

**DATED**

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(1) **THAMES WATER UTILITIES LIMITED**

and

(2) **XYZ**

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**BULK DISCHARGE AGREEMENT**

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**THIS BULK DISCHARGE 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 RG1 8DB; and
- (2) [<< >>] (**“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 sewerage 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 Sewerage Services to XYZ in connection with its proposed sewerage undertaking at the Site.
- D) Subject to the Conditions Precedent being fulfilled, Thames has agreed to provide Sewerage Services in accordance with and subject to the terms of this Agreement.

**AND IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS MADE AND EXCHANGED HEREIN IT IS NOW AGREED AS FOLLOWS:**

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 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 Except for obligations in sub-clause 2.1.4 below, the Parties’ obligations under this Agreement shall commence only when each of the following has occurred:

- 2.1.1 this Agreement has been signed and dated by each Party;

- 2.1.2 XYZ has been Appointed;
- 2.1.3 any Connection Charge and Infrastructure Charge due and payable by XYZ to Thames at the time at which each of the conditions in Clauses 2.1.1 and 2.1.2 have been satisfied, has been paid by XYZ to Thames; and
- 2.1.4 the Guarantee has been executed by the Parent and delivered to Thames.
- 2.2 Subject to Clause 2.1, this Agreement shall come into force when it has been signed and dated 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 Sewerage Network at a Point of Connection on the date specified in the notice or as soon as reasonably practicable thereafter thereafter PROVIDED ALWAYS that Thames shall be under no obligation to make the connection until it is satisfied that the construction of the Relevant Sewers has been completed as shown in the On Site Sewers Design..
- 2A.2 The Connection Notice shall include full technical details of the sewer to be connected to the Thames Sewerage Network and the proposed mode of connection.
- 2A.3 XYZ shall not commence constructing the proposed sewer described in the Connection Notice until Thames has approved the technical details and proposed mode of connection, such approval not to be unreasonably withheld and to be given without undue delay.
- 2A.4 After receiving a notice referred to in Clause 2A.1 from XYZ, and provided that XYZ has met any requirements of Thames (acting as a Reasonable and Prudent Operator) with respect to connections to a public sewer, Thames shall issue a consent to XYZ allowing for the connection of the XYZ Sewerage Network to the Thames Sewerage Network at a Point of Connection under section 106 or 107 of the Act without undue delay.
- 2A.5 Thames or, with Thames's permission, XYZ, shall make the commissioning Connection from the Thames Sewerage Network to the XYZ Sewerage

Network and install and connect any associated pipework. If XYZ wishes to make the Connection, it shall, in addition to obtaining consent from Thames to carry out the Connection works, obtain a Thames Water operational safety authorisation (TWOSA) prior to commencing the Connection works.

2A.6 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 11.6 after the date on which such Connections are commissioned.

### **3 TERM AND TERMINATION**

3.1 Subject to Clause 2.1, this Agreement commences when it has been signed and dated by both Parties, and shall continue until it is validly terminated in accordance with this Clause 3.

3.2 Either Party (in this Clause 3, 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 11.7 or any failure by XYZ to provide connections data in accordance with Clause 11.14) and, if such breach is capable of remedy, it 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 days;
- (C) The Defaulting Party ceases to be a sewerage undertaker appointed under the Act for any reason;
- (D) XYZ 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 3.2(D) to (H) occurs in any jurisdiction.

3.3 The Parties may terminate this Agreement by mutual consent.

3.4 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.

**4 Not Used**

4.1

## **5 RESPONSIBILITY FOR PIPEWORK**

5.1 The Parties agree that the part of the pipe through which the Discharge passes which is situated downstream of the Point of Connection vests in Thames.

5.2 XYZ shall construct at its own expense any pipes and ancillary apparatus necessary to connect its equipment and infrastructure upstream of the Point of Connection into the Point of Connection. It is acknowledged that such equipment and infrastructure, once constructed, will vest in XYZ

## **6 NOT USED**

## **7 DISCHARGE**

7.1 Subject to Clause 7.2, Thames shall provide the Sewerage Services to XYZ and accept the Discharge.

7.2 Thames will not be obliged to provide the Sewerage Services, and, subject to Clause 10, no liability shall rest upon Thames, in any of the following circumstances:

- (A) where providing the Sewerage Services would prejudice Thames's ability to comply with any of its obligations under the Act or its instrument of appointment; or
- (B) where the Discharge volume exceeds the Maximum Daily Volume in any day, the Maximum Annual Volume in any Charging Year or the Maximum Instantaneous Flow at any point during the term of this Agreement; or
- (C) where, acting as a Reasonable and Prudent Operator, Thames is prevented from providing the Sewerage Services by an Emergency or a Force Majeure Event.

### 7.3 Quantity

7.3.1 XYZ shall ensure that the Discharge volume does not exceed the Maximum Daily Volume in any day, the Maximum Annual Volume in any Charging Year and the Maximum Instantaneous Flow at any point during the term of this Agreement.

7.3.2 XYZ shall 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 Discharge to enable it to comply with its obligations in Clause 7.3.1.

7.3.3 If the Discharge exceeds the Maximum Daily Volume on any 3 days within a 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 so required, XYZ shall pay, a sum equal to the reasonable costs of carrying out any Reinforcements to the Thames Sewerage Network that Thames, acting as a Reasonable and Prudent Operator, considers are required in order to provide the Sewerage Services at the highest daily volume of Discharge recorded during a period comprising the day which gave rise to Thames's right to serve notice on XYZ under this Clause 7.3.3 and the 12 months prior to that day.

7.3.4 If XYZ makes a Discharge 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 so required, XYZ shall pay, a sum equal to the reasonable costs of carrying out any Reinforcements to the Thames Sewerage Network that Thames, acting as a Reasonable and Prudent Operator, considers are

required in order to provide the Sewerage Services at the highest rate of flow of Discharge recorded during a period comprising the day on which Thames's right to serve notice on XYZ under this Clause 7.3.5 accrued and the 12 months prior to that day.

- 7.3.5 If the Discharge in any Charging Year exceeds the Maximum Annual Volume, 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 so required, XYZ shall pay, a sum equal to the reasonable costs of carrying out any Reinforcements to the Thames Sewerage Network that Thames, acting as a Reasonable and Prudent Operator, considers are required in order to provide the Sewerage Services 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 7.3.7.
- 7.3.6 XYZ shall be entitled by notice to Thames to require Thames to supply, and if required, Thames shall supply (at its cost), information which sets out the basis for the calculation of any sums demanded by Thames under Clauses 7.3.3, 7.3.5 or 7.3.7.
- 7.3.7 Any sums payable by XYZ under Clauses 7.3.3, 7.3.5 or 7.3.7 shall be added to the next invoice issued by Thames to XYZ under Clause 11.4 after the date of the relevant notice given by Thames under Clauses 7.3.3, 7.3.5 or 7.3.7.
- 7.3.8 For the avoidance of doubt Thames's right to recover the reasonable costs of Reinforcements from XYZ under Clauses 7.3.3, 7.3.5 and 7.3.7 is in addition to, and is without prejudice to any rights in damages or other causes of action Thames might have in respect of costs other than Reinforcement costs arising under or in connection with a breach by XYZ of its obligations under Clause 7.3.1.
- 7.3.9 If Discharge occurs in excess of the Maximum Daily Volume or at a rate in excess of the Maximum Instantaneous Flow, then XYZ shall:
- (A) notify Thames of the existence and cause of the excess Discharge as soon as reasonably 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 the Discharge to levels less than Maximum Daily Volume or the Maximum Instantaneous Flow.

## **8 TRADE EFFLUENT**

8.1 If XYZ receives an Application or consents to any discharge of Trade Effluent into the XYZ Sewerage Network or if any discharge of Trade Effluent is, or is to be made to the XYZ Sewerage Network and thereby to the Thames Sewerage Network as part of the Discharge, the provisions of Schedule 2 come into force immediately.

## **9 SAMPLING**

9.1 XYZ shall provide Thames with such samples of the Discharge as Thames may reasonably require:

(A) in order to verify that the Discharge comprises only foul water emanating from premises within the Site and does not include:

- (i) any wastewater specified in section 106(2)(a)(i) and (ii) of the Act;
- (ii) anything prohibited under section 111 of the Act; or
- (iii) any Trade Effluent which has been discharged into the XYZ Sewerage Network other than in accordance with a Trade Effluent Consent validly granted by XYZ; or

(B) for the purpose of:

- (i) billing customers holding Trade Effluent Consents;
- (ii) measuring the solids present in the Discharge; or
- (iii) ensuring that customers are complying with the terms of Trade Effluent Consents.

## **10 PLANNED AND UN-PLANNED WORKS, EMERGENCIES AND OTHER INCIDENTS**

10.1 Thames shall give XYZ 5 Business Days' notice of any planned works on the Thames Sewerage Network that may (in Thames's opinion as a Reasonable and Prudent Operator) materially affect the Sewerage Services.

10.2 For the avoidance of doubt, any interruption to the Sewerage Services expected to be longer than 4 hours is deemed to materially affect the Sewerage Services within the meaning of Clause 10.1.

10.3 Subject to its compliance with the remainder of this Clause 10, 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

Sewerage Services 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) on which the Sewerage Services are 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. Except in the event of Emergency, Thames shall give XYZ at least 5 days' notice of any planned works that do not fall within Clause 10.1 but that may impact on the Sewerage Services.

10.4 In the event of an Emergency:

10.4.1 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 practicable after the same have come to that Party's attention (acting as a Reasonable and Prudent Operator); and

10.4.2 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.

10.5 The Parties shall co-operate as Reasonable and Prudent Operators to ensure, as far as is reasonably practicable, that any Emergency or Force Majeure Event does not affect the Parties' performance of their obligations under this Agreement and shall, in so far as is permitted under Relevant Legislation, co-operate in investigating the cause of such Emergency or Force Majeure Event, sharing any lessons learned so as to seek to prevent a recurrence.

## **11 CHARGING**

11.1 XYZ shall pay the Sewerage Charges to Thames in accordance with this Agreement.

11.2 The Sewerage Charges (which includes fixed charges as well as volume related charges) shall be calculated using the tariff in the NAV Tariff Document. Except as provided in Clause 11.3 or 11.5A, for the purposes of calculating the Sewerage Charges, the amount of Discharge received by Thames in the course of providing the Sewerage Services to XYZ shall be deemed to be equal to the volume of water (whether measured by the Water Meter, or estimated in accordance with the Bulk Supply Agreement) used by Thames as the basis for charges under the Bulk Supply Agreement.

11.3 Where, for any reason the Water Meter cannot be read, Sewerage 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 Sewerage Charges shall be made based on the volume measured by the Water Meter when it has been obtained and shall be included in the first subsequent invoice issued by Thames under Clause 11.6.

- 11.3A Within 5 Business Days of the end of a Charging Year (“Relevant Charging Year”), Thames shall review the volume of the Discharge 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 Sewerage 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 11.6.

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

- 11.4 If Thames’s charges to Equivalent Customers increase or decrease, the Sewerage Charges shall increase or decrease (as the case may be) by an equal percentage.
- 11.4A If the tariff applied by Thames in calculating the Sewerage Charges under the NAV Tariff Document or the Replacement Tariff (as the case may be) ceases to be available or the basis of either of them is altered so that it is no longer suitable for the purposes of the Sewerage Services (including, but not limited to, the establishment by Thames of differential tariffs based on the catchment areas of sewage treatment works or customers’ demand profiles):
- (A) Thames may propose another tariff in respect of the Sewerage Services (the “Replacement Tariff”);
  - (B) In proposing any Replacement Tariff, Thames shall act as a Reasonable and Prudent Operator and, subject to that obligation, shall treat XYZ as if it were a customer, in the catchment area of the same sewage treatment works as the Point of Connection, making a discharge at the same or similar volumes to the Discharge connected with the Sewerage Services, and shall not unduly discriminate between XYZ and such customers;

- (C) Where a Replacement Tariff has been proposed by Thames, such proposal shall be notified by Thames to XYZ in accordance with Clause 25, and XYZ shall have no more than 2 months to either accept or reject the proposal (if the proposal is accepted by XYZ, or if XYZ has not given notice to Thames of its rejection of the proposal within 2 months of the date of the notice of the proposal, the Replacement Tariff shall be applied in calculating the Sewerage Charges from either the date of XYZ's acceptance or the expiry of the 2 month period);
  - (D) Where XYZ wishes to reject any proposed Replacement Tariff and has given Thames notice of such rejection within 2 months from the date of the notice of any such (or any future) proposal, the proposed Replacement Tariff shall be the subject of a dispute resolution process under Clause 12.
- 11.5 The Sewerage Charges 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 or any other Regulatory Authority following an application made to the Authority or such other Regulatory Authority by either Party with a request for an order, decision, determination or direction to be made in respect of the Sewerage Charges) and such amendment shall be deemed to be a valid variation of this Agreement under Clause 21.
- 11.5A In the event that water is supplied by XYZ to its customers on Site from sources other than those covered by the Bulk Supply Agreement (such as bore holes or rainwater harvesting), and the volume of the Discharge as measured by the Water Meter in any Charging Year is greater than the volume of water measured by the Water Meter in that Charging Year, or Thames otherwise considers that the volume of the Discharge in any Charging Year is greater than the volume of the water measured by the Water Meter in that Charging Year, then Thames may serve notice upon XYZ under Clause 21 with proposals to increase the Sewerage Charges payable by XYZ in respect of that Charging Year. An adjustment shall be made to the Sewerage Charges if Thames demonstrates to XYZ (both parties acting as Reasonable and Prudent Operators) that the volume of the Discharge in any Charging Year is greater than the volume of water measured by the Water Meter in that Charging Year, and in that case, the volume of the Discharge for the purposes of calculating the monthly Sewerage Charges shall be the demonstrated volume of the Discharge in that Charging Year divided by 12.
- 11.6 Thames shall issue an invoice to XYZ monthly. The invoice shall include a statement of the Sewerage Charges for the preceding month, and may, for the avoidance of doubt, include a statement of other charges (including Trade Effluent Charges and Infrastructure Charges) due and payable in accordance with this Agreement.

- 11.7 XYZ shall 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 11.6. For the purposes of determining the time at which an invoice is deemed to have been received by XYZ, the provisions of Clause 25.3 shall apply to invoices.
- 11.8 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 11.7, 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 Barclays Bank plc from the date of the invoice until the date of actual payment.
- 11.9 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.
- 11.10 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 by XYZ in addition to such sums.
- 11.11 Thames shall use the Site Schedule to inform XYZ of the Billing Reference Number so that Thames may more effectively invoice XYZ for the Sewerage Charges.

#### Infrastructure Charges

- 11.12 Infrastructure Charges shall be equivalent to the sewerage 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 Sewerage Network if Thames had been the appointed sewerage undertaker for those premises in place of XYZ and the connection had therefore been made to the Thames Sewerage Network.
- 11.13 XYZ shall keep a record of the date upon which premises on the Site are first connected to the XYZ Sewerage 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 Sewerage Network in the 6 months prior to the Infrastructure Charging Date ("Infrastructure Charging Period") and the date of each connection.
- 11.14 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 11.13, and shall be included in the next invoice issued by Thames to XYZ under Clause 11.6.

11.15 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 or any other Regulatory Authority following an application made to the Authority or such other Regulatory Authority by either Party with a request for an order, decision, determination or direction to be made in respect of the Infrastructure Charges) and such amendment shall be deemed to be a valid variation of this Agreement in accordance with Clause 21. 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 Sewerage Network prior to the date of that amendment.

## **12 SETTLEMENT OF DISPUTES**

12.1 The Parties shall 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 (in this Clause 12, "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 12.2 or Clause 12.3 should apply to the Dispute. For the avoidance of doubt, Clause 12.2 or Clause 12.3 shall only apply to a Dispute if both Parties have consented.

### **12.2 Mediation**

12.2.1 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.

12.2.2 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).

12.2.3 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 21.1.

12.2.4 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.

### 12.3 Independent Expert

12.3.1 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 sewerage management.

12.3.2 If a notifying Party makes a proposal for the appointment of an Independent Expert under Clause 12.3.1, then the other Party shall respond by notice to the notifying Party within 5 Business Days, indicating whether it accepts or rejects the proposal.

12.3.3 If the proposal is accepted under Clause 12.3.2, then the person nominated by the notifying Party shall be appointed as an Independent Expert. If the proposal is rejected under Clause 12.3.2, then the Parties shall apply to the Institution of Water Officers (or its nearest equivalent successor body) to appoint an Independent Expert.

12.3.4 The Independent Expert is required to prepare a written decision in relation to the Dispute, and shall give notice 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).

12.3.5 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.

12.3.6 The Parties shall 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.

12.3.7 To the extent not provided for by this Clause 12.3, 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.

- 12.3.8 For the avoidance of doubt, the Independent Expert acts as an expert and not as an arbitrator.
- 12.3.9 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 21.1.
- 12.4 Unless the Parties agree otherwise in writing, a dispute resolution process under Clause 12.2 or 12.3, 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.
- 12.5 Each Party shall bear its own costs in relation to a dispute resolution process under Clause 12.2 or 12.3. 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 12.2 or 12.3 shall be borne by the Parties equally, or in such other proportions as the Mediator or Independent Expert shall direct.
- 12.6 For the avoidance of doubt, nothing in this Agreement limits or prevents either Party from seeking a determination from, or 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.

### **13 LIMITATION OF LIABILITY**

- 13.1 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 13.1 are hereby expressly excluded (subject always to Clauses 13.5 and 13.6).
- 13.2 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 Sewerage Services 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.
- 13.3 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 13.1, the Consequential Loss, resulting from negligence or any

breach or non-performance of this Agreement (whether in contract, tort, misrepresentation or otherwise howsoever but excluding any breach by XYZ of its obligation under Clause 11.7 to make payment to Thames) on the part of that Party or its servants or agents shall be limited to two-hundred thousand pounds (£200,000) 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 13.3 are hereby expressly excluded (subject always to Clauses 13.5 and 13.6).

- 13.4 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).
- 13.5 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.
- 13.6 Save as otherwise expressly provided in this Agreement, this Clause 13 (insofar as it excludes or limits liability) shall override any other provision in this Agreement provided that nothing in this Clause 13 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.
- 13.7 This Clause 13 shall survive the termination of this Agreement for whatever cause.
- 13.8 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 failing to operate its sewerage 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.

13.9 Each Party hereby acknowledges and agrees that the provisions of this Clause 13 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

13.10 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.

13.11 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.

#### **14 INDEMNITIES**

14.1 Subject to the limitations set out in Clause 13, 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 PROVIDED ALWAYS THAT where the said act or omission results in the loss or reduction of sewerage services provided by XYZ to any of its customers and XYZ incurs any liability to compensate them therefore, Thames's liability to XYZ with respect to its liability to compensate its customers shall not exceed the compensation to which those customers would have been entitled had they been customers of Thames.

14.2 Subject to the limitations set out in Clause 13, 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:

14.2.1 any act or omission of XYZ that is unlawful or negligent or is in breach of an express provision of this Agreement; or

14.2.2 the inclusion in the Discharge of any Trade Effluent whose discharge has not been authorized in accordance with a Trade Effluent Consent, or any other substance that Thames Water tests for under Clause 9.1(A)(i) and (ii)

## **15 FORCE MAJEURE EVENT**

15.1 If either Party (in this Clause 15, 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 Sewerage 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.

15.2 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.

15.3 Neither Party may rely on Clause 15.1 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.

## **16 CONFIDENTIALITY**

16.1 Save as provided in Clause 16.2, neither Party shall disclose Confidential Information to any other person.

16.2 The obligation of confidentiality in Clause 16.1 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 for the purposes of this Agreement to those of a Party's officers, agents, employees, professional advisers, insurers, bankers or Affiliates who need to know it, upon obtaining from such persons an undertaking as to confidentiality substantially equivalent to that contained in this Clause 16;
  - (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.
- 16.3 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 16 and that injunctive relief is an appropriate remedy.
- 16.4 Any information to be disclosed pursuant to sub-Clauses (E), (F) and (G) of Clause 16.2 shall be disclosed only after consultation with the other Party, where reasonably practicable.
- 16.5 The restrictions contained in this Clause 16 shall apply without limit in time and shall survive the termination of this Agreement for whatever reason.
- 16.6 Announcements and publicity
- 16.6.1 No announcement (except where 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 16.6.1 shall apply without limit in time and shall survive the termination of this Agreement for whatever reason.
- 16.6.2 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.

## **17 ENVIRONMENTAL INFORMATION REGULATIONS**

- 17.1 The Parties recognise that they are subject to legal duties under the EIR, which may require the disclosure of information upon request. Such

information may include matters relating to, arising out of or under this Agreement in any way.

- 17.2 The Parties recognise that each request for information shall be considered individually.
- 17.3 Notwithstanding anything in this Agreement to the contrary including, but without limitation, the general obligation of confidentiality imposed on the Parties pursuant to Clause 16.1, in the event that either Party (in this Clause 17.3, "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 17.3, "the Other Party"),:
- (A) the Relevant Party 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) regarding the EIR request and the availability of EIR Exemptions, and the Other Party agrees to respond to such consultation within 7 Business Days of receiving the consultation notice;
  - (B) the Relevant Party shall not disclose any information that the Parties have agreed is Exempted Information, and, where the Parties so agree, 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; and
  - (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 in accordance with the agreement of the Parties under sub-clause (B) of this Clause 17.3, 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 17.3 shall

include reasonable internal costs, including establishment charges and overheads.

## **18 INTERVENTION BY THAMES**

- 18.1 If Thames, acting as a Reasonable and Prudent Operator, believes that there has been, or is likely to be, a discharge to the XYZ Sewerage Network which has led, or may lead, to a risk of serious harm to human health, the environment or the operational assets of Thames, whether such harm would be immediate or delayed, then Thames may give directions to XYZ to exercise any powers conferred on XYZ by Relevant Legislation in order to prevent or minimise the discharge, or prevent or mitigate any effect on human health or the environment, and XYZ shall comply as soon as practicable with any such directions.
- 18.2 XYZ shall nominate a person to receive any directions to be given by Thames under Clause 18.1. Such directions can be given either orally or in writing, although, if given orally, Thames shall also provide a written copy of the directions as soon as reasonably practicable.

## **19 PROVISION OF INFORMATION**

- 19.1 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.
- 19.2 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 is reasonably practicable.
- 19.3 The Party shall indemnify the other Party in respect of all reasonable costs and expenses incurred by the other Party in complying with Clauses 19.1 or 19.2.
- 19.4 The reporting obligations referred to in Clause 19.1 shall include, but not be limited to:
- (A) Population Equivalent reports;
  - (B) Dangerous Substances reports; and
  - (C) Pollution Inventory reports.

## **20 WAIVER**

- 20.1 No obligation under this Agreement shall be considered waived by either Party unless such waiver is executed in writing.
- 20.2 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.
- 20.3 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.
- 20.4 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

## **21 VARIATION**

- 21.1 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 regarding the terms of any such variation.
- 21.2 Subject to Clause 11.5, 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, the matter shall be dealt with in accordance with Clause 21.3.
- 21.3 If the Parties cannot agree upon a proposed variation, such disagreement shall be regarded as a dispute and settled under the provisions of Clause 12.
- 21.4 If the Authority decides to amend the boundary of the Site, whether as a result of court proceedings or otherwise, the Parties will vary the Site Schedule to reflect the Authority's amendment.

21.5 If XYZ re-applies to the Authority to be appointed in respect of a revised site that falls within the scope of the Site and as a result is Appointed by the Authority, the Parties will vary the Site Schedule to reflect the Authority's decision based on that re-application

## **22 ASSIGNMENT**

22.1 This Agreement may be assigned by either Party:

22.1.1 by means of a Transfer Scheme under Schedule 2 of the Act in the event that that Party ceases to be a sewerage undertaker under the Act; or

22.1.2 with the consent of both Parties.

22.2 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 be entitled 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.

## **23 ENTIRE AGREEMENT**

23.1 This Agreement shall supersede all arrangements, agreements, discussions or understandings, 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 arrangements, agreements, discussions or understandings are hereby terminated.

23.2 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.

23.3 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.

## 24 CONTRACT and OPERATIONAL MANAGEMENT

- 24.1 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.
- 24.2 The Contract Managers shall hold meetings at such venues and at such intervals as may be agreed between the Parties from time to time.
- 24.3 Each Party shall notify the other in accordance with Clause 25 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.
- 24.4 In the event of an Emergency or other operational incident, the Parties agree to follow the procedures in Schedule 4.

## 25 NOTICES

- 25.1 Except for notices given under Clause 10.4 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 25.2. 25.2 Notices under this Agreement shall be sent to a Party at its addressor e-mail 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 RG1 8DB	<a href="mailto:wholesalemarketservices@thameswater.co.uk">wholesalemarketservices@thameswater.co.uk</a>
		[ ]

Attention: [REDACTED]		
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or to any such other persons, addresses or e-mail 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).

25.3 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;
- (C) if sent by e-mail, when sent.

25.4 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.

## 26 SEVERANCE

26.1 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.

## 27 RIGHTS OF THIRD PARTIES

27.1 Subject to Clause 22.2, 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.

## **28 COUNTERPARTS**

28.1 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.

## **29 GOVERNING LAW AND JURISDICTION**

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

29.2 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.

## **30 COSTS AND EXPENSES**

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

**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. It is hereby agreed that the terms set out below shall have the meanings hereby assigned:

**“Accessories”** means the items listed in the definition of “accessories” in section 219 of the Act, and any pumping stations required in connection with the Discharge;

**“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) any contractor (of any tier) of that Party or any of the entities referred to in (a) or (b), not being the other Party, or, the agents, servants, officers or directors of any of the entities referred to in (a), (b) or (c) above;

**“Applicant”** means a person making an Application;

**“Application”** means an application for a Trade Effluent Consent, or for the variation of the terms of an existing Trade Effluent Consent (as the case may be), for discharge from premises on the Site, including any information or documentation provided in support of such application, and any amended Application shall, for the purposes of this Agreement, be treated as a new Application;

**“Appointment”** means appointment of XYZ as the sewerage undertaker in respect of the Site by the Authority pursuant to Section 7 of the Act, and cognate expressions shall be construed accordingly;

**“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 or its nearest equivalent successor body;

**“Bulk Supply Agreement”** means an agreement for the bulk supply of water to the Site, entered into by the Parties on or about the date 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 Year**” means the period between 1 April and 31 March in any year during the term 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, processes, 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 Sewerage Network and the XYZ Sewerage Network are physically connected so as to enable provision of the Sewerage Services;

“**Connection Charge**” means the sum payable in respect of connecting the Thames Sewerage Network to the Point of Connection ;

“**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;

“**Control System**” means the orifice plate or hydro-brake mechanism or such other appropriate mechanism as may be agreed by the Parties to be constructed by and vested in XYZ pursuant to Clause 7.3.2, and includes any replacement mechanism.

“**Discharge**” means the discharge of substances within the meaning of paragraphs (a), (b) and (c) of the definition of “domestic sewerage purposes” in section 117(1) of the Act, and Trade Effluent, by means of a bulk discharge by XYZ to Thames at a Point of Connection;

“**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 whereby the Sewerage Services become limited or unavailable, because of a burst pipe, plant or process breakdown, drought, pollution or contamination, or any event or circumstance beyond the reasonable control of XYZ whereby the provision of the Sewerage Services on the Site becomes limited or unavailable, because of a burst pipe, plant or process breakdown, drought, pollution or contamination;

**“Equivalent Customers”** means Thame’s customers in the Thames area of appointment who make equivalent volumes of discharge with equivalent discharge profiles to SSE at the site, and whose supplied premises are within the catchment area of the same sewage treatment works.

**“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;

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

**“Independent Expert”** means a person appointed under Clause 12.3;

**“Infrastructure Charge”** means the sum specified in the Site Schedule and levied and adjusted in accordance with Clause 11;

**“Infrastructure Charging Date”** has the meaning given in Clause 11.13;

**“Infrastructure Charging Period”** has the meaning given in Clause 11.13;

**“XYZ Sewerage Network”** means the sewerage network on the Site vested for the time being in XYZ, including any Accessories;

**“Maximum Annual Volume”** means the Discharge volume specified in the Site Schedule;

**“Maximum Daily Volume”** means the Discharge volume specified in the Site Schedule;

**“Maximum Instantaneous Flow”** means the maximum rate of flow of Discharge specified in the Site Schedule, i.e. the Maximum Peak Discharge also known as Peak Flow;

**“Mediator”** means a person appointed pursuant to Clause 12.2;

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

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

**“Parent”** means ..... registered in ..... with number ....., whose registered office is .....

**“Pipe”** means the pipe which is vested in XYZ and marked in green on the Plan enabling Discharge into the Thames Sewerage Network;

**“Point of Connection”** means the location of a Connection as more particularly described in the Site Schedule and shown on the Site Plan;

**“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, 7.3.3, 7.3.5 or 7.3.7 in order to expand the capacity of the Thames Sewerage Network to receive a particular volume of Discharge from the Site, but does not include works to repair or maintain the Thames Sewerage 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 Sewers”** means the sewers (if any) to be constructed by XYZ as shown on the Onsite Mains design, including all valves, washouts, hydrants,

chambers, stubs and other fittings used in connection with the sewers.

**“Service Regulations”** means the *Water Supply and Sewerage Services (Customer Service Standards) Regulations 1989*;

**“Sewerage Charges”** means the charges levied by Thames for the Sewerage Services, as calculated in accordance with the NAV Tariff Document , the Site Schedule and this Agreement and for the avoidance of doubt includes Trade Effluent Charges;

**“Sewerage Services”** means the reception, treatment and disposal of the Discharge (and includes, for the avoidance of doubt, the Trade Effluent Services);

**“Site”** means the site shown on the Site Plan and (to the extent applicable) as described in the Site Schedule;

**“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 attached to this Agreement;

**“Thames Charges Scheme”** means the charges scheme made by Thames under section 143 of the Act and published from time to time;

**“Thames Sewerage Network”** means the sewerage network vested for the time being in Thames, including any Accessories;

**“Trade Effluent”** has the same meaning as in Section 141 of the Act;

**“Trade Effluent Charges”** means the charges levied by Thames for the Trade Effluent Services;

**“Trade Effluent Consent”** means a permission to discharge Trade Effluent into the XYZ Sewerage Network given in accordance with Chapter III of Part IV of the Act;

**“Trade Effluent Services”** means the means the reception, treatment and disposal of Trade Effluent pursuant to this Agreement and the Act; and

**“Water Meter”** means the measuring instrument measuring the volume of water supplied to XYZ at the Site, installed pursuant to the Bulk Supply Agreement.

2. In this Agreement, **“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).

3. In this Agreement, unless the context otherwise requires:

- (a) The singular includes the plural (and vice versa) and a reference to either gender includes the other;
- (b) Any reference to a Clause, a Schedule, a Site Schedule or an Appendix is a reference to a Clause, a Schedule, a Site Schedule or Appendix of this Agreement; and any reference to this Agreement includes all Clauses, Schedules, Site Schedules and Appendices which form part of this Agreement;
- (c) 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;
- (d) Any reference to legislation (whether primary or secondary) shall be to that legislation as amended;
- (e) A reference to writing, or to any related expression, includes a reference to any communication effected by telex, cable, facsimile transmission, email or any comparable means;
- (f) A reference to a person includes any legal or natural person, unincorporated association, partnership or LLP, and in each case their officers, agents, contractors, employees and permitted assigns (or nearest equivalents in each case);
- (g) 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;
- (h) A reference to a contractor includes contractors and sub-contractors of any tier;
- (i) Headings are for convenience only and do not affect the interpretation or construction of this Agreement;

- (j) 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;
- (k) Words and expressions defined in the *Interpretation Act 1978* shall have the meaning in this Agreement, unless otherwise specified in this Agreement;
- (l) Words of inclusion are without limitation; and
- (m) A reference to month or months is a reference to a calendar month or months.

## **SCHEDULE 2 TRADE EFFLUENT PROVISIONS**

### **1 DEFINITIONS**

- 1.1 It is hereby agreed that in this Schedule 2, the terms set out below shall have the meanings hereby assigned:

**“Biosolids”** means sludge arising from the treatment of the Discharge which is to be used in agriculture in accordance with the Sludge (Use in Agriculture) Regulations 1989 or is otherwise to be recycled in accordance with the Waste Management (Licensing) Regulations 1994.

**“Support”** means the provision of all reasonably necessary data and information and, in the event of any proceedings, the provision of witnesses to attend a court or tribunal and give evidence relating, inter alia, to the control of Trade Effluent and any other relevant matter connected with the Thames Sewerage Network or the XYZ Sewerage Network, as the case may be, and the obligation to provide support indemnifying the other Party upon demand in respect of that other Party’s reasonable costs and expenses in providing such support, provided that such demand shall be accompanied by details of the basis of calculation of such costs.

- 1.2 Words and expressions not defined in this Schedule 2 shall have the meanings given them elsewhere in this Agreement.

### **2 RIGHT TO DISCHARGE**

- 2.1 Subject to the terms of this Agreement and, in particular, this Schedule 2, Thames shall permit XYZ to discharge Trade Effluent from the XYZ Sewerage Network to the Thames Sewerage Network where a Trade Effluent Consent has been granted by XYZ to the person wishing to discharge the Trade Effluent into the XYZ Sewerage Network.

### **3 TRADE EFFLUENT CONSENTS**

- 3.1 XYZ shall provide Thames with a copy of any Application as soon as reasonably practicable after XYZ has received the Application, and shall consult Thames as to the conditions that should be included in any Trade Effluent Consent to be granted to the relevant Applicant.
- 3.2 Within 20 Business Days of receiving the copy of the Application referred to in Paragraph 3.1 of this Schedule 2, Thames shall notify XYZ of any condition it believes, acting as a Reasonable and Prudent Operator, should be included in any Trade Effluent Consent to be granted to the relevant Applicant.
- 3.3 XYZ shall include each condition notified by Thames under Paragraph 3.2 of this Schedule 2 in any Trade Effluent Consent granted to the relevant Applicant.
- 3.4 If the Application is referred to the Environment Agency under Section 120 of the Act, XYZ shall notify Thames of such referral and the outcome of the same before the procedure set out in Paragraph 3.1 of this Schedule 2 shall apply.

- 3.5 XYZ shall provide Thames with a copy of any Trade Effluent Consent (or refusal of the same) issued to an Applicant at the same time as providing the Applicant with the same.
- 3.6 In the event of an appeal against the refusal of an Application, Thames shall provide all support reasonably requested by XYZ to deal with the appeal and shall, subject to the applicable procedural or other rules applying to the conduct of the appeal, be entitled to require that XYZ include any written or other submissions that Thames may wish to make in respect of the appeal where Thames cannot make those submissions on its own behalf.
- 3.7 All Trade Effluent Consents shall be reviewed no less than once every two years by XYZ, Thames and the relevant customer.

#### **4 CHARGING**

- 4.1 At the same time as notifying XYZ of the conditions that it considers should be included in a Trade Effluent Consent, Thames shall also notify XYZ of the Trade Effluent Charge that will be levied on XYZ for the provision of the Trade Effluent Services with respect to the Trade Effluent covered by that Trade Effluent Consent, such Trade Effluent Charge to be equal to the charge that would be levied by Thames for the discharge of Trade Effluent directly into the Thames Sewerage Network.
- 4.2 XYZ shall provide Thames with such samples of any Trade Effluent discharged into the XYZ Sewerage Network as Thames may reasonably require (in accordance with a risk assessment conducted by Thames) in order to verify that the strength and composition of such Trade Effluent is in accordance with the relevant Trade Effluent Consent.
- 4.3 If at any time the charges levied by Thames for the discharge of Trade Effluent directly into the Thames Sewerage Network by Equivalent Customers increase or decrease, then the Trade Effluent Charges shall increase or decrease (as the case may be) by an equal percentage.
- 4.4 The provisions of sub-clauses 11.6 to 11.11 inclusive of this Agreement shall apply to all Trade Effluent Charges.

#### **5 LEGAL REQUIREMENTS**

- 5.1 The Parties shall co-operate in seeking to comply with their respective duties under Relevant Legislation where and to the extent it is lawful to do so.
- 5.2 For the purposes of Paragraph 5.1 of this Schedule 2:
  - 5.2.1 XYZ shall administer, issue and enforce all Trade Effluent Consents in accordance with Relevant Legislation;
  - 5.2.2 On an annual basis, XYZ shall provide Thames with details of the procedures that it adopts in order to enforce Trade Effluent Consents and to ensure that

premises on the Site comply with Relevant Legislation as it relates to the unauthorized discharge of Trade Effluent into the XYZ Sewerage Network;

5.2.3 Each Party shall notify the other as soon as reasonably practicable when it becomes aware of any matter being discharged that is capable of injuring any part of the Thames Sewerage Network or the XYZ Sewerage Network, including any matter that may interfere with the free flow of the contents of the relevant Sewerage Network or that may interfere with the treatment and disposal of such contents;

5.2.4 Each Party shall provide all support reasonably requested by the other to respond to any enforcement action brought by a Regulatory Authority under any Relevant Legislation, or to bring any enforcement action against any third party under any Relevant Legislation; and

5.2.5 Each Party shall respond and cooperate in a timely fashion to any reasonable request made by the other for support in mitigating, reducing or stopping the effects of any pollution that is likely to occur or has in fact occurred contrary to any Relevant Legislation.

## **6 MEETINGS**

6.1 Representatives of each Party shall meet not less than once every six months to discuss any matters arising out of this Schedule 2 and the operation and management of each Party's obligations under it.

6.2 Without prejudice to Paragraph 6.1 of this Schedule 2, either Party may request a meeting at any time upon reasonable notice in writing to the other to discuss any particular matter or concern arising out of or in relation to this Schedule 2, and the Parties shall use their best endeavours to agree a date, time and venue for such meeting and to attend the same.

6.3 The Parties shall agree work programs to ensure ongoing compliance with Trade Effluent Consents.

**SCHEDULE 3  
SITE SCHEDULE**

**Bulk Discharge Schedule for the Site Known as .....**

**Section 1: Connection Works and Discharge Restrictions**

The connection works comprise

*This section to include the layout of the site and the technical design. Give details of number of residential units and commercial units and details of number of phases over how many years*

Figure1: Site boundary and location

**Connection**

*This section is to include if this is for foul and/or surface water, point of connection, type of sewer connecting into and size. Also need detail of location of connection at relevant site boundary and stipulate flow rates as provided by XYZ.*

**Discharge**

The Discharge must not exceed the rates set out in the table below [*and must not include any surface water.*] \*

\* delete if inapplicable

<b>Surface Water Connection</b>	<b>Maximum Peak Discharge l/s</b>	<b>Maximum Daily Volume M<sup>3</sup></b>	<b>Maximum Annual Volume M<sup>3</sup></b>
<b>Foul Water Connection</b>	<b>Maximum Peak Discharge l/s</b>	<b>Maximum Daily Volume M<sup>3</sup></b>	<b>Maximum Annual Volume M<sup>3</sup></b>

**Reinforcement**

*[This section is to give details of reinforcement or state that the receiving sewers currently have adequate capacity to cope with the proposed increase in flow for this site]*

**Section 2: Charges**

- i) Connection Charge**  
XYZ will pay for .....on the basis of the estimate issued on ..... reference .....
  
- ii) Infrastructure Charges**  
£X .payable as a Condition Precedent under Clause 2.1.3. Subsequent payments will be payable on the basis set out in Clause 11.
  
- iii) Sewerage Charges**

**SCHEDULE 4  
CONTACT PROCEDURES FOR OPERATIONAL INCIDENT**

Sewerage problem reported by Thames:

1. Thames contacts XYZ Operational contact (at [REDACTED]) and advises XYZ of the problem
2. XYZ contacts its customers

Sewerage problem reported by XYZ:

1. XYZ contacts Wholesale Market Services team at Thames (the Sales and Contracts Manager at [cam@thameswater.co.uk](mailto:cam@thameswater.co.uk) 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  
ABC 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.....