the notice to ensure that all such items are excluded from the Discharge and, if the *New Appointee* fails to comply with such notice ~~and~~ fails to demonstrate that all necessary steps are being taken to exclude such items from the Discharge, the *Water Company* may itself carry out the steps specified in the notice and recover the reasonable costs of doing so from the *New Appointee*, or where the *New Appointee* is unable to remedy the situation and the nature of the Discharge is such that it injures, damages or compromises treatment and/or disposal within the Water Company's Sewerage Network the *Water Company* may terminate this Bulk Discharge Agreement forthwith. terminate the Agreement if required.
- 5.6. The *New Appointee* shall ensure that it provides, maintains and improves in accordance with its duties under section 94 of the Act a separate system of public sewerage for Surface Water and in so far as it is reasonably practicable to do so shall ensure that any connection made to any sewer or drain within the *Site* for the discharge of Surface Water or Highway Drainage is made to such separate Surface Water sewerage network.
- 5.7. The *New Appointee* shall at its cost and expense and so long as may be necessary in the reasonable opinion of the *Water Company* dose ~~Effluent~~

the Discharge with Nutriox or such other chemical or product as may reasonably be substituted at the *Water Company's* request to control septicity and avoid the creation of smell nuisance in or arising from the Effluent Discharge.

## **6. Return to Sewer Assumption**

6.1. Where:

6.1.1. clause F is not applied to this Agreement;

6.1.2. a Meter has not or cannot be installed in accordance with clause F; or

6.1.3. any such Meter is not or has not been accurately recording the Discharge for any period:

then clause 6.2 shall apply (but not otherwise)

6.2. The parties shall calculate the volume of the Discharge by taking for the appropriate period (at the *Water Company's* election following consultation with the *New Appointee*) either:

6.2.1. a volume equal to the bulk water supply to the *New Appointee*, 90% (or such other percentage as NAV Charging Arrangements shall provide) of the volume of water supplied to premises less the *Water Company's* default return to sewer (RTS) allowance (unless such allowance is already included in the *Water Company's* charging structure) plus any alternative water supplies utilised (such as rain water harvesting or borehole supplies) and subsequently discharged within to the *Site* for that period; or

6.2.2. a volume which has been established by the *Water Company* (after consultation with the *New Appointee*) as the standard volume of the Discharge from properties forming the *Site* (and, if appropriate, the standard strength of any trade effluent discharge) during that period.

6.3. For the purposes of calculating charges fairly in accordance with the method used under clause 6.2.1:

6.3.1. the *New Appointee* will provide information on the volume of water supplied to the *Site* by way of any bulk supply, drawn and supplied to premises from its own water resources, by way of rainwater harvesting or by way of any other source (or any combination of them) for that period;

6.3.2. The *Water Company* RTS (unless included in the *Water Company's* Charging Structure) a reasonable allowance (unless included in the *Water Company's* charging structure) for water assumed to have been lost between the sources set out in clause 6.3.1 and the *Discharge*

*Point* must be applied either in the formulation of the charge or the percentage set out in clause 6.2.1.

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

- 7.1. 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.
- 7.2. In respect of work or Necessary Works to the Water Company's Sewerage 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 Discharge:
- 7.2.1. the *Water Company* shall give the *New Appointee* 22 Working Days' notice;
- 7.2.2. the *Water Company* shall keep the *New Appointee* updated as any information previously provided changes and as further information becomes available;
- 7.2.3. 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:
- 7.2.3.1. reasonably consider them;
- 7.2.3.2. where it reasonably considers it appropriate do so, incorporate the *New Appointee's* comments into its plan; and
- 7.2.3.3. reissue the plan at least 10 Working Days in advance of carrying out the planned work;
- 7.2.4. 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
- 7.2.5. 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).
- 7.3. In respect of any work which may (in the *Water Company's* reasonably held opinion) affect the Discharge but does not fall within the description set out in clause 7.2, 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.

- 7.4. 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 Discharge within 48 hours.
- 7.5. In the event of an Emergency, which may (in the *Water Company's* reasonable opinion) materially affect the Discharge, 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 sewerage services.
- 7.6. Both parties shall co-operate in good faith to ensure that any Emergency does not affect sewerage services to either party's customers. To that end, during an Emergency the *Water Company* will use its best reasonable endeavours to provide to the *New Appointee* Emergency Services provided that in the reasonable opinion of the *Water Company* none of the conditions set out in clause 7.9 are met at the time of the request by the *New Appointee* or would be met if the *Water Company* provided the Emergency Services.
- 7.7. 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 Discharge in order to prevent a recurrence.
- 7.8. ~~Where there is an operational incident on the *New Appointee's* Sewerage Network that prevents the use of the Discharge, the *Water Company* shall if requested by the *New Appointee* (provided that the confirmation required under clause 9Z.10 has been provided to the *Water Company* by the *New Appointee*), provide Assistance Services 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 9Z.9 are met at the time of the request by the *New Appointee* or would be met if the *Water Company* provided the Assistance Services. Not used.~~
- 7.9. The conditions referred to in clauses 7.6 and 7.8 are the following:

- 7.9.1. that the Emergency Services or Assistance Services will or are likely to cause the *Water Company* to breach any of its statutory obligations or fail to meet any of its Service Standards;
- 7.9.2. that the Emergency Services or Assistance Services will or are likely to affect the ability of the *Water Company* to manage any planned event or to respond to any actual or potential unplanned event; or
- 7.9.3. that there is insufficient capacity in the Water Company's Sewerage Network.
- 7.10. 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 Assistance Services 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.
- 7.11. If the *Water Company* concludes that any of the conditions referred to in clause 7.9 are met and that it is not able to provide the Emergency Services or Assistance Services (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 Services or Assistance Services to the extent it is able to and the parties shall continue to coordinate their response until the event has ended.

## **8. Charging and Payment**

- 8.1. Where the NAV Charging Arrangements provide for any form of Charges based on connection of properties to the New Appointee's Sewerage Network, the *New Appointee* shall inform the *Water Company* on each *Reporting Date* of the addresses of properties connected to the New Appointee's Sewerage Network during the previous Reporting Period 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.
- 8.2. Where the NAV Charging Arrangements provide for any form of volumetric Charges
  - 8.2.1. a charge shall be included in the relevant Charging Period in respect of the volume or deemed volume of the Discharge accepted (including by way of Emergency Services or Assistance Services) but not included in an invoice for any previous Charging Period unless the NAV Charging Arrangements provide otherwise; and

- 8.2.2. the amount of Discharge accepted by the *Water Company* from the *New Appointee* shall be taken to be:
- 8.2.2.1. where (by virtue of clause 6.1) clause 6.2 applies, the amount set out in that clause;
  - 8.2.2.2. where (by virtue of clause 6.1) clause 6.2 does not apply, the amount shown by the readings taken from the Meter at the Discharge Point.
- 8.3. If the Discharge exceeds the *Maximum Volume* or *Maximum Rate of Flow* or [sulphide content](#) or originates from properties exceeding the *Development Limit*, Charges may be calculated according to such enhanced rate as may be set out in the NAV Charging Arrangements.
- 8.4. 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 9.10, 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).
- 8.5. Where NAV Charging Arrangements provide for Charges for Assistance Services and Assistance Services are supplied, the *New Appointee* must pay to the *Water Company* such Charges.
- 8.6. Where part of the Discharge is of trade effluent and NAV Charging Arrangements provide for charges in respect of the costs of receiving, treating and disposing of the trade effluent and/or of any assessment made in connection with trade effluent applications or consents, the *New Appointee* shall pay such charges.
- 8.7. Save as provided in clause 8.4 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.
- 8.8. 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.
- 8.9. 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.

- 8.10. 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.
- 8.11. 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.
- 8.12. The *New Appointee* shall remain liable for all charges payable in respect of the Discharge until this agreement has expired or has been validly terminated in accordance with clause 14. 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
- 8.13. 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 Discharge which shall be added accordingly.
- 8.14. 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 of the *Water Company*~~set out in clause G~~.
- 8.15. 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 Sewers or Network Re-inforcements required to facilitate the Discharge at the *Discharge Point*.

## **9. Liability**

- 9.1. 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 sewerage services except to the

extent that such act or omission is unlawful or negligent or is in breach of an express provision of this agreement.

- 9.2. Without prejudice to the generality of clause 9.1, the *Water Company* shall not be liable for any interruption, suspension or reduction of the Discharge 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.
- 9.3. Without prejudice to clause 9.1, 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 Discharge.
- 9.4. 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.
- 9.5. 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.
- 9.6. 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.
- 9.7. 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.

9.8. 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.

~~9.9.~~ Subject to clause 9.8, 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 £105,000,000 (ten five million pounds).

~~9.9-9.10.~~ Notwithstanding the provisions of clause 4.1 and this clause 9, 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-sewerage services 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 8.4.

~~9.10-9.11.~~ \_\_\_\_\_ This agreement (including this clause 9) 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.

## **10. Force Majeure**

10.1. 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.

## **11. Confidentiality**

11.1. 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.

- 11.2. 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.
- 11.3. The exceptions referred to in clause 11.2 are where the information:
  - 11.3.1. enters the public domain or otherwise comes to the attention of the other party without any breach of clause 11.2 having occurred;
  - 11.3.2. 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
  - 11.3.3. is required to be disclosed in compliance with the Act or any other legal obligation other than a contractual obligation.
- 11.4. 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.
- 11.5. This clause 11 shall continue to bind a person for a period of 5 years after the expiry of this agreement or the date on which the Discharge is terminated for whatever reason.

## **12. Provision of Information**

- 12.1. A party may by notice to the other party request that the other party supplies to it any data or information relating to the other party's business that may be required in order for the party to comply with any reporting obligations arising under Relevant Legislation, or in order for the party to comply with this Agreement, and, upon receiving the request, the other party shall supply such data or information to the party as soon as reasonably practicable.
- 12.2. A party may by notice to the other party request that the other party supplies to it any data produced by loggers or telemetry connected to the Meter, and, upon receiving the request, the other party shall supply

such data or information to the party as soon as is reasonably practicable.

12.3. The party shall indemnify the other party in respect of all reasonable costs and expenses incurred by the other party in complying with clauses 12.1 or 12.2.

12.4. The reporting obligations referred to in clause 12.1 shall include, but not be limited to:

12.4.1. Population Equivalent reports;

12.4.2. Dangerous Substances reports; and

12.4.3. Pollution Inventory reports.

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

13.1. It is hereby declared that nothing within this agreement precludes the *Water Company* or any other party from offering to supply sewerage services to any owner or occupier of premises within the *Site* either by means of a service from the *New Appointee* or the *Water Company* or any third party, provided that such a supply is permitted by English law.

13.2. 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 sewerage services set out in this agreement either party may make a Change Request under clause 15.

### **14. Term**

14.1. Subject to the remainder of this clause, this agreement will only commence upon Ofwat awarding the *New Appointee* a variation enabling it to supply sewerage services for the *Site*, either on the date of this award or the date hereof, whichever is later~~on the date hereof~~ and continue until terminated in accordance with clause 14.2.

14.2. Termination may take place in the following circumstances:

14.2.1. 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*;

14.2.2. the *Water Company* may terminate this agreement if the Authority has not confirmed the appointment of the *New Appointee* as the sewerage undertaker for an area, which includes the *Site*, within 6 months of the date of this agreement;

14.2.3. the *Water Company* may terminate this agreement on 10 years' notice to the *New Appointee*;

14.2.4. 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 14.3) and the breach has not been remedied within that time; or

14.2.5. 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 16;

~~14.2.5.~~14.2.6. the *Water Company* may terminate this agreement in accordance with clause 5.5.

14.3. A notice under clause 14.2.4 shall only be considered validly given if it includes:

14.3.1. a statement that it is a notice given under clause 14.2.4 of this agreement;

14.3.2. details of the obligation that is breached;

14.3.3. details of how that obligation has been breached; and

14.3.4. a statement that the *New Appointee* must remedy the breach within ~~two months~~60 days -otherwise this agreement will terminate at midnight on the 60<sup>th</sup> day.

14.4. If termination takes place under clause 14.2:

14.4.1. the *Water Company* shall be entitled forthwith to take such steps as it may deem appropriate to disconnect the *New Appointee's* sewers and terminate sewerage services with effect from termination pursuant to clause 14.2; and

14.4.2. 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.

14.5. Termination or expiry of this agreement shall not affect any rights or obligations which may have accrued prior to its termination or expiry.

14.6. In the event of termination of this agreement (by either party) prior to:

14.6.1. completion of the Connection Works; or

14.6.2. the appointment of the *New Appointee* as a sewerage undertaker for an area including the *Site*

(whichever the later)

the *New Appointee* shall pay to the *Water Company* the full amount of any costs that the *Water Company* has incurred (either having paid such costs or being under an enforceable obligation to pay them) prior to the *Water Company* having either given, or received, notice of such termination.

## **15. Change Management**

- 15.1. 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.
- 15.2. A Change Request can be signed only by an authorised signatory of the Requesting Party.
- 15.3. A Change Request signed by the authorised signatory of the Recipient is an agreed Change to this Agreement.
- 15.4. 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.
- 15.5. 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:
  - 15.5.1. a Change Request reference number;
  - 15.5.2. the author and submission date of the Change Request;
  - 15.5.3. the requested implementation date (which shall be no less than 20 Working Days from the date of the Change Request);
  - 15.5.4. the reason for the Change;
  - 15.5.5. full details of the Change including an assessment on all aspects of the agreement and sewerage services;
  - 15.5.6. any proposed changes in the Charges;
  - 15.5.7. the consequential amendments, if any, to this agreement (including the Schedules) necessitated by the Change; and
  - 15.5.8. 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.
- 15.6. For the avoidance of doubt, any written notice that contains all of the information set out in clause 15.5 shall be considered a valid Change Request, and the Recipient shall be obliged to comply with the terms of this clause.

- 15.7. On receipt of a valid Change Request, the Recipient shall, within the period of validity of the Change Request, evaluate the Change Request and:
- 15.7.1. decide to approve, sign and return the Change Request to the Requesting Party;
  - 15.7.2. decide to reject the Change Request, giving reasons for such rejection; or
  - 15.7.3. 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.
- 15.8. For the avoidance of doubt, the Recipient shall not be required to agree to any Change Request proposed by the Requesting Party.
- 15.9. 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.

## **16. Assignment**

- 16.1. 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.

## **17. Entire Agreement**

- 17.1. 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 Discharge.
- 17.2. 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.

## **18. Notices**

- 18.1. 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.

## **19. Severance**

- 19.1. 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 clauses 14.

**20. Contracts (Rights of Third Parties) Act 1999**

20.1. 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.

**21. Anti-bribery and Anti-Slavery Provisions**

21.1. Both parties shall:

21.1.1. 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);

21.1.2. 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;

21.1.3. 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

21.1.4. 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.

21.2. In performing their obligations under this agreement, the parties shall:

21.2.1. 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

21.2.2. have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance and enforce them where appropriate; and

21.2.3. 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.

21.3. Each party shall notify the other as soon as it becomes aware of:

21.3.1. any material breach of its anti-slavery policies and procedures; or

21.3.2. any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.

**22. Dispute Resolution**

- 22.1. 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:
  - 22.1.1. the Water Industry Act 1991 or the Water Act 2014; or
  - 22.1.2. either the *Water Company's* or the *New Appointee's* Instruments of Appointment; or
  - 22.1.3. 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 22 to 26.
- 22.2. Disputes may be escalated as follows
  - 22.2.1. Subject to clause 22.1 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.
  - 22.2.2. 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.
  - 22.2.3. Any Dispute that cannot be resolved within twenty (20) Business Days of receipt of the written notice referred to in clause 22.2.1 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 22.2.1 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 22.2.1.
  - 22.2.4. Any Dispute that cannot be resolved by the parties within forty (40) Business Days of receipt of the written notice referred to in clause 22.2.1 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 22.2.4. 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 22.2.1 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 22.2.1.

- 22.2.5. 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 22.2.1 then the Dispute may be referred to arbitration in accordance with clause 23.

### **23. Reference to and conduct of arbitration**

- 23.1. If the parties have not resolved a Dispute to the satisfaction of both parties in accordance with Clause 21 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.
- 23.2. Each party shall advise the Authority promptly upon referring any dispute to arbitration pursuant to clause 23.1.
- 23.3. The arbitration tribunal shall consist of a sole arbitrator appointed in accordance with the LCIA Rules subject to the provisions of this clause 23. 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.
- 23.4. 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.
- 23.5. 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.
- 23.6. If no nomination is transmitted to the LCIA under clause 23.5 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.
- 23.7. 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.

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

- 24.1. The decision of the arbitration tribunal pursuant to a reference under clause 23.1 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.
- 24.2. The disputing parties hereby waive any right to challenge or appeal any award of the arbitration tribunal to the full extent permitted by Law.
- 24.3. The arbitration tribunal appointed in accordance with clause 23 shall have the powers referred to in section 35 of the Arbitration Act 1996 in relation to the consolidation of related proceedings.
- 24.4. If a Dispute has been referred to an arbitration tribunal pursuant to clause 23 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.
- 24.5. Within ten (10) Business Days of receiving the request referred to in clause 24.4, 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 24.3. Any dispute between arbitration tribunals shall be referred to the LCIA for resolution.
- 24.6. In the event of the arbitration tribunal ordering consolidation of the Related Disputes in accordance with clause 24.5, 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.
- 24.7. In the event that the related Disputes are consolidated the arbitration tribunal shall determine all the consolidated related Disputes at the same time.

## **25. Notification of arbitration determinations**

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

## **26. Interim judicial relief**

- 26.1. 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:
- 26.1.1. 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;
- 26.1.2. 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
- 26.1.3. 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.

## **27. Governing Law**

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

## **28. Change of Law**

- 28.1. 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.
- 28.2. 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 21 above.

## **29. Form of Agreement**

- 29.1. This agreement is not a deed and may be signed under hand by any authorised signatory.
- 29.2. 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.

## **SCHEDULE**

### **1. Purpose**

- 1.1. This Schedule governs the discharge of trade effluent from the New Appointee's Sewerage Network to the Water Company's Sewerage Network as part of the Discharge and is intended to ensure adequate consultation and control of any such trade effluent for the protection of the *Water Company*.
- 1.2. The *New Appointee* acknowledges that the *Water Company* will incur costs in connection with the conveyance, treatment and disposal of trade effluent received from the New Appointee's Sewerage Network and that the discharge of trade effluent into the Water Company's Sewerage Network may have a significant effect upon the *Water Company's* ability to comply with the discharge consent granted to the *Water Company* by the Environment Agency under the Water Resources Act 1991 and the Environmental Permitting Regulations 2010 in respect of the eventual outfall from the Water Company's Sewerage Network to controlled waters, breach of which may constitute an offence under the Water Resources Act 1991 and/or the Environmental Permitting Regulations 2010 or other statutory provisions and its ability to dispose of the Biosolids and other waste.

### **2. Right to Discharge**

- 2.1. Subject to the terms set out in this agreement and, in particular, the terms set out below, and notwithstanding clause 5.1.1, the *Water Company* will permit the *New Appointee* a right to discharge trade effluent from the New Appointee's Sewerage Network to the Water Company's Sewerage Network where such trade effluent arises from premises within the *Site* and a trade effluent consent has been granted by the *New Appointee* to the person wishing to discharge the trade effluent.

### **3. Charging Provisions**

- 3.1. On receipt of any application made to the *New Appointee* and the *Water Company* being duly notified by the *New Appointee* of the terms and conditions included, or to be included, within any trade effluent consent to discharge trade effluent or to modify or vary such a trade effluent

consent, the *Water Company* may notify and charge the *New Appointee* for all reasonable costs and reasonable expenses reasonably incurred by the *Water Company* in modifying the *Water Company's* Sewerage Network (including any receiving treatment works) as a consequence of receiving, treating and disposing of the trade effluent including any administration costs and overheads, any additional charges made by the Environment Agency in respect of any consent, permit or registration, including the costs of applying for a variation or modification to its discharge consent issued by the Environment Agency under the terms of the Water Resources Act 1991 or under the Environmental Permitting Regulations 2010 and any additional costs incurred in disposing of the Biosolids and any other waste.

3.2. The *New Appointee* shall provide to the *Water Company* on a monthly basis (or more frequently should this be required by the *Water Company's* trade effluent risk assessment model in use at the time) such samples of any trade effluent discharge into the *New Appointee's* Sewerage Network as the *Water Company* may reasonably require in order to determine the strength of such trade effluent discharge both for monitoring and charging purposes

3.3. If at any time the *Water Company* considers that the amount of Charges due under clause 8.6 require revision, it shall give the *New Appointee* reasonable notice of the same.

#### **4. Trade Effluent control**

4.1. Both parties shall co-operate with the other in order to assist the other to comply with their respective statutory duties under the Act.

4.2. For the purpose of complying with paragraph 4.1 above:

4.2.1. the *New Appointee* shall deal with, issue and enforce all trade effluent consents (including those for short-term discharges of six months or less) granted to occupiers of trade premises which discharge to the *New Appointee's* Sewerage Network in accordance with the Act (including carrying out any environmental assessment);

4.2.2. each party shall notify the other party as soon as reasonably practicable when it obtains knowledge of any incident occurring or of any particular matter being discharged that is capable of injuring any sewer or drain forming part of the *Water Company's* Sewerage Network, interfering with the free flow of its contents or prejudicially affecting the treatment ~~and~~or disposal of its contents or of any non-compliance with trade effluent consents;

4.2.3. the *New Appointee* shall notify the *Water Company* of any application for trade effluent consent or to vary the conditions attached to a trade effluent consent as soon as practicable and not less than within five

days of receipt and shall supply to the *Water Company* a copy of the application and all supporting information provided by the applicant

4.2.4. the *New Appointee* shall notify the *Water Company* of:

- its intent to give a direction varying the conditions attached to an existing consent;
- within five days of it coming to the attention of the [New Appointee](#), the cessation of any trade effluent discharge or a discharge that is referred to as in the Retail Market's market operating system as "discontinued"; and
- within five days of it coming to the attention of the [New Appointee](#), any discharge that has significantly changed in volume and/or composition (whether or not it remains compliant with any relevant trade effluent consent);

4.2.4.4.2.5. \_\_\_\_\_ within 50

days of receipt of the copy of the application for trade effluent consent or to vary the conditions attached to a trade effluent consent and all supporting information provided by the applicant, or where the *New Appointee* has notified its intent to give a direction varying the conditions attached to an existing consent, the *Water Company* shall use its ~~best~~ reasonable endeavours, ~~and acting reasonably and~~ in good faith, ~~to~~ advise the *New Appointee*:

- of the conditions which it considers should be imposed on any such grant or variation of the trade effluent consent which may be necessary or desirable because of any of the TE Decision Criteria; or
- that any application for a new trade effluent consent or for variation of an existing trade effluent consent should be refused because of any of the TE Decision Criteria.

~~which~~ This advice shall be followed by the *New Appointee* insofar as it is reasonable for the *New Appointee* to follow such advice, acting at all times reasonably and in good faith to take account of the *Water Company's* interests and any operational and financial impacts for either party and shall be copied to the applicant where applicable; and if the *New Appointee* feels unable to follow any such advice received from the *Water Company*, the *New Appointee* shall provide written reasons for not doing so;

4.2.5.4.2.6. \_\_\_\_\_ where the

*Water Company* requires the *New Appointee* to give a direction varying the conditions attached to an existing consent or refusal to grant a new trade effluent consent vary an existing one the *Water Company* shall provide the *New Appointee* with the reasons for requiring the variation,

the required date of effect of the variation and advise the *New Appointee* of the conditions which it considers should be included in the variation ;

~~4.2.6.4.2.7.~~ \_\_\_\_\_ the advice given under paragraph 4.2.6 shall be followed by the *New Appointee* insofar as it is reasonable for the *New Appointee* to follow such advice, acting at all times reasonably and in good faith to take account of the *Water Company's* interests and any operational and financial impacts; and if the *New Appointee* feels unable to follow any such advice received from the *Water Company*, the *New Appointee* shall provide written reasons for not doing so;

~~4.2.7.4.2.8.~~ \_\_\_\_\_ the *New Appointee* shall provide the *Water Company* with a copy of any refusal, variation or consent issued at the same time as notifying the discharger or its sewerage licensee;

~~4.2.8.4.2.9.~~ \_\_\_\_\_ if the application for trade effluent consent or to vary such consent or the intended direction varying the conditions attached to an existing consent is referred to the Environment Agency under section 120 of the Act or the *New Appointee* carries out its own (H1) assessment in lieu, the *Water Company* shall be notified of the referral or assessment and the outcome of the referral or assessment before the procedure set out in paragraph 4.2.5 above shall apply;

~~4.2.9.4.2.10.~~ \_\_\_\_\_ in the event of an appeal against the refusal of an application for, or variation of, a trade effluent consent, or any of the conditions attached to such a consent, or the time it has taken the *New Appointee* to issue a consent, the *Water Company* shall provide ~~all~~-reasonable support as requested by the *New Appointee* to deal with the appeal and the *Water Company* shall, subject to the applicable procedural or other rules applying to the conduct of the appeal be entitled to request that the *New Appointee* include any written or other submissions that the *Water Company* may wish to make in respect of the appeal;

~~4.2.10.4.2.11.~~ \_\_\_\_\_ in considering whether to take enforcement action of the type set out in paragraph 4.2.12, the *New Appointee* shall take into account (but not be bound by) any code of practice or guidance in respect of trade effluent enforcement issued from time to time by the *Water Company*;

~~4.2.11.4.2.12.~~ \_\_\_\_\_ in the event of enforcement action being taken by the *New Appointee* for breach of section 111 or the trade effluent provisions of the Act, the *Water Company* shall provide ~~all~~-reasonable support if requested by the *New Appointee* to support such enforcement action;

~~4.2.12-4.2.13.~~ in the event of enforcement action under the Water Resources Act 1991 and/or the Environmental Permitting Regulations 2010 or any other relevant statutory provisions being taken against the *Water Company* by the Environment Agency or any other person in respect of the discharge from the *Water Company's* treatment works into which the Discharge is received or the disposal of Biosolids or other waste from the *Site*, the *New Appointee* shall provide all reasonable support requested by the *Water Company* to deal with such enforcement action; and

~~4.2.13-4.2.14.~~ in the event of an incident occurring which may reasonably risk a breach of a discharge consent issued to the *Water Company* by the Environment Agency under the Water Resources Act 1991 or under the Environmental Permitting Regulations 2010 or may reasonably risk a breach of any other legislative provision, the *New Appointee* shall respond and co-operate in timely fashion with any reasonable request made by the *Water Company* for support, for investigations to be carried out and for action to be taken by the *New Appointee* in relation to the *New Appointee's* Sewerage Network to prevent, stop or mitigate the effects of any pollution which may be likely, or is occurring or has occurred.

- 4.3. For the purposes of paragraphs 4.2.11, 4.2.13, 4.2.14 and 4.4, "support" includes:
- 4.3.1. the provision of all reasonably necessary data and information;
  - 4.3.2. the provision of sewerage network investigation technicians (immediately where there is an imminent risk of severe impact to persons, property or the environment) to carry out the following roles: manhole lifting, dye tracing, blockage clearing, underground pipe location, root cause analysis, and the formulation of written and advice and directions to the end user that are designed to avoid repeat occurrences; and
  - 4.3.3. in the event of any proceedings, the provision of witnesses to attend court and give evidence relating, inter alia, to the control of trade effluent and any other relevant matter connected with the *Water Company's* Sewerage Network or the *New Appointee's* Sewerage Network, as the case may be.
- 4.4. The party providing the support or cooperation or information (the "Provider") at the request of the other party (the "Requestor") pursuant to this paragraph 4 shall be entitled to be reimbursed the reasonable and proper costs incurred by the Provider in providing such support or cooperation or information upon request (save to the extent that the costs under the request relate to a breach of this Agreement by the

Provider), and provided that such request for reimbursement shall be accompanied by details of the basis of calculation of such costs.

- 4.5. The Water Company can take enforcement action directly with the *New Appointee*, under section 111 of the Act, if the *New Appointee's* discharge is non-compliant. ~~notably used section 111 of the Act.~~

## **5. Trade Effluent Wholesale Charging**

- 5.1. Where NAV Charging Arrangements provide for a separate charge in respect of the discharge of effluent including trade effluent into the Water Company's Sewerage Network the following sub-paragraphs of this paragraph 5 shall apply (but not otherwise).
- 5.2. The *New Appointee* shall ensure that for each trade effluent consent attaching to non-household premises a Discharge Point Identifier is associated with those premises and registered in the Central Market Operating System
- 5.3. The *New Appointee* shall submit all billing information contained within the Retail Market D2 Settlement Report to the *Water Company* for those Discharge Point Identifiers with all data fields correctly completed within one week after the Central Market Operating System monthly settlement report is issued. Data for all settlement runs (P1, R1, R2, R3, R4 and RF) shall be provided for each Discharge Point Identifier, along with a reconciliation report to identify and quantify any difference in charges between settlement runs for each Discharge Point Identifier.

## **6. Meetings**

- 6.1. Representatives of both parties shall meet at regular intervals, not less than six monthly, to discuss any matters arising out of this Schedule and the operation and management of each parties' functions under this Schedule.
- 6.2. In addition, either party may request a meeting at any time upon reasonable notice in writing to the other to discuss any particular matter or concern arising out of or in relation to this Schedule.

## **7. Variation**

- 7.1. the *Water Company* acting reasonably and in good faith may serve notice on the *New Appointee* to vary the terms of this Schedule in light of new or forthcoming legislation, any variation or modification of the discharge consent granted to it by the Environment Agency, any changes to its current policies in respect of Biosolids or other waste or as a consequence of any review of the Water Company's Sewerage Network or the discharge or disposal of biosolids or other waste therefrom by either the *Water Company* or the Environment Agency. Any such notice shall specify the proposed variation and the legislative or other basis of the proposed variation in the notice.

7.2. In the absence of agreement, the proposed variation shall be treated as a change request in accordance with clause 15 (Change Control).

## **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 disappplied, 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 Discharge Points
- B1. Unless otherwise agreed between the parties, the *Temporary Connection* may be disconnected from the Water Company's Sewerage Network and removed at any time after the *Temporary Connection End Date* following which the term "Discharge" and "*Discharge 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 projections of the quantity of Discharge at the *Discharge Point* to enable the *Water Company* to undertake asset management and drainage planning in accordance with the *Water Company's* regulatory obligations.
- D. Alternative Discharge Point
- D1. Where there is an *Alternative Discharge Point*, the *Water Company* may, having first consulted the *New Appointee*, choose in its absolute discretion to provide Emergency Services or Assistance Services or part of it as a piped discharge through the *Alternative Discharge Point*, but the *Water Company* shall have no obligation to do so without

prejudice to any obligation the *Water Company* may have to provide Emergency Services or Assistance Services by other means.

- D2. When the *Water Company* provides Emergency Services or Assistance Services or part of it as a piped discharge through an *Alternative Discharge Point*, it shall determine in its reasonable opinion the capacity that is available and can be provided (taking into account the needs of the other persons to whom the *Water Company* provides sewerage services and the need to ensure that the Emergency Services or Assistance Services do not prejudice the safe, efficient and lawful operation of the *Water Company's* Sewerage Network and any treatment works) and shall have no obligation to provide any minimum capacity and shall be able to reduce or interrupt the piped Emergency Services or Assistance Services 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 piped Emergency Services or Assistance Services 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. Discharge Meter

- F1. Prior to commencement of the Discharge from the Discharge Point pursuant to this Agreement, the *Water Company* shall ensure at its own cost that a Meter vested in it and capable of accurately measuring (within the range deemed acceptable by MCerts) both the volume and the rate of flow of the Discharge is fitted at such Discharge Point.
- F2. Once fitted, the *Water Company* shall maintain the Meter at its own cost, and provided that if it becomes necessary or desirable to replace the Meter because of variations to the volume or rate of flow of the Discharge in excess of the *Maximum Volume* or the *Maximum Rate of Discharge* the *Water Company* shall install a replacement at its own cost.
- F3. If, at any time, the 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.
- F4. The *New Appointee* may ask for the Meter to be tested by the *Water Company* to prove that it is measuring the Discharge correctly within the relevant limits of deviation provided 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 of undertaking that test.

F5. Such Meter shall be used by the *Water Company* for monitoring the *Maximum Volume*, the *Maximum Rate of Discharge* 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*.

G. Logger Data Sharing

G1. 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. The *New Appointee* will provide the *Water Company* with the data from the logger forming part of the bulk water supply meter(s) in such form, on such terms and at such times as may be from time to time be agreed between them.

H. Volumetric Estimation (Period after Meter Reading)

H1. Where the *Water Company* provides a Bulk Water Agreement to the *Site* it 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 F5 and ending at the end of the appropriate *Charging Period*.

~~H1.~~H2. Where the *Water Company* does not provide a Bulk Supply Agreement to the *Site*, or where the *Site* has access to other sources of water (e.g. rain water harvesting or ground water) the *New Appointee* will furnish the *Water Company* with meter readings, logging data and any other information it reasonably requests to assess the estimated volume of water the *New Appointee* has discharged.

~~H2.~~H3. The *Water Company* will calculate Charges accordingly and include them within the invoice given under clause 8.10 for the appropriate *Charging Period*.

~~H3.~~H4. 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*.