

(1) THAMES WATER UTILITIES LIMITED

and

(2) XYZ

BULK SUPPLY AGREEMENT

THIS BULK SUPPLY AGREEMENT is made the day of

BETWEEN

- 1) **THAMES WATER UTILITIES LIMITED ("Thames")**, a company registered in England with number 2366661 whose registered office is at Clearwater Court, Vastern Road, Reading, Berkshire RG1 8DB; and
- 2) **XYZ ("XYZ")**, a company registered in England with number whose registered office is at

(Each a "Party" and together, the "Parties")

WHEREAS

- A) Thames is appointed under Section 6 of the Act to be the water undertaker for its area as defined in the instrument of appointment issued by the Secretary of State for the Environment on the 31st August 1989.
- B) XYZ has applied to the Authority to be Appointed.
- C) XYZ has requested Thames to provide the Bulk Supply for use by XYZ in connection with its proposed water undertaking at the Site.
- D) Subject to the Conditions Precedent being fulfilled, Thames has agreed to provide the Bulk Supply in accordance with and subject to the terms of this Agreement.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

The provisions set out in Schedule 1 shall be incorporated in this Agreement and shall have effect as if expressly set out herein.

2. CONDITIONS PRECEDENT

2.1 The Parties' obligations under this Agreement shall commence only when each of the following has occurred:

- (A) This Agreement has been signed and dated by each Party
- (B) XYZ has been Appointed;

- (C) Any Connection and Infrastructure Charge due and payable by XYZ to Thames at the time at which each of the conditions in Clauses 2.1(A) and (B) have been satisfied, has been paid by XYZ to Thames; and
 - (D) The Guarantee has been executed by the Parent and delivered to Thames.
- 2.2 Subject to Clause 2.1, Clauses 1, 2 and 2A and Clauses 7 to 25 shall come into force when this Agreement has been duly executed by each Party.
- 2.3 The parties agree that the connection charge shall not be refundable. However, if Thames is subsequently able to recover any such costs and expenses covered by the Connection Charge from another person, Thames shall in good faith repay XYZ on receipt of such costs and expenses from that other person. For the avoidance of doubt, nothing in this Clause shall require Thames to repay to XYZ more than it receives from such other person.

2A. CONNECTION

- 2A.1 Subject to payment of the Connection Charge, XYZ may serve notice on Thames requesting a connection to the Thames Distribution Network at a Point of Connection on the date specified in the notice or as soon as reasonably practicable thereafter PROVIDED ALWAYS that Thames shall be under no obligation to make the connection until it is satisfied that the construction of the Relevant water Mains has been completed as shown in the On Site mains Design.
- 2A.2 Upon receipt of the notice referred to in Clause 2A.1, Thames shall provide a tee off from the Thames Distribution Network, a Meter (with a full bore bypass), the Non Return Valve and a temporary hydrant (to be removed when commissioning takes place).
- 2A.3 Thames or, with Thames's permission, XYZ, shall make the final Connection from the Thames Distribution Network to the XYZ Distribution Network within 10 Business Days of XYZ providing written confirmation to Thames that satisfactory pressure and bacteriological sample results have been received in respect of the Connection and the XYZ Distribution Network.
- 2A.4 In the event that further Connections are established during the course of this Agreement, any applicable Connection Charge payable by XYZ shall be included in the next invoice issued by Thames to XYZ under Clause 5.3.3 after the date on which such Connections are commissioned.

2A.5 Meters and Non Return Valve

2A.5.1 Thames shall provide and install a Meter pursuant to Clause 2A.2 in the approximate position marked on the Site Plan, which positions shall be at or as near as reasonably practicable to the Point of Connection and the connection point for the Back-Up Supply. The Meter shall comply with specifications agreed by the Parties (acting reasonably) and shall comply with the Measurement Regulations. The Parties agree that the Meters will vest in Thames, and that Thames will be responsible for any maintenance, and, subject to Clauses 6.4 and 6.5, replacement, of the Meters.

2A.5.2 Following installation of the Meter, Thames may conduct an initial test of the Meter for accuracy and provide XYZ with written details and results of that test

2A.5.3 All testing of the Meter pursuant to this Agreement shall be carried out in accordance with Regulation 6 of the *Water (Meters) Regulations 1988*, and XYZ shall be deemed to be the “customer” within the context of Regulation 6.

2A.5.4 Both Parties shall be entitled to connect loggers and/or any telemetry to the Meters, and each Party shall be responsible for the maintenance of the loggers and/or the telemetry (or any subsequent replacement) that it has connected.

2A.5.5 If a Meter is not in use at any time, Thames shall notify XYZ as soon as reasonably practicable.

2A.5.6 Thames shall install a Non Return Valve in the approximate positions marked on the Site Plan. The Non Return Valves shall comply with specifications agreed by the Parties (acting reasonably). The Parties agree that the Non Return Valves will vest in Thames, and that Thames will be responsible for any maintenance, and, if and when it is necessary, replacement of the Non Return Valves.

2A.5.7 XYZ may access the Meter to take visual readings with the consent of Thames (such consent not to be unreasonably conditioned, withheld or delayed). If a Meter is located within the Site, XYZ shall take reasonable steps to facilitate Thames’s access to the Meter for the purposes contemplated by this Agreement.

3. COMMENCEMENT AND TERM

Subject to Clauses 2.1 and 2.3, this Agreement commences when it has been signed and dated by both Parties, and shall continue until it is validly terminated in accordance with Clause 9.

4. THAMES'S OBLIGATIONS

4.1.1 Provision of Supply

Subject to Clauses 4.4.1 and 4.4.2, Thames shall make available and deliver to XYZ at the Point of Connection the Bulk Supply.

4.1.2 Subject to Clauses 4.4.1 and 4.4.2, Thames shall deliver the Bulk Supply at no less than the Working Pressure and no more than the Maximum Pressure. For the avoidance of doubt, the Parties acknowledge that:

(A) Thames's calculation of the Working Pressure is based on the Pressure Assumptions; and

(B) Thames is not obliged to supply at a pressure greater than the Working Pressure in the event that the Pressure Assumptions are incorrect.

4.2 Not used

4.2.1

4.2.2

4.3 Responsibility for pipework

The Parties agree that the part of the pipe through which the Bulk Supply is taken which is situated upstream of the Point of Connection vests in Thames.

4.4. Quantity

4.4.1 Thames shall not be liable to provide a greater quantity of water than the Maximum Annual Volume within any Charging Year, the Maximum Daily Volume within any day or the Maximum Instantaneous Flow at any point during the term of this Agreement. If XYZ uses the Bulk Supply at a rate in excess of the Maximum Daily Volume or the Maximum Instantaneous Flow, then Thames will not be obliged to provide the Bulk Supply at the Working Pressure for as long as the Maximum Daily Volume or the Maximum Instantaneous Flow is exceeded.

4.4.2 Thames will not be obliged to provide the Bulk Supply (whether at the Working Pressure, or at all), and subject to Clauses 4.6 and 4.7, no liability shall rest upon Thames, in any of the following circumstances:

- (A) where providing the Bulk Supply, or providing the Bulk Supply at the Working Pressure, would prejudice Thames's ability to comply with any of its obligations under the Act or its instrument of appointment. For the avoidance of doubt, but without prejudice to the generality of the foregoing, Thames will be permitted to limit or restrict the Bulk Supply if such a restriction is in accordance with a Drought Order;
- (B) where XYZ's use of water at a Point of Connection is at a rate in excess of the Maximum Daily Volume or the Maximum Instantaneous Flow, and Thames considers (acting as a Reasonable and Prudent Operator) that this use prejudices Thames's ability to comply with any of its obligations under the Act or its instrument of appointment and Thames therefore takes steps to limit the Bulk Supply; or
- (C) where, acting as a Reasonable and Prudent Operator, Thames is prevented from providing the Bulk Supply, or providing the Bulk Supply at the Working Pressure, by a Force Majeure Event or an Emergency (except a Drought Order).

4.5 Quality

4.5.1 The Bulk Supply shall comply with the quality standards imposed by the Act and the 2000 Regulations, PROVIDED ALWAYS that where a particular standard is the subject of an authorised departure granted by or an undertaking accepted by the Secretary of State or the Chief Inspector of Drinking Water under the provisions of the Act or the 2000 Regulations, compliance with the terms of the relevant authorised departure or undertaking shall be deemed to be compliance with the relevant quality standard imposed by the Act or the 2000 Regulations (as the case may be), in which case Thames shall provide XYZ with a certified copy of any such authorised departure or undertaking. Each Party confirms to the other that there are no such authorised departures or undertakings existing at the date hereof and 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 grant of any such authorised departures or the acceptance of any such undertaking and of the outcome thereof.

4.5.2 Thames shall act as a Reasonable and Prudent Operator to ensure that the operation of the Thames Treatment Works or Thames Distribution Network does not cause any contamination of the water in the XYZ Distribution Network including, if necessary, suspending the Bulk Supply and, in any event, shall:

- (A) notify XYZ of the existence and cause (if known) of any contamination that could affect the XYZ Distribution Network as soon as reasonably practicable after the same have come to Thames's attention (acting as a Reasonable and Prudent Operator); and
- (B) keep XYZ notified of the steps being taken to remedy the contamination.

4.6 Planned Works

4.6.1 Thames shall give XYZ 5 Business Days' notice of planned work or planned Necessary Works to the Thames Distribution Network or a Meter that may (in Thames's opinion as a Reasonable and Prudent Operator) materially affect the Bulk Supply.

4.6.2 For the avoidance of doubt, any interruption to the Bulk Supply expected to be longer than 4 hours is deemed to materially affect the Bulk Supply within the meaning of Clause 4.6.1.

4.6.3 Subject to its compliance with the remainder of this Clause 4.6, Thames shall have no obligation or liability in respect of or arising in consequence of a reasonable need, acting as a Reasonable and Prudent Operator, to shut down or curtail, for whatever reasonable period, the provision of the Bulk Supply during any maintenance, repair, improvement, replacement or renewal of any plant or other equipment (including without prejudice to the generality of the foregoing, all pipes, tanks, meters, treatment works, fittings, conduits and apparatus, including a Meter or a Non Return Valve) on which the Bulk Supply is dependent provided always that Thames shall use reasonable endeavours to minimise the frequency and length of such periods so as to minimise inconvenience caused to XYZ.

4.6.4 Except in event of Emergency, Thames shall give XYZ at least 5 Business Days' notice of any planned work or planned Necessary Works that do not fall within Clause 4.6.1 but that may impact on the Bulk Supply.

4.7 Alternative Supply and Back-Up Supply

4.7.1 Thames shall make the Back-Up Supply or Alternative Supply available to XYZ in accordance with Schedule 3.

4.7.2 Nothing in this Agreement shall require Thames to reserve or maintain in the Thames Distribution Network any quantity of water to provide the Back-Up Supply or Alternative Supply.

4.7.3 Thames will own and operate the valve controlling any connections into the XYZ Distribution Network to be used for the Back-Up Supply, and such valves shall not be operated by XYZ without the consent of Thames (such consent not to be unreasonably conditioned, withheld or delayed).

4.8 Asset Payment

4.8.1 Subject to Sub-Clause 4.8.2, Thames shall pay to XYZ the Asset Payment (the value of which, if any, is set out in the Site Schedule) within 35 days of the date the Connection is made, after having deducted any Connection and Infrastructure Charge due and payable by XYZ to Thames at the time at which each of the conditions mentioned in Clauses 2.1(A) and (B) have been satisfied PROVIDED ALWAYS that if the aforesaid payments payable by XYZ exceed the Asset Payment, any balance due to Thames will be payable by XYZ within 35 days of the date of the relevant invoice submitted by Thames and PROVIDED ALSO that any changes to the dimensions of the Relevant Water Mains shown in the Onsite Mains Design will lead to a recalculation of the Asset Payment.

4.8.2 Where the Relevant Mains have not all been constructed on the date of Connection, the Asset Payment will be payable by instalments. The first instalment will be payable with the time frame stipulated under sub-clause 8.8.1 and calculated by reference to the dimensions of the Relevant Water Mains that exist when the Connection is made. Subsequent instalments will be payable on a phased basis, the phasing to be agreed between the parties and in the absence of agreement to be determined under the disputes provisions of Clause 23 PROVIDED ALWAYS THAT Thames shall not at any stage be liable to pay any proportion of the Asset Payment that relates to any part of the Relevant Water Mains that have not been constructed.

5. **XYZ's OBLIGATIONS**

5.1 Responsibility for Pipework

XYZ will construct at its own expense any pipes and ancillary apparatus necessary to connect its equipment and infrastructure downstream of the Point of Connection into the Point of

Connection. It is acknowledged that such equipment and infrastructure will vest in XYZ.

5.1A On Site Mains Design and Inspection

During the construction of the Relevant Mains, XYZ shall give to Thames and any person or persons duly authorised by Thames access to every part of the said construction works insofar as it is practicable to do so and necessary for Thames to be satisfied that the Relevant Mains are constructed in accordance with the On Site Mains Design.

5.2 Quantity

5.2.1 XYZ acting as a Reasonable and Prudent Operator shall use reasonable endeavours to ensure that its usage of water at the Point of Connection does not exceed the Maximum Daily Volume in any day, the Maximum Annual Volume in any Charging Year and Maximum Instantaneous Flow at any point during the term of this Agreement.

5.2.2 XYZ may construct a control system linked to a flow meter at an appropriate point on its own pipe in order to ensure that it has sufficient control over the Bulk Supply to enable it to comply with its obligations relating to Maximum Daily Volume, Maximum Annual Volume and Maximum Instantaneous Flow.

5.2.3 If XYZ uses more than the Maximum Daily Volume on 3 or more days within any period of 14 days, then notwithstanding any other rights accruing to Thames under this Agreement, Thames shall be entitled by notice to XYZ to require XYZ to pay, and if required, XYZ shall pay, a sum equal to the reasonable costs of carrying out any Reinforcements to Thames's Distribution Network that Thames, acting as a Reasonable and Prudent Operator, considers are required in order to provide the Bulk Supply at the highest rate of daily usage recorded during a period comprising the day which gave rise to Thames's right to serve notice on XYZ under this Clause 5.2.3 and the 12 months prior to that day.

5.2.4 For the purpose of Clause 5.2.3, a day shall not be counted as a day on which XYZ's usage is in excess of the Maximum Daily Volume if a Force Majeure Event or an Emergency caused the excess usage on that day.

5.2.5 If XYZ uses the Bulk Supply at a rate in excess of the Maximum Instantaneous Flow at any time on 3 or more days within any period of 14 days, then notwithstanding any other rights accruing to Thames under this Agreement, Thames shall be

entitled by notice to XYZ to require XYZ to pay, and if required, XYZ shall pay, a sum equal to the reasonable costs of carrying out any Reinforcements to the Thames Distribution Network that Thames, acting as a Reasonable and Prudent Operator, considers are required in order to provide the Bulk Supply at the highest rate of flow recorded during a period comprising the day on which Thames's right to serve notice on XYZ under this Clause 5.2.5 accrued and the 12 months prior to that day.

- 5.2.6 For the purpose of Clause 5.2.5, a day shall not be counted as a day on which XYZ's usage is in excess of the Maximum Instantaneous Flow if a Force Majeure Event or Emergency caused the excess usage on that day.
- 5.2.7 If XYZ uses more than the Maximum Annual Volume in any Charging Year, then notwithstanding any other rights accruing to Thames under this Agreement, Thames shall be entitled by notice to XYZ to require XYZ to pay, and if required, XYZ shall pay, a sum equal to the reasonable costs of carrying out any Reinforcements to the Thames Distribution Network that Thames, acting as a Reasonable and Prudent Operator, considers are required in order to provide the Bulk Supply at the volume actually used by XYZ in the Charging Year which gave rise to Thames's right to serve notice on XYZ under this Clause 5.2.7.
- 5.2.8 XYZ shall be entitled by notice to Thames to require Thames to supply, and if required, Thames (at its cost) shall supply, information which sets out the basis for the calculation of any sums demanded by Thames under Clauses 5.2.3, 5.2.5 or 5.2.7.
- 5.2.9 Any sums payable by XYZ under Clauses 5.2.3, 5.2.5 or 5.2.7 shall be added to the next invoice issued by Thames to XYZ under Clause 5.3.3 after the date of the relevant notice given by Thames under Clauses 5.2.3, 5.2.5 or 5.2.7.
- 5.2.10 For the avoidance of doubt, Thames's right to recover the reasonable costs of Reinforcement works from XYZ under Clauses 5.2.3, 5.2.5 and 5.2.7 is in addition to, and is without prejudice to any rights in damages or other causes of action arising under or in connection with a breach by XYZ of its obligations under Clause 5.2.1.
- 5.2.11 If XYZ uses the Bulk Supply at a rate in excess of the Maximum Daily Volume or the Maximum Instantaneous Flow, then it shall:
- (A) notify Thames of the existence and cause of the excess use as soon as practicable after the same have come to

XYZ's attention (acting as a Reasonable and Prudent Operator); and

- (B) keep Thames notified of the steps being taken to reduce its use to levels less than Maximum Daily Volume or the Maximum Instantaneous Flow.

5.3 Supply Charges

5.3.1 XYZ shall pay the Supply Charges to Thames in accordance with this Agreement.

5.3.1A The Supply Charges (which includes fixed charges as well as volume related charges) shall be calculated using the NAV Tariff Document"

5.3.1B Within 5 Business Days of receiving actual Meter readings covering a Charging Year ("Relevant Charging Year"), Thames shall review the volume of the Bulk Supply for the Relevant Charging Year, and shall identify the tariff in the NAV Tariff Document which applies to that volume ("Relevant Tariff"). If the Relevant Tariff is different from the tariff actually applied by Thames in calculating the Supply Charges during the Relevant Charging Year, then:

- (A) where XYZ has made an overpayment during the Relevant Charging Year, Thames shall make a refund to XYZ of the amount of the overpayment within 14 days of the calculation or, if agreed by XYZ, shall issue a credit note; and
- (B) where XYZ has made an underpayment during the Relevant Charging Year, the amount of the underpayment shall be included on the first subsequent invoice issued by Thames under Clause 5.3.3.

In all cases, Thames shall apply the Relevant Tariff when calculating the Supply Charges in the Charging Year subsequent to the Relevant Charging Year.

5.3.1C If Thames's charges to the Equivalent Customers increase or decrease, the Supply Charges shall increase or decrease (as the case may be) by an equal percentage.

5.3.2 The Supply Charges shall be amended to the extent necessary to satisfy the requirements of any changes to Relevant Legislation (including, for the avoidance of doubt, any order, decision, determination or direction of the Authority following an application made to the Authority by either Party with a request for an order, decision, determination or direction to be made in

respect of the Supply Charges) and such amendment shall be deemed to be a valid variation of this Agreement in accordance with Clause 14.1.

- 5.3.3 Thames will issue an invoice to XYZ monthly. The invoice will include a statement of the Supply Charges for the preceding month, and may, for the avoidance of doubt, include a statement of other charges (including Infrastructure Charges) due and payable in accordance with this Agreement.
- 5.3.4 Where, for any reason the Meter cannot be read, Supply Charges may be calculated by Thames on an estimated basis, acting as a Reasonable and Prudent Operator. Where this occurs, any appropriate adjustments to the Supply Charges will be made, based on the next actual reading of the relevant Meter. If such adjustments show that XYZ has made an overpayment, then Thames shall make a refund to XYZ of the amount of the overpayment within 14 days of the calculation or, if agreed by XYZ, shall issue a credit note. If such adjustments show that XYZ has made an underpayment, then the amount of the underpayment shall be included on the first subsequent invoice issued by Thames under Clause 5.3.3.
- 5.3.5 XYZ will make payment direct to Thames through a Bank Automated Clearing System (BACS) payment to a UK bank account nominated by Thames. Such payment shall be made within 14 days of the date that XYZ receives an invoice from Thames under Clause 5.3.3. For the purposes of determining the time at which an invoice is deemed to have been received by XYZ, the provisions of Clause 18.3 shall apply to invoices.
- 5.3.6 If, within 14 days of receiving an invoice from Thames, XYZ has failed to pay the amount of the invoice in full to Thames in accordance with Clause 5.3.5, then interest shall accrue on the sum outstanding at the rate of two per cent per annum over the base rate from time to time of National Westminster Bank plc from the date of the invoice until the date of actual payment.
- 5.3.7 Payment by XYZ shall be made without conditions attached and without deduction (except to the extent required by law), whether by way of set-off or otherwise.
- 5.3.8 All sums referred to in this Agreement are quoted exclusive of Value Added Tax, and Value Added Tax (where applicable) and all other taxes now or in the future payable in respect of the supplies made by Thames under this Agreement shall be added and payable in addition to such sums.

5.3.9 Thames shall inform XYZ of the Billing Reference Number so that Thames may more effectively invoice XYZ for the Supply Charges.

5.4 Infrastructure Charges

5.4.1 XYZ shall pay the Infrastructure Charges to Thames in accordance with this Agreement

5.4.2 Infrastructure Charges shall be equivalent to the water infrastructure charge that would have been payable to Thames under section 146 of the Act, Condition C of Thames's instrument of appointment and the Thames Charges Scheme upon the connection of premises on the Site to the XYZ Distribution Network if Thames had been the appointed water undertaker for those premises in place of XYZ and the connection had therefore been made to the Thames Distribution Network.

5.4.3 XYZ shall keep a record of the date upon which premises on the Site are first connected to the XYZ Distribution Network, and shall notify Thames within 10 Business Days of both 1 April and 1 October in each Charging Year (each occurrence of 1 April or 1 October being an "Infrastructure Charging Date") of the address of each of the premises that have been connected to the XYZ Distribution Network in the 6 months prior to the Infrastructure Charging Date ("Infrastructure Charging Period") and the date of each connection.

5.4.4 The Infrastructure Charge for an Infrastructure Charging Period shall be calculated by Thames as soon as reasonably practicable after it receives data for that Infrastructure Charging Period from XYZ under Clause 5.4.2, and shall be included in the next invoice issued by Thames to XYZ under Clause 5.3.3.

5.4.5 The Infrastructure Charge shall be amended to satisfy the requirements of any changes to Relevant Legislation (including, for the avoidance of doubt, any order, decision, determination or direction of the Authority and such amendment shall be deemed to be a valid variation of this Agreement in accordance with Clause 14.1. For the avoidance of doubt, the Parties agree that any such amendment to Relevant Legislation shall not operate retrospectively, and so shall not affect any amount payable by XYZ for Infrastructure Charges in respect of premises that are connected to the XYZ Distribution Network prior to the date of that amendment.

5.5 Use of Water

XYZ shall use the water supplied by Thames hereunder only for the purposes of fulfilling its statutory duty to maintain an efficient and economical system of water supply within the Site and for no other purpose.

5.6 Temporary Use Ban and Drought Orders

5.6.1 If at any time, Thames imposes a temporary Use Ban on any of its customers in an area adjacent to the Site, XYZ shall as soon as reasonably practicable take all steps necessary to impose upon its customers at the Site a Temporary Use Ban in the same or, at its option, more stringent terms as are applied by Thames. Thames shall give such notice to XYZ as is reasonable in the circumstances where it intends to introduce a Temporary Use Ban.

5.6.2 Where Thames is proposing to apply for a Drought Order that shall restrict the use of water by any of its customers in an area adjacent to the Site, it shall notify XYZ of its intention and of the terms sought. XYZ shall, as soon as reasonably practicable, take all necessary steps to apply for a Drought Order in equivalent or, at its option, more stringent terms to those applied for by Thames and if such a Drought Order is granted, shall impose restrictions on the use of water by its customers at the Site that are no less stringent than those applied by Thames to its customers.

5.7 Contamination

XYZ shall act as a Reasonable and Prudent Operator to ensure that the XYZ Distribution Network does not cause any contamination of the water in the Thames Distribution Network including, if necessary, asking Thames to suspend the Bulk Supply and, in any event, shall:

- (A) notify Thames of the existence and cause (if known) of any contamination that could conceivably affect the Thames Distribution Network, as soon as reasonably practicable after the same have come to XYZ's attention (acting as a Reasonable and Prudent Operator), and keep Thames notified of the steps being taken to remedy contamination; and
- (B) inform Thames of any contamination incidents reportable to a Regulatory Authority occurring within the XYZ Distribution Network.

5A. OBLIGATIONS OF PARTIES

5A.1 Water Fittings Regulations

5A.1.1 XYZ shall take any action necessary with respect to enforcement of the *Water Supply (Water Fittings) Regulations 1999* within the Site to ensure that the XYZ Distribution Network does not give rise to any risk of contamination or back-syphonage that could lead to water quality failures in the Thames Distribution Network. Where Thames is reasonably satisfied that there is a material risk of such contamination or back-syphonage, it shall have the right to temporarily suspend the Bulk Supply without prior notice.

5A.1.2 Thames shall take any action necessary with respect to enforcement of the *Water Supply (Water Fittings) Regulations 1999* within the Thames Distribution Network to ensure that it does not give rise to any risk of contamination or back-syphonage that could lead to water quality failures in the XYZ Distribution Network. Where XYZ is reasonably satisfied that there is a material risk of such contamination or back-syphonage, it shall have the right to require Thames to temporarily suspend Bulk Supply without prior notice, and if so required, Thames shall temporarily suspend the Bulk Supply.

5A.2 Provision Of information

5A.2.1 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.

5A.2.2 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 Meters, and, upon receiving the request, the other Party shall supply such data or information to the Party as soon as reasonably practicable.

5A.2.3 The Party making a request under Clauses 5A.2.1 or 5A.2.2 shall indemnify the other Party in respect of all reasonable costs and expenses incurred by the other Party in complying with Clauses 5A.2.1 or 5A.2.2

5A.3 Emergencies

5A.3.1 In the event of an Emergency:

- (A) a Party who becomes aware of the existence of the Emergency shall notify the other Party of the existence and cause (if known) of the Emergency as soon as reasonably practicable after the same have come to that Party's attention (acting as a Reasonable and Prudent Operator); and
- (B) each Party shall keep the other Party notified throughout the Emergency of the steps being taken to address any effects of the Emergency on that Party's performance of its obligations under this Agreement.

5A.3.2 The Parties shall co-operate as Reasonable and Prudent Operators to ensure, as far as is reasonably practicable, that any Force Majeure Event or Emergency does not affect the supply of water to either Party's Customers and shall, in so far as is permitted under Relevant Legislation, co-operate in investigating the cause of such Force Majeure Event or Emergency, sharing any lessons learned so as to seek to prevent a recurrence.

6. MEASUREMENT OF BULK SUPPLY

- 6.1 The Bulk Supply and Back-Up Supply shall pass through and be measured by the relevant Meter.
- 6.2 Subject to the provisions of this Clause 6 and Clause 5.3.4, the amount of water supplied by Thames as the Bulk Supply or Back-Up Supply shall be taken to be that shown on the register of the relevant Meter.
- 6.3 If XYZ is of the opinion that the amount shown by a Meter is inaccurate, it may give Thames notice requiring the accuracy of that Meter to be tested by Thames.
- 6.4 The reasonable expenses of any such test (including the cost of removing the Meter and providing a substitute) shall be met by Thames if the Meter is found to be inaccurate by more than 6% and by XYZ if the Meter is found to be inaccurate by less than 6%.
- 6.5 If a Meter fails, or is found to be inaccurate by more than 2.5% in accordance with a test carried out under Clause 6.3, the quantity of water supplied by Thames during the period prior to the replacement of the Meter (including, for the avoidance of doubt, the period prior to detection of the failure of the Meter or the test carried out under Clause 6.3) shall be taken to be such as Thames and XYZ shall agree, or in default of such agreement, such as shall be settled under the dispute resolution procedure in Clause 23.

7. LIMITATION OF LIABILITY

- 7.1 Neither Party shall in any circumstances have any liability whatsoever to the other Party for any Consequential Loss, and all conditions, warranties or other terms, whether express or implied, statutory or otherwise, inconsistent with the provisions of this Clause 7.1 are hereby expressly excluded (subject always to Clauses 7.5 and 7.6).
- 7.2 Neither Party shall be liable 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 Bulk Supply, Back-Up Supply or Alternative Supply, except to the extent that such loss or damage arises from an act or omission that is unlawful or negligent or is in breach of an express provision of this Agreement.
- 7.3 Each Party's liability in respect of the direct consequences and, in the event that it is not entitled (for any reason) to rely upon the provisions of Clause 7.1, the Consequential Loss resulting from negligence or any breach or non-performance of this Agreement (except for a breach by XYZ of its obligation under Clause 5.3.5 to make payment to Thames, or any other breach or non-performance of the Agreement arising from a failure by XYZ to pay for the Bulk Supply) or any misrepresentation or any other tort on the part of that Party or its servants or agents shall be limited to one hundred thousand pounds (£100,000) in any one calendar year for any one or more incidents or series of incidents whether related or unrelated in that calendar year, and all conditions, warranties or other terms, whether express or implied, statutory or otherwise, inconsistent with the provisions of this Clause 7.3 are hereby expressly excluded (subject always to Clauses 7.5 and 7.6).
- 7.4 Nothing in this Agreement shall exclude or limit the liability of either Party arising out of or in connection with any fraud committed by that Party or for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.
- 7.5 Save as otherwise expressly provided in this Agreement, this Clause 7 (insofar as it excludes or limits liability) shall override any other provision in this Agreement provided that nothing in this Clause 7 shall exclude or restrict or otherwise prejudice or affect any of the rights, powers, duties and obligations of either Party hereto which are conferred or created by the Act, any licence granted pursuant to the Act or any Relevant Legislation.

- 7.6 This Clause 7 shall survive the termination of this Agreement for whatever cause.
- 7.7 For the avoidance of doubt, the Parties expressly agree that:
- (A) Thames shall not be liable to compensate XYZ for any payments that XYZ may be required to make under the Service Regulations where the breach of the Service Regulations was caused by XYZ in failing to operate its water undertaking as a Reasonable and Prudent Operator; and
 - (B) in no circumstances shall Thames be required to compensate XYZ for any payments in respect of poor service that it chooses to make to its customers as enhanced rights and benefits above the requirements of the Service Regulations.
- 7.8 Each Party hereby acknowledges and agrees that the provisions of this Clause 7 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.
- 7.9 Subject to the rest of this Clause 7, any liability under this Agreement or otherwise on the part of either Party shall be reduced to the extent that the other Party has itself caused or contributed to the same and, in the event of liability to any third party, the Party who has caused or contributed to that liability shall indemnify the innocent Party in respect of the same.
- 7.10 The Parties agree to use all reasonable endeavours to mitigate any loss, damage or injury to which they might be subject as a result of a breach of this Agreement or any Relevant Legislation by the other Party.

8. INDEMNITIES

- 8.1 Subject to the limitations set out in Clause 7, and without prejudice to XYZ's duty to mitigate its losses, Thames shall keep XYZ indemnified from and against any claim, loss, cost, liability, damage or expense which XYZ incurs or suffers as a result of any act or omission of Thames that is unlawful or negligent or is in breach of an express provision of this Agreement.
- 8.2 Subject to the limitations set out in Clause 7, and without prejudice to Thames's duty to mitigate its losses, XYZ shall keep Thames indemnified from and against any claims, loss, cost, liability, damage or expense which Thames incurs or suffers as a result of any act or omission of XYZ that is unlawful

or negligent or is in breach of an express provision of this Agreement.

- 8.3 In the event that Thames is in breach of this Agreement as a result of which XYZ's customers suffer any loss of or reduction in the services provided to them by XYZ and XYZ incurs any liability to its customers to compensate them therefor, Thames shall indemnify and keep indemnified XYZ from and against such compensation and shall reimburse the same to XYZ (subject to the provision of reasonable supporting evidence) PROVIDED THAT Thames's liability in such circumstances shall not exceed the compensation to which XYZ's customers would have been entitled had they been customers of Thames.
- 8.4 Where either Party becomes aware of any claim, difference, dispute or proceedings (actual or threatened) which it reasonably expects may lead to a liability to the other Party under this Agreement, it shall notify the other Party as soon as reasonably practicable and shall provide such information as the other Party may reasonably require and shall consult with the other Party as to the conduct of such claim, difference, dispute or proceedings (whether actual or threatened).

9. TERMINATION

- 9.1 Either Party (in this Clause 9, the "Non-Defaulting Party") may, without prejudice to any of its other rights arising hereunder, terminate this Agreement by notice with immediate effect to the other Party (the "Defaulting Party") if:
- (A) the Defaulting Party commits a material breach of any of the terms or conditions hereof (including, for the avoidance of doubt, any failure by XYZ to pay the amount of an invoice in full to Thames in accordance with Clause 5.3.5 or to provide connections data to Thames in accordance with Clause 5.4.2) and such breach (if capable of remedy) continues 30 days after notice in writing, specifying the breach and requiring the same to be remedied, has been given by the Non-Defaulting Party;
 - (B) the Defaulting Party relies on the existence of a Force Majeure Event to excuse performance under this Agreement for more than 60 consecutive days;
 - (C) the Defaulting Party ceases to be a water undertaker appointed under the Act for any reason;

- (D) the Defaulting Party ceases to be the undertaker for the Site;
- (E) an order is made or a resolution is passed for the winding-up of the Defaulting Party except in the case of a voluntary winding-up for the purposes of a scheme of reconstruction or amalgamation;
- (F) an administration order is made in respect of the Defaulting Party or a petition for such an order is presented, or the Defaulting Party otherwise “enters administration” (as that phrase is defined in paragraph 1 of Schedule B1 of the Insolvency Act 1986);
- (G) a receiver (which expression shall include an administrative receiver) is appointed in respect of the Defaulting Party or all or any of its assets;
- (H) the Defaulting Party is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- (I) any voluntary arrangement is proposed under Section 1 of the Insolvency Act 1986 in respect of the Defaulting Party; or
- (J) anything analogous to any of the events described in sub-Clauses 9.1(D) to (H) occurs in any jurisdiction.

9.2 The Parties may terminate this Agreement by mutual consent.

9.3 Thames may terminate this Agreement with immediate effect by notice to XYZ if the Guarantee ceases to be in effect.

9.4 XYZ may terminate this contract with 12 weeks notice provided that Thames Water's reasonable costs of termination as agreed by the parties are met.

9.4.1 On receipt of notice of termination Thames Water will identify any costs arising from the termination and notify same to XYZ.

9.4.2 XYZ shall within 10 working days inform Thames Water those costs it agrees and those on which it requires further information from Thames Water. The parties shall then meet in good faith to discuss and use reasonable endeavours to agree those costs not yet agreed by XYZ.

9.4.3 Costs may include but will not be limited to:

- a) recovery of, and costs to establish network arrangements to ensure water reticulation issues are managed; and
- b) costs to negotiate new contractual arrangements

9.4.4 If parties cannot agree upon the costs of termination, such a disagreement will be regarded as a dispute and settled under the provisions of Clause 23.

9.5 This Agreement may be terminated by order, determination or direction of the Authority, or by new or amended Relevant Legislation.

9.6 Except where expressly stated to the contrary, the rights and obligations of the Parties under this Agreement shall cease immediately upon its termination. However, termination shall not affect any rights, obligations or remedies which have accrued on or before the date of termination.

10. FORCE MAJEURE EVENT

10.1 If either Party (in this Clause 10, the “Affected Party”) is unable to carry out any of its obligations under this Agreement due to a Force Majeure Event, this Agreement shall remain in effect but, save as otherwise provided in this Agreement, both Parties’ obligations other than the obligation to pay the Water Charges and Infrastructure Charges shall be suspended without liability for the period during which the Force Majeure Event prevails, provided that:

- (A) the Affected Party has given the other Party prompt notice describing the Force Majeure Event, including the nature of the occurrence, its expected duration and the steps being taken to mitigate its effects, and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of the Force Majeure Event;
- (B) the suspension of performance is of no greater scope and of no longer duration than is strictly required by the Force Majeure Event; and
- (C) the Affected Party uses all reasonable efforts to mitigate the impact of the Force Majeure Event and to remedy its inability to perform as quickly as possible.

10.2 Immediately after the end of the Force Majeure Event, the Affected Party shall notify the other Party in writing of the same

and each Party shall resume performance of its obligations under this Agreement.

- 10.3 Neither Party may rely on Clause 10.1 where the Force Majeure Event has arisen either directly or indirectly because of that Party's failure to act as a Reasonable and Prudent Operator.

11. EXERCISE OF RIGHTS

- 11.1 No obligation under this Agreement shall be considered waived by either Party unless such waiver is executed in writing.
- 11.2 No delay or omission by either Party in exercising any right, power or remedy provided by law or under this Agreement or any other documents referred to in it shall:
- (A) affect that right, power or remedy; or
 - (B) operate as a waiver thereof.
- 11.3 The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 11.4 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

12. ASSIGNMENT

- 12.1 This Agreement may be assigned by either Party:
- 12.1.1 by way of a transfer scheme under Schedule 2 of the Act in the event that that Party ceases to be a water undertaker under the Act, or
 - 12.1.2 with the consent of both Parties.
- 12.2 In the event of a change to Relevant Legislation that provides for the division of Thames's existing business into separate legal entities, Thames shall have an absolute right to assign, charge and/or otherwise transfer whether by legal or equitable assignment or novation or otherwise this Agreement (or any rights and obligations hereunder) to an Associated Company without requiring the prior consent of XYZ, and XYZ agrees to execute any necessary documentation to effect and/or acknowledge any such assignment, novation or transfer, except that the consent of XYZ shall be required (and XYZ shall be entitled to withhold such consent) if the assignment, charge or transfer would render any right of XYZ in respect of this

Agreement unenforceable or the performance of any obligation by the Associated Company in respect of this Agreement illegal.

13. CONTRACT and OPERATIONAL MANAGEMENT

- 13.1 Each Party shall appoint an appropriate person (each a “Contract Manager”, together the “Contract Managers”) to manage all matters arising under or in connection with this Agreement and to monitor the general performance of this Agreement.
- 13.2 The Contract Managers shall hold meetings at such venues and at such intervals as may be agreed between the Parties from time to time.
- 13.3 Each Party shall notify the other in accordance with Clause 18 of the name and contact details of the Contract Manager appointed by it for the purposes of this Agreement from time to time. The name and contact details of the Contract Managers as at the date of this Agreement are listed in Schedule 4.
- 13.4 In the event of an Emergency or other operational incident, the Parties agree to follow the procedures in Schedule 4.

14. VARIATION

- 14.1 This Agreement may only be varied in writing signed by each of the Parties. Either Party shall at any time be entitled to propose variations to this Agreement by notice in writing to the other Party. The Parties, acting as Reasonable and Prudent Operators, shall negotiate in good faith the terms of any such variation.
- 14.2 Subject to Clause 5.3.2, if it becomes apparent that a variation to this Agreement has become necessary by virtue of changes to the statutory obligations of either of the Parties or otherwise to give effect to changes to Relevant Legislation, the Parties shall agree such variation as is necessary to give effect to any such changes but only to the extent that such variation would not alter the substantive purpose and commercial arrangements embodied in this Agreement. If such variation cannot be so made, any variation shall be dealt with in accordance with Clause 14.3.
- 14.3 If the Parties cannot agree upon a proposed variation, such disagreement will be regarded as a dispute and settled under the provisions of Clause 23.

15. CONFIDENTIALITY

- 15.1 Save as provided in Clause 15.2, neither Party shall disclose Confidential Information to any other person.
- 15.2 The obligation of confidentiality in Clause 15.1 shall not apply to any information that would otherwise be Confidential Information to the extent that:
- (A) it is disclosed through no fault of the disclosing Party;
 - (B) it is received by a Party from a third party entitled to disclose it;
 - (C) it is known to a Party before receipt from the other Party;
 - (D) it is developed by a Party independently from the other Party;
 - (E) its disclosure is required to give effect to any Relevant Legislation or is ordered by a Regulatory Authority or a court or tribunal;
 - (F) it is disclosed to a Party's officers, agents, employees, professional advisers, insurers, bankers or Affiliates for the purposes of this Agreement who need to know it upon obtaining from such persons an undertaking as to confidentiality substantially equivalent to that contained in this Clause 15;
 - (G) its disclosure is required by Relevant Legislation or for the purpose of any judicial proceedings or for dispute resolution as provided for in this Agreement; or
 - (H) the other Party has given prior written consent to the disclosure.
- 15.3 Without prejudice to any rights in damages or other causes of action arising under or in connection with this Agreement, each Party recognises that damages will not be an adequate remedy for breach of this Clause 15 and that injunctive relief is an appropriate remedy.
- 15.4 Any information to be disclosed pursuant to sub-Clauses (E), (F) and (G) of Clauses 15.2 shall be disclosed only after consultation with the other Party, where reasonably practicable.
- 15.5 The restrictions contained in this Clause 15 shall apply without limit in time and shall survive the termination of this Agreement for whatever reason.

16. ENVIRONMENTAL INFORMATION REGULATIONS

- 16.1 The Parties recognise that they are subject to legal duties, which may require the release of information under the EIR and may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this Agreement in any way.
- 16.2 The Parties recognise that each request for information shall be considered individually.
- 16.3 Notwithstanding anything in this Agreement to the contrary including, but without limitation, the general obligation of confidentiality imposed on the Parties pursuant to Clause 15, in the event that either Party (in this Clause 16.3, "the Relevant Party") receives a request for information under the EIR, the Relevant Party shall be entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the EIR PROVIDED ALWAYS that where the information requested is information that has been given to the Relevant Party by the other Party (in this Clause 16.3, "the Other Party"), the Relevant Party:
- (A) shall use reasonable endeavours to consult the Other Party as soon as reasonably practicable (and in any event within a maximum of 5 Business days) and the Other Party agrees to respond to such consultation within 7 Business Days of receiving the consultation notice;
 - (B) shall not disclose any information that the Parties have agreed is Exempted Information and shall rely on EIR Exemptions and use reasonable endeavours to ensure that the Exempted Information remains withheld, including the lodging of any appeal against a decision by the Information Commissioner in relation to the request;
 - (C) in the event that the Relevant Party bears any costs or expenses, including, but not limited to external legal costs, in seeking to maintain the withholding of the information, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner in relation to disclosure, the Other Party shall indemnify the Relevant Party, save that the Relevant Party shall use reasonable endeavours to consult the Other Party before incurring any external costs or expenses and comply with all reasonable requirements of the Other Party before incurring external costs and expenses and shall permit the Other Party to take over the sole conduct of the matter if it so chooses; and
 - (D) for the avoidance of doubt, the costs and expenses recoverable by the Relevant Party under sub-Clause (C)

of this Clause 16.3 shall include reasonable internal costs, including establishment charges and overheads.

17. ANNOUNCEMENTS AND PUBLICITY

- 17.1 No announcement (except those required by Relevant Legislation, the Environment Agency or the Authority) concerning the subject matter of this Agreement or any ancillary matter shall be made by either Party without the prior written approval of the other Party, such approval not to be unreasonably conditioned, withheld or delayed. The restrictions contained in this Clause 17.1 shall apply without limit in time and shall survive the termination of this Agreement for whatever reason.
- 17.2 Neither Party shall refer to this Agreement or any of its subject matter in any advertising, publicity or promotional material without the prior written approval of the other Party, such approval not to be unreasonably conditioned, withheld or delayed.

18. NOTICES

- 18.1 Except for notices given under Clause 5A.3 or where otherwise stated, any notice, request or other communication to be made by one Party to the other Party under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by e-mail, recorded delivery, special delivery or courier to the other Party to the address and for the attention of the relevant person set out in Clause 18.2. Notices under this Agreement shall be sent to a Party at its address and for the attention of the individual set out below:

<u>Party, title of contact</u>	<u>Address</u>	<u>Email</u>
Thames Water Utilities Limited Attention: Company Secretary	Clearwater Court, Vastern Road, Reading, Berkshire RG1 8DB	wholealemarketservices@thameswater.co.uk
XYZ Water Limited Attention:		

or to any such other persons or addresses as may from time to time be notified by one Party to the other in accordance with this Clause 18 (provided such notification shall only be effective 5 Business Days from receipt).

18.3 Any notice given under this Agreement shall, in the absence of earlier receipt, be deemed to have been duly given as follows:

- (A) if delivered personally or by courier, on delivery;
- (B) if sent by recorded delivery or special delivery, two clear Business Days after the date of posting;

18.4 Any notice given under this Agreement outside the hours of 0900 to 1700 hours on a Business Day shall be deemed not to have been given until 0900 on the next Business Day.

19. COUNTERPARTS

This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each such counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

20. ENTIRE AGREEMENT

20.1 This Agreement shall supersede all discussions, understandings, arrangements or agreements, whether written or verbal, relating to all matters that are referred to and which were previously entered into or made between the Parties hereto and all such discussions, understandings, arrangements or agreements are hereby terminated.

20.2 This Agreement represents the entire agreement between the Parties and no modification or alteration hereto shall have effect unless the same is agreed in writing between the Parties provided that nothing in this Clause shall exclude or limit the liability of either Party for any representation made fraudulently.

20.3 In the event that any provision of this Agreement shall be void or unenforceable by reason of any provision or applicable law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and, if necessary, be so amended as shall be necessary to give effect to the spirit of this Agreement so far as reasonably practicable.

21. COSTS AND EXPENSES

Each Party shall pay its own costs and expenses in relation to the preparation, execution and carrying into effect of this Agreement.

22. CHOICE OF GOVERNING LAW AND JURISDICTION

22.1 This Agreement is to be governed by and construed in accordance with English law.

22.2 Subject to the exhaustion of the process described in Clause 23, the courts of England are to have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement. Any proceedings may therefore be brought in the English courts.

23. SETTLEMENT OF DISPUTES

23.1 The Parties will use their best endeavours, in good faith and in a timely manner, to negotiate a settlement to any claim or dispute between them arising out of or in connection with this Agreement ("Dispute"), including the involvement of the respective Managing Directors/Chief Executive Officers. If, whether or not a Party has used its best endeavours to negotiate a settlement, the Dispute is not resolved by negotiation within 20 Business Days of either Party serving notice upon the other setting out the nature of the Dispute, either Party shall be entitled to request by notice to the other Party that the provisions of either Clause 23.2 or Clause 23.3 should apply to the Dispute. For the avoidance of doubt, Clause 23.2 or Clause 23.3 will only apply if both Parties have consented.

23.2 Mediation

23.2.1 To appoint a Mediator, the notifying Party shall apply to CEDR, or, with the consent of both Parties, any other suitable alternative forum, for the appointment of a mediator.

23.2.2 The Parties shall meet with the Mediator within 10 Business Days of his appointment (or such period as may be determined by the Mediator) in order to agree a programme for the exchange of all relevant information and the structure to be adopted for the mediation (if considered appropriate, the Parties may at any stage seek guidance on a suitable procedure from the forum that has appointed the Mediator).

23.2.3 If the Parties resolve the Dispute, the settlement or agreement shall be reduced to writing and shall be binding on the Parties once it is signed by both Parties, and, to the extent relevant, shall be deemed to be a valid variation to this Agreement under Clause 14.1.

23.2.4 If the Parties fail to resolve the Dispute within 1 month of a Mediator being appointed (or such longer period as may be agreed in writing between the Parties), the Dispute may be referred to the courts.

23.3 Independent Expert

23.3.1 To appoint an Independent Expert, the notifying Party shall propose to the other Party the appointment of an independent person of repute with experience in water management.

23.3.2 If a notifying Party makes a proposal for the appointment of an Independent Expert under Clause 23.3.1, then the other Party shall respond by notice to the notifying Party within 5 Business Days, indicating whether it accepts or rejects the proposal.

23.3.3 If the proposal is accepted under Clause 23.3.2, then the person nominated by the notifying Party shall be appointed as an Independent Expert. If the proposal is rejected under Clause 23.3.2, then the Parties shall apply to the Institution of Water Officers (or its nearest equivalent successor body) to appoint an Independent Expert.

23.3.4 The Independent Expert is required to prepare a written decision in relation to the Dispute, and shall give notice (including a copy) of the decision to the Parties within a maximum of 30 Business Days of the Dispute being referred to the Independent Expert (or such longer period as may be agreed in writing between the Parties).

23.3.5 If the Independent Expert fails to issue a written decision within 30 Business Days of the Dispute being referred (or such longer period as may be agreed in writing between the Parties), the Dispute may be referred to the courts.

23.3.6 The Parties will be entitled to make written submissions to the Independent Expert, and shall provide to the Independent

Expert (or procure that others provide to the Independent Expert on their behalf) such assistance, information and documents as the Independent Expert reasonably requires for the purpose of reaching a decision.

23.3.7 To the extent not provided for by this Clause 23.3, the Independent Expert may, in its reasonable discretion, determine such other procedures to assist with the conduct of the decision as it considers just or appropriate.

23.3.8 For the avoidance of doubt, the Independent Expert acts as an expert and not as an arbitrator.

23.3.9 The Independent Expert's written decision in relation to the Dispute shall be final and binding in the absence of manifest error or fraud, and, to the extent relevant, shall be deemed to be a valid variation to this Agreement under Clause 14.1.

23.4 Unless the Parties agree otherwise in writing, a dispute resolution process under Clause 23.2 or 23.3, and all other correspondence and documentation connected with it, including any settlement, agreement or determination relating to it, shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

23.5 Each Party shall bear its own costs in relation to a dispute resolution process under Clause 23.2 or 23.3. The fees of the Mediator or Independent Expert, and any costs properly incurred by the Mediator or Independent Expert in the course of the dispute resolution process under Clause 23.2 or 23.3 shall be borne by the Parties equally, or in such other proportions as the Mediator or Independent Expert shall direct.

23.6 For the avoidance of doubt, nothing in this Agreement limits or prevents either Party from seeking a determination from or from applying to the Authority or any other Regulatory Authority for the enforcement of any rights or obligations of a Party or the taking by the Parties or the Authority or such Regulatory Authority of any interim or procedural steps under any Relevant Legislation at any time.

24. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Subject to Clause 12.2, the Parties do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement.

25. SEVERANCE

Each of the sub-Clauses of this Agreement shall be construed as a separate and severable contract term so that in the event that any sub-Clause of this Agreement is held by any court or tribunal, or any Regulatory Authority to be invalid or unenforceable or is so rendered by any Relevant Legislation, such sub-Clause shall be deemed deleted without prejudice to the remaining provisions of this Agreement (which shall continue in full force and effect) and the Parties shall thereupon negotiate as Reasonable and Prudent Operators a substitute provision or provisions which achieves, as near as possible, the effect of the deleted provision whilst complying with the said Relevant Legislation.

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
XYZ

Signed by:

Signature

Name [Redacted]
Position [Redacted]

Signed by:

Signature

Name [Redacted]
Position [Redacted]

duly authorised for and on behalf of
THAMES WATER UTILITIES LIMITED

SCHEDULE 1 DEFINITIONS AND INTERPRETATION

1 Definitions

In this Agreement, the following expressions shall have the meanings set out below unless the contrary intention appears:

"Act" means the 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.

"Affiliate" means a Party's:

- (a) parent, subsidiary, affiliated or associated companies;
- (b) co-venturers, successors or assignees;
- (c) contractor (of any tier), or a contractor of any of the entities referred to in (a) or (b), not being the other Party;
or
- (d) the agents, servants, officers or directors of any of the entities referred to in (a), (b) or (c) above.

"Alternative Supply" has the meaning given in Schedule 3.

"Appointment" means appointment of XYZ as the water undertaker in respect of the Site by the Authority pursuant to Section 7 of the Act, and cognate expressions shall be construed accordingly.

"Asset Payment" means an equivalent payment to the one described in section 6.2.3(b) of the Charging Arrangements.

"Associated Company" means any subsidiary, holding company or company with a holding company in common (as defined in section 256 of the Companies Act 2006).

"Authority" means the Water Services Regulation Authority appointed under the provisions of the Act, or its nearest equivalent successor body.

"Back-Up Supply" means the supply of potable water to the XYZ Distribution Network through a connection other than at the Point of Connection.

"Bulk Supply" means the supply of potable water in bulk by Thames to XYZ at the Point of Connection in accordance with the provisions of this Agreement.

"Business Day" means any day when the clearing banks in the City of London are open for general banking business.

"CEDR" means the Centre for Effective Dispute Resolution.

"Charging Arrangements" means Thames's document in force at the date of this Agreement setting out the charges, income offsets, asset payments and / or the methodologies for calculating those, applied by Thames in accordance with the Charging Rules.

"Charging Rules" the Charging Rules for New Connection Services (English Undertakers) issued by the Water Services Regulation Authority in August 2017 under sections 51CD, 105ZF and 144ZA of the Act

"Charging Year" means the period between 1 April and 31 March in any year of this Agreement.

"Conditions Precedent" means the conditions set out in Clause 2.

"Confidential Information" means all material, including, without limitation, manufacturing, technical, information or engineering, data, proceXYZs, operating and testing procedures, designs, charts, drawings, letters, photographs, and specifications, plans, graphs, manuals, studies, reports, tables, proposals, conclusions, samples, scientific, specifications, findings, formulae, formulations, ideas, inventions, know-how, business plans, customer lists and information about actual or potential customers, financial, pricing or other commercial information, copyright or other intellectual property whether or not registerable, which are regarded by the disclosing Party as proprietary and confidential, and other data and correspondence derived from the disclosing Party or to which the recipient may be exposed by reason of or in connection with this Agreement, including the fact of any mediation or negotiations conducted with regard to it or to its terms and any and all correspondence, documentation, settlement or agreement flowing from such mediation or negotiations.

"Connection" means the point at which the Thames Distribution Network and the XYZ Distribution Network are physically connected so as to enable provision of the Bulk Supply.

"Connection Charge" means the sum payable in respect of connecting the Thames Distribution Network to the Point of

Connection, as set out in the Site Schedule (and shall include, for the avoidance of doubt, the cost to Thames of procuring, installing and testing a Meter, a Non Return Valve and temporary hydrant in accordance with Clause 2A.2).

“Consequential Loss” means any economic, consequential, indirect or special loss in each case howsoever caused, arising out of or in connection with this Agreement and whether or not foreseeable, irrespective of whether caused by negligence or by any other tortious act or omission or by breach of this Agreement or statutory duty, including, but without limitation, loss of profit, revenue or goodwill.

“Demand” means, in respect of a day, the Maximum Daily Volume and, in respect of a year, the Maximum Annual Volume.

“Drought Order” has the same meaning as in section 221 of the *Water Resources Act 1991*.

“EIR” means the *Environmental Information Regulations 2004*.

“EIR Exemption” means an exception contained in regulations 12 and 13 of the EIR.

“Emergency” means any event or circumstance beyond the reasonable control of Thames that limits the supply of potable water available to Thames for provision of water to the Site, including a burst pipe or main, plant or process breakdown, drought (including, for the avoidance of doubt, the making of a Drought Order), pollution or contamination, or any event or circumstance beyond the reasonable control of XYZ whereby its provision of water to its customers on the Site becomes limited or unavailable, because of a burst pipe or main, plant or process breakdown, drought, pollution or contamination.

“Equivalent Customers” means Thames’s customers in the Thames area of appointment who purchase equivalent volumes of water with equivalent demand profiles to XYZ at the Site, and whose supplied premises are in equivalent water resource zones to the Site.

“Exempted Information” means information which is covered by an EIR Exemption.

"Force Majeure Event" means any event beyond the reasonable control of the Party affected and not reasonably foreseeable and avoidable by a party acting as a Reasonable and Prudent Operator other than an Emergency; including, but not limited to, an act of God; decree of government; fire; flood, or explosion; war, rebellion,

sabotage or terrorism; riot or civil commotion or industrial disputes or actions (not involving the employees of a Party seeking to excuse non-performance on a Force Majeure Event), and epidemics (and excluding, for clarification, the consequences of any Drought Order, save where such orders specifically override the terms of this Agreement and direct a reduction in the volume of water that may be supplied under this Agreement).

“Guarantee” means a parent company guarantee to guarantee the performance of the XYZ’s obligations under this Agreement, in the form contained in Schedule 5 to this Agreement.

“Independent Expert” means a person appointed under Clause 23.3.3.

“Infrastructure Charge” means the sum specified in the Site Schedule and levied and adjusted in accordance with Clause 5.4A.

“Infrastructure Charging Date” has the meaning given in Clause 5.4.3.

“Infrastructure Charging Period” has the meaning given in Clause 5.4.3.

“Maximum Annual Volume” means the volume measured in megalitres per Charging Year specified in the Site Schedule.

“Maximum Daily Volume” means the volume measured in megalitres per day specified in the Site Schedule.

“Maximum Instantaneous Flow” means the flow measured in litres per second specified in the Site Schedule.

“Maximum Pressure” means the maximum pressure value listed in the Site Schedule.

“Measurement Regulations” means *Measuring Instruments (Cold-water Meters) Regulations 2006*.

“Mediator” means a person appointed pursuant to Clause 23.2.1.

“Meter” means a measuring instrument measuring the volume of water supplied to XYZ at the Point of Connection or the connection for the Back-Up Supply, the approximate positions of which are shown on the Site Plan, and a reference to a “Meter” includes a reference to any replacement meter.

“NAV Tariff Document” means the NAV tariff document published on Thames’s web site.

“Necessary Works” has the same meaning as in section 93 of the Act.

“Non Return Valve” means the double check valve to prevent backflow of water into the Thames Distribution Network, the approximate position of which is shown on the Site Plan.

“On Site Mains Design” means a plan showing the Relevant Water Mains which XYZ has already provided to Thames.

“Parent” means XYZ plc registered in Scotland with number SC117119, whose registered office is at Inveralmond House, 200 Dunkeld Road, Perth, Perthshire, PH1 3AQ.

“Point of Connection” means the point at which the Bulk Supply enters the XYZ Distribution Network, as marked **X** on the Site Plan.

“Pressure Assumptions” means the assumptions used by Thames to calculate the Working Pressure as set out in the Site Schedule.

“Reasonable and Prudent Operator” means a person seeking in good faith to perform its contractual obligations in accordance with all Relevant Legislation, exercising that degree of care, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under similar circumstances.

“Regulatory Authority” means the Authority, the Environment Agency, the Drinking Water Inspectorate, the Health and Safety Executive, or any other competent regulatory authority.

“Reinforcement” means works undertaken by Thames in accordance with Clauses 4.2.1, 5.2.3, 5.2.5 or 5.2.7 in order to expand the capacity of the Thames Distribution Network to supply water to the Site, or to supply water at a particular level of pressure, but does not include works to repair or maintain the Thames Distribution Network.

“Relevant Legislation” means:

- (a) the primary legislation of the UK Parliament and the European Union, and any secondary legislation made thereunder;
- (b) any binding order, decision, determination or direction of a Regulatory Authority which applies generally or applies to

the Parties in respect of their rights or obligations concerning this Agreement; and

- (c) any and all relevant licences, consents, permissions or laws, including each Party's instrument of appointment,

in each case as from time to time amended, whether before, on or (in the case of re-enactment or consolidation only) after the date of this Agreement, and shall be deemed to include provisions of earlier Relevant Legislation (as from time to time amended) which have been re-enacted or re-issued (with or without modification) or replaced (directly or indirectly).

"Relevant Water Mains" means the water mains (if any) to be constructed by XYZ as shown on the Onsite Mains design that will form the basis of Thames's' calculation of the Asset Payment, including all valves, washouts, hydrants, chambers, stubs and other fittings used in connection with the water mains

"Service Regulations" means the *Water Supply and Sewerage Services (Customer Service Standards) Regulations 1989*.

"Site" means the site shown on the Site Plan and (to the extent applicable) as described in the Site Schedule, and includes each part of the Site.

"Site Plan" means the plan attached to and forming part of the Site Schedule showing the extent of the Site and the location of the Point of Connection.

"Site Schedule" means the site schedule in Schedule 2.

"XYZ Distribution Network" means the water supply network vested for the time being in XYZ, including any source of supply, treatment works, pipes or other apparatus.

"Supply Charges" means the charges levied by Thames for the Bulk Supply or Back-Up Supply, as calculated in accordance with the NAV Tariff Document, the Site Schedule and this Agreement.

"Temporary Use Ban" means any prohibitions on the use of water imposed under Section 76 of the Act.

"Thames Charges Scheme" means the charges scheme made by Thames under section 143 of the Act and published by Thames from time to time.

“**Thames Distribution Network**” means the water supply network vested for the time being in Thames including any source of supply, treatment works, pipes or other apparatus.

“**Thames Treatment Works**” means the water treatment works operated by Thames Water and used to provide the Bulk Supply.

“**2000 Regulations**” means *Water Supply (Water Quality) Regulations 2000*.

“**Working Pressure**” means the pressure listed in the Site Schedule, being Thames’s calculation of the minimum pressure of the Bulk Supply at the Point of Connection required to supply a minimum of 10m head at the highest point of elevation of the Site, with an additional 5m head allowance to allow for any service pipe losses, using the Pressure Assumptions.

2 Interpretation

- (A) words and expressions defined in the *Interpretation Act 1978* shall have the same meaning in this Agreement, unless otherwise specified in this Agreement;
- (B) the Clause and Schedule headings and table of contents are for convenience and reference only and shall not be taken into account in construing the terms of this Agreement;
- (C) any reference to a Clause, a schedule or an appendix is a reference to a Clause, a schedule or appendix of this Agreement; and any reference to this Agreement includes all Clauses, schedules and appendices which form part of this Agreement, including, for the avoidance of doubt, the Site Schedule;
- (D) words importing the masculine gender include the feminine and vice versa and words in the singular include the plural and vice versa;
- (E) references to any enactment include any subordinate legislation made from time to time under it and are to be construed as references to that enactment as for the time being amended or modified and to any enactment for the time being replacing or amending it;
- (F) the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the words **other** or **including** or **in particular** shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;

- (G) a reference to writing, or to any related expression, includes a reference to any communication effected by facsimile transmission, email or any comparable means;
- (H) any reference to a sum of money is a reference to Great British Pounds Sterling, and any reference to payment or receipt of funds is a reference to the receipt of cleared funds;
- (I) any reference to a day or days is a reference to a calendar day or days; and
- (J) any reference to a person includes any legal or natural person, unincorporated association, partnership or LLP, and unless otherwise specified, their officers, agents, contractors, employees and permitted assigns (or nearest equivalents in each case).

**SCHEDULE 2
SITE SCHEDULE**

Bulk Supply Schedule For The Site Known

As:



Section 1: Connection Works and Supply Restrictions

Figure 1: Location of Site

Figure 2: Site Boundary

Figure 3:

Figure 4:

Connections

Reinforcement

Pressure Estimates

Estimated pressures are as follows:

Location	Minimum		Maximum	
	Pressure	Head	Pressure	Head

The following assumptions have been used in calculating pressure estimates:

Demand Limits

Connection	Maximum Instantaneous Flow l/s	Maximum Daily Volume M ³	Maximum Annual Volume MI

Section 2: Charges

- i) Connection Charge**
XYZ will pay a connection charge of £X on the basis of the estimate issued on reference
- ii) Asset Payment**
£X (This is based on the dimensions of the Relevant Water Mains constructed by XYZ as shown on the On Site Mains Design. Any changes to the dimensions of the Relevant Water Mains will lead to a recalculation of the Asset Payment).
- iii) Infrastructure Contribution**
£X payable as a Condition Precedent under Clause 2.1C.
Subsequent payments will be payable on the basis set out in Clause 5.
- iv) Supply Charges**

SCHEDULE 3 ALTERNATIVE SUPPLY AND BACK-UP SUPPLY

1. In the event that:

- the Bulk Supply is unavailable, contaminated or otherwise unfit for public supply; or
- Planned Works or damage to the Thames Distribution Network or to the XYZ Distribution Network prevents either the Bulk Supply being made or, if available, being distributed by XYZ within the Site,

then Thames shall use reasonable endeavours to supply water to the Site using the Back-Up Supply.

2. XYZ shall be liable to pay Supply Charges for the Back-Up Supply as if the Back-Up Supply was Bulk Supply (and for the avoidance of doubt, Clause 5.3 of the main provisions of this Agreement applies to such Supply Charges).
3. Clauses 4.5, 5.7 and 5A.1 of the main provisions of this Agreement shall apply to the Back-Up Supply as if each reference in those clauses to Bulk Supply was a reference to Back-Up Supply.
4. If Thames is unable to provide the Back-Up Supply, or the Back-Up Supply is either unavailable or insufficient to meet Demand, then an alternative supply of water by bowser, temporary mains, bottled water or otherwise, compatible with the obligation imposed on XYZ under the *Security and Emergency Measures (Water and Sewerage Undertakers) Direction 1998* in respect of the Site ("Alternative Supply"), may be provided by Thames to XYZ at the Site, in accordance with the remaining provisions of this Schedule.
5. Where an Alternative Supply is required due to a problem occurring on XYZ's side of the Point of Connection or a Force Majeure Event affecting XYZ, and an obligation on XYZ arises either under the provisions of the Act, the Service Regulations or the *Security and Emergency Measures (Water and Sewerage Undertakers) Direction 1998* to make an alternative water supply available to its customers, and an Alternative Supply is provided by Thames (Thames being under no obligation to do so if it does not have available resources), then XYZ shall bear, and shall reimburse to Thames, all costs and expenses incurred by Thames in providing such Alternative Supply, including such sums as may be reasonable in respect of establishment charges and overheads.
6. Where an Alternative Supply is required due to the carrying out of planned works or planned Necessary Works (and not when required to address supply interruptions caused by the circumstances outlined in paragraphs 7 and 8 below) by Thames and an obligation on XYZ arises

either under the provisions of the Act, the Service Regulations or the *Security and Emergency Measures (Water and Sewerage Undertakers) Direction 1998* to make an alternative water supply available to its customers, then an Alternative Supply shall be provided by Thames at Thames's cost.

7. Subject to paragraph 8 below, where an Alternative Supply is required due to an unplanned problem with the Bulk Supply on Thames's side of the Point of Connection and an obligation on XYZ arises either under the provisions of the Act, the Service Regulations or the *Security and Emergency Measures (Water and Sewerage Undertakers) Direction 1998* to make an alternative water supply available to its customers, then subject to paragraph 8 below, an Alternative Supply shall be provided by Thames at Thames's cost.
8. Where an Alternative Supply is required due to an unplanned problem with the Bulk Supply on Thames's side of the Point of Connection that could not have been prevented by Thames acting as a Reasonable and Prudent Operator, or that arises through a Force Majeure Event affecting Thames, and an obligation on XYZ arises either under the provisions of the Act, the Service Regulations or the *Security and Emergency Measures (Water and Sewerage Undertakers) Direction 1998* to make an alternative water supply available to its customers, then Thames may provide an Alternative Supply (Thames being under no obligation to do so if it does not have available resources to deploy due to the need to address an operational incident in its area of appointment as a water undertaker). All costs and expenses incurred by Thames in the provision of such Alternative Supply (including such sums as may be reasonable in respect of establishment charges and overheads) shall be borne equally by the Parties.
9. Thames shall provide the Alternative Supply by delivering it to a single location within the Site nominated by XYZ. The nomination of a Site can be varied by 5 Business Days' notice from XYZ to Thames.
10. In each case, XYZ shall be responsible for distributing the Alternative Supply to its customers. XYZ may by reasonable notice to Thames request Thames to make the Alternative Supply available directly to XYZ's customers by distributing the Alternative Supply within the Site. XYZ shall be liable to pay all costs and expenses incurred by Thames in performing this distribution, including such sums as may be reasonable in respect of establishment charges and overheads.
11. If XYZ is liable (whether wholly or partially) for costs or expenses incurred by Thames in the provision of the Alternative Supply, then those costs and expenses shall be included in an invoice issued by Thames to XYZ under Clause 5.3.3 of the main provisions of this Agreement.

SCHEDULE 4
CONTACT PROCEDURES FOR OPERATIONAL INCIDENT

Water supply problem reported by Thames:

1. Thames contacts XYZ Emergency Service Centre on [REDACTED] and advises XYZ of the problem
2. XYZ contacts its customers

Sewerage problem reported by XYZ:

1. XYZ contacts their Account Manager within Wholesale Market Services and /or 0800 009 3975)
2. Thames investigates and provides updates

SCHEDULE 5 GUARANTEE

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions and Interpretations

1.1 In this Guarantee:-

- (A) references to Clauses are unless otherwise stated to clauses of this Guarantee;
- (B) references to “Guarantor” and “Thames” shall include their respective transferees, successors and assigns whether immediate or derivative;
- (C) the headings to Clauses are for convenience only and have no legal effect;
- (D) words and expressions not otherwise defined in this Guarantee shall, where the context permits, be construed in accordance with the provisions of the Agreements;
- (E) references herein to any agreement or document shall be construed as referring to such agreement or document as the same may have been, or may from time to time be varied, amended, supplemented, substituted, novated or assigned;
- (F) the expression “person” shall be construed to include reference to any person, firm, company, partnership, corporation or unincorporated body of persons or any state or government or any agency thereof;
- (G) unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa; and
- (H) the expression “Obligations” means all or any indebtedness, monies, liabilities, obligations, warranties, duties and undertakings of XYZ Water referred to in Clauses 2.1(A) and 2.1(B) of this Guarantee.

1.2 It is the intention of the parties hereto that this Guarantee be executed as a deed.

2. Guarantee and Indemnity

2.1 In consideration of Thames entering into the Agreements, the Guarantor irrevocably and unconditionally:-

- (A) guarantees to Thames the proper and punctual performance by XYZ Water of each and all of the obligations, warranties, duties and undertakings of XYZ Water under and pursuant to the Agreements when and if such obligations, duties and undertakings shall become due according to the

terms of the Agreements;

(B) guarantees to Thames the proper and punctual performance by XYZ Water of the due payment and discharge of all sums of money and liabilities due, owing or incurred or payable and unpaid by XYZ Water to Thames pursuant to the Agreements or as a result of any breach thereof (including without limitation all expenses (including legal fees and taxes) incurred by Thames in connection with Thames seeking to enforce any of the above); and

(C) agrees with Thames as a primary obligation, to indemnify and keep indemnified Thames from and against all and any losses incurred by Thames arising from any failure by XYZ Water to carry out, perform or meet any of the Obligations as a result of any of the Obligations being or becoming void, voidable, unenforceable or ineffective as against XYZ Water for any reason whatsoever, whether or not known to Thames or any other person, save that the liability of the Guarantor under this Clause 2.1(C) shall not exceed the amount of any such losses, which Thames would otherwise have been able to recover from XYZ Water under the Obligations but for any such failure or other reason mentioned in this Clause 2.1(C) on the assumption that the Agreements are not void, voidable, unenforceable or ineffective, in each case, including without limitation all expenses (including legal fees and taxes) incurred by Thames as the case may be in connection with Thames seeking to enforce any of the above.

2.2 Except in relation to the matters set out in Clause 4.1(E), the Guarantor shall be entitled in any action or proceedings by Thames to raise any equivalent rights in defence of liability (including any set-off, abatement or counterclaim) or (notwithstanding clause 4.1(E)) any defence of statutory limitation as XYZ Water would have against Thames under the Agreements, as applicable so that except in relation to any costs incurred in enforcing this Guarantee, the liability of the Guarantor shall be no greater and of no longer duration than the liability which it would have had if it had been jointly and severally liable with XYZ Water to Thames as a party to the Agreements.

2.3 For the avoidance of doubt, the Guarantor shall not under any circumstances whatsoever be liable under this Guarantee for the performance by XYZ Water of any of its obligations, warranties, duties and undertakings or the payment and discharge of any sums of money or liabilities owing or incurred or payable and unpaid by XYZ Water pursuant to the Agreements or any deemed capacity of XYZ Water in relation thereto, other than as provided in Clause 2.1.

2.4 The Guarantor agrees that for the purpose of determining whether any right, liability or obligation of XYZ Water falls to be determined in accordance with the Agreements, the Guarantor shall, in the event of a dispute in regard thereto, be bound by any decision reached in accordance with the Dispute Resolution Procedure referred to in the Agreements in respect of that dispute.

3. Amendments to the Agreements

3.1 The Guarantor hereby authorises XYZ Water and Thames to make any addendum or variation to the Agreements, the due and punctual performance of which addendum or variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this Guarantee so that all references to the Agreements in this Guarantee shall be to the Agreements as so amended or varied from time to time.

3.2 The obligations of the Guarantor hereunder shall in no way be affected by any variation or addendum to the Agreements.

4. Non-exoneration

4.1 The obligations of the Guarantor under this Guarantee shall not be discharged, affected or impaired by any act, omission or thing which but for this Clause 4 would reduce, release or prejudice any of the Guarantor's obligations under this Guarantee including without limitation and whether or not known to the Guarantor:

(A) the granting by Thames or any other person of any time or other indulgence, or any concession or arrangement or waiver or forbearance granted or made by Thames to or with XYZ Water or any other person;

(B) any assertion of any right or remedy or the pursuit of any rights or remedies by Thames against XYZ Water or any other person or the failure, delay or forbearance on the part of Thames or any other person in enforcing any of its rights against XYZ Water or any other person;

(C) the giving by XYZ Water or Thames or any other person of any security in relation to the obligations or liabilities of XYZ Water pursuant to the Agreements or any other agreement entered into pursuant thereto or the variation, compromise, renewal or release of or refusal or neglect to take up or enforce such security or any non-presentation or non-observance of any formality or other requirement in respect of any instrument;

(D) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of XYZ Water or any other person;

(E) any unenforceability, illegality, invalidity or frustration of any provision of or obligation under the Agreements or under any other document or security to the intent that the Guarantor's liability under this Guarantee shall remain in full force and its guarantee be construed accordingly as if there was no unenforceability, illegality, invalidity or frustration;

(F) the insolvency, liquidation, winding-up, dissolution or administration of (or the appointment of an administrator or receiver of) XYZ Water, or any joint venture party of XYZ Water, or any other person, or the amalgamation, reconstruction, reorganisation, change in status, function, control or

ownership of XYZ Water, or any other person;

(G) any present or future law or regulation purporting to reduce or prejudice any of the obligations or liabilities of XYZ Water or Thames pursuant to the Agreements; or

(H) anything that Thames or XYZ Water may do or omit or neglect to do which, but for this provision, might exonerate the Guarantor or impair its liability hereunder.

5. Non-competition

5.1 No assurance, security or payment which may be avoided under any enactment relating to bankruptcy or insolvency or any statutory modification or re-enactment of any such enactment, and no release, settlement or discharge which may have been given or made on the faith of any such assurance, security or payment shall prejudice or affect this Guarantee, which shall remain fully effective and binding upon the Guarantor.

5.2 Subject to Clause 5.3, the Guarantor shall not:

(A) by virtue of or in respect of any payment made, security realised or moneys received for or on account of the Guarantor's liability under this Guarantee, be subrogated to, benefit from, succeed to or share in any rights, security or moneys held or received by Thames, XYZ Water or any other person or be entitled to or exercise any right of contribution, set-off, counterclaim or indemnity, or exercise any other rights or legal remedies, including claiming or recovering by the institution of proceedings or the threat of proceedings or otherwise, any such sum from XYZ Water; or

(B) claim or prove as creditor or otherwise in competition with Thames in respect of any moneys owing to it by XYZ Water for or on account of the Guarantor's liability under this Guarantee in the event of any bankruptcy, liquidation or other insolvency proceedings relating to XYZ Water or any joint venture party of XYZ Water. The Guarantor shall give Thames the benefit of each such claim and proof and of all moneys received in respect thereof and in the meantime shall hold the same in trust for Thames.

6. Nature of Guarantor's Obligations

6.1 This Guarantee is a continuing guarantee and, accordingly, shall remain in operation and in full force and effect (notwithstanding any intermediate satisfaction of the obligations and liabilities guaranteed hereunder by XYZ Water, the Guarantor or any other person) until all obligations (whether actual or contingent), payments, warranties, duties and undertakings now or hereafter to be carried out or performed by XYZ Water and Thames under the Agreements and all the obligations (whether actual or contingent) of the Guarantor under this Guarantee have been satisfied or performed in full.

6.2 This Guarantee is irrevocable and is in addition to and not in substitution for any other security which Thames may at any time hold for the performance of such obligations.

6.3 This Guarantee may be enforced by Thames against the Guarantor without first having recourse to any security and without taking any steps or proceedings against XYZ Water or any other person.

6.4 In the event that Thames brings legal proceedings against XYZ Water, the Guarantor will be bound by any decision of any adjudicator and by any judgment made by the court in such proceedings.

7. Payments Without Deduction

7.1 All sums payable under this Guarantee shall be paid in full free and clear of and without deduction of or withholding for or on account of any present or future taxes, duties and/or other charges except as may be required by law.

8. Assignment

8.1 This Guarantee is personal to the Guarantor and is not capable of assignment by the Guarantor.

8.2 Thames shall not be entitled to assign the benefit of this Guarantee without the prior written consent of the Guarantor (such consent not to be unreasonably conditioned, withheld or delayed).

9. Miscellaneous

9.1 No delay or forbearance by Thames in exercising its rights or remedies under this Guarantee shall impair or be construed as a waiver of such rights or remedies.

9.2 Thames is entitled to make any number of demands under this Guarantee.

9.3 The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.

9.4 If the Guarantor fails to pay any amount in accordance with this Guarantee, the Guarantor shall pay interest in sterling on that amount from the time of the date of service of demand by Thames to the Guarantor up to the time of actual payment (as well after as before judgment) at the Applicable Rate provided that the Guarantor shall not be liable to pay interest under this Guarantee on amounts guaranteed that bear interest independently of this Guarantee.

10. Notices

10.1 Any notice to be given under this Guarantee shall be in writing and delivered by hand and/or sent by post (first class recorded delivery), notices shall be deemed to have been received:

(A) in the case of delivery by hand, when delivered; and

(B) if sent by first class recorded delivery, two Business Days from the date of posting).

10.2 The address for service of each party shall be as follows:

Guarantor

Thames

Clearwater Court
Vastern Road
Reading
Berkshire
RG1 8DB

10.3 Notices shall be marked for the attention of the company secretary or such person or at such address as the relevant Party may from time to time notify in writing to the other

.11. Disputes and Jurisdiction

11.1 If any dispute or difference arises between the Guarantor and Thames in connection with this Guarantee which cannot be resolved by mutual agreement, it shall be referred to the exclusive jurisdiction of the English Courts.

11.2 This Guarantee shall be governed by and construed in accordance with English law.

IN WITNESS whereof this Guarantee has been executed as a deed and delivered by the Guarantor the day and year first before written.

Executed as a Deed for and on behalf of
XYZ PLC
(the Guarantor)
acting by

Director.....

Director/Secretary.....

Executed as a Deed for and on behalf of
THAMES WATER UTILITIES LIMITED
(Thames)
acting by

Director.....

Director/Secretary.....