

**THIS BULK DISCHARGE AGREEMENT** is made the **xx** day of **xxxx** 20**xx**

**BETWEEN:**

- (1) **NORTHUMBRIAN WATER LIMITED** a company incorporated in England and Wales (No. 02366703) whose registered office is at Abbey Road, Pity Me, Durham DH1 5FJ (“NWL”); and
- (2) **XXXX** a company incorporated in England and Wales (No. **xxxx**) whose registered office is at **xxxx** (“XXX”).

(Each a “Party” and together “the Parties”)

**WHEREAS:**

- (1) NWL is the sewerage undertaker for the area set out in its Instrument of Appointment, which takes effect under section 6 of the Act;
- (2) XXX is the sewerage undertaker for the site known as **xxxx** (“the Site”) pursuant to the Act;
- (3) The parties wish to enter into an Agreement for NWL to provide Discharge Services to XXX at the Site and, more particularly, at the Point of Connection on the terms of this Agreement, as set out in the Site Schedule.
- (4) This Agreement is made under section 110A of the Act.

**IT IS AGREED AS FOLLOWS:**

**1. INTERPRETATION**

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

**Act** means the Water Industry Act 1991, and any re-enactment or amendment of the same whether made before or after the date of this Agreement and any regulations, orders, directives, directions, requirements or delegated or secondary legislation made under it;

- Appendices**
- 1. Trade Effluent Provisions
  - 2. Site Schedule
  - 3. Site Plan

#### 4. Contact Protocol

**Affiliate**

means either Party's:

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

**Appointed**

means appointment of XXX as the sewerage undertaker in respect of a Site by the Authority pursuant to Section 7 of the Act;

**Authority**

the Water Services Regulation Authority (Ofwat);

**XXX's  
Sewerage  
Network**

means the sewerage network vested for the time being in XXX, including any pipework, man holes, pumping stations and ancillary apparatus in each case from which the Discharge is to be made;

**Charging Year**

means the period between 1 April in one year and 31 March in the following year;

**Confidential  
Information**

means all material, including, without limitation, manufacturing, technical, 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 reports, 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 a Party as proprietary and confidential, and other data and correspondence derived from the Customer 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, in respect of any Site, the point at which NWL's Sewerage Network and XXX's Sewerage Network are physically connected so as to enable provision of the Sewerage Services;

**Consequential Loss** means any economic, consequential, indirect or special loss including, without limitation, loss of profit and loss of opportunity in each case howsoever caused, arising out of or in connection with this Agreement and whether or not foreseeable at the date of this Agreement, irrespective of whether caused by negligence or by any other tortious act or omission or by breach of this Agreement;

**Customer** means a customer who receives sewerage services from either NWL or XXX (as the case may be);

**Discharge** means the discharge of substances within the meaning of paragraphs (a) and (b) of the definition of "domestic sewerage purposes" of section 117(1) of the Act together with where applicable trade effluent within the meaning of section 141 of the Act by means of a bulk discharge by XXX to NWL at the Point of Connection in such volumes (measured in litres per second) as may be specified in the relevant Site Schedule as being required by XXX;

**Emergency** means any circumstances beyond the reasonable control of NWL (acting reasonably and in good faith) whereby the capacity within NWL's Sewerage Network to receive, treat and dispose of the wastewater comprising the Discharge is reduced because of a blockage or break in any pipe forming part of NWL's Sewerage Network, plant or process breakdown;

**Equivalent Customers** means NWL's customers in NWL's area of appointment who purchase services to an equivalent or similar

quantity to XXX;

<b>Force Majeure Event</b>	means any event (other than, with regard to NWL, an Emergency) beyond the reasonable control of the Party affected and not reasonably foreseeable and avoidable by the exercise of reasonable diligence and foresight including, but not limited to, an act of God; decree of government; fire; flood; explosion; war; rebellion, sabotage or terrorism; riot or civil commotion; industrial disputes or actions (not involving the employees of a Party seeking to excuse non-performance owing to a Force Majeure Event), and epidemics;
<b>Material Breach</b>	means any breach of this Agreement, which in the opinion of a Reasonable and Prudent Operator would not be considered to be trivial or inconsequential in the context of the continued performance of this Agreement;
<b>Maximum Rate of Flow</b>	means the maximum rate (measured in litres per second) at which the Discharge will be made from XXX's Sewerage Network to NWL's Sewerage Network, as more particularly defined in the Site Schedule;
<b>Meter</b>	means a measuring instrument complying with the requirements of the Water (Meters) Regulations 1988 as amended or replaced from time to time including the box housing the Meter, and any logger or outreading apparatus, and a reference to a "Meter" includes a reference to any replacement meter;
<b>Necessary Works</b>	includes works carried out, in exercise of any power conferred by or under any enactment, by a person than a sewerage undertaker;
<b>NWL's Scheme of Charges</b>	means the <b>Wholesale Charges Scheme</b> published by the NWL under the provisions of section 143 of the Act detailing the charges for providing its services, as amended from time to time in accordance with rules issued by the Authority from time to time;
<b>NWL's Sewerage</b>	means the sewerage network vested for the time being in the NWL, including any pipework, man holes, pumping stations and ancillary apparatus in each case,

<b>Network</b>	through which the Discharge is to be made;
<b>Operational Contact Protocol</b>	The contact details for both parties for operational purposes as set out in Appendix 4;
<b>Point of Connection</b>	means the location of the Connection as more particularly described in the Site Schedule (at Appendix 2) and the Discharge Rates and Connection Points (at Appendix 2A) and as shown on the Site Plan (at Appendix 3);
<b>Program of Development</b>	means the relevant Program of Development comprised in the Site Schedule and setting out the details of the build, connection and occupancy rates in respect of the Site;
<b>Reasonable and Prudent Operator</b>	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 and the expression "RPO" shall mean the same;
<b>Relevant Legislation</b>	<p>(a) the primary legislation of the UK Parliament and the European Union, and any secondary legislation made thereunder;</p> <p>(b) any binding order, decision, determination or direction of the Authority or any other competent regulatory authority which applies generally or applies to the Parties in respect of their rights or obligations concerning this Agreement; and</p> <p>(c) any and all relevant licences, consents, permissions or laws, including each Party's Instrument of Appointment;</p> <p>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</p>

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);

<b>Sewer</b>	includes "accessories" as defined in Section 219 of the Act and any pumping stations required in connection with the Discharge;
<b>Sewerage Services</b>	means the reception, treatment and disposal of the Discharge;
<b>Sewerage Treatment Works</b>	means NWL's sewage treatment facility that will accept the discharge from the Site;
<b>Site</b>	The site known as <b>xxxx</b> as described in the Site Schedule at Appendix 2;
<b>Site Plan</b>	means the plan showing the extent of the Site and the location of the Point of Connection at Appendix 3;
<b>Site Schedule</b>	means the relevant Site Schedule attached to this Agreement at Appendix 2;
<b>Surface Water Discharge</b>	Means the discharge within the meaning of paragraph (c) of the definition of "domestic sewerage purposes" of section 117(1) of the Act together with highway drainage;
<b>Wholesale Charges Scheme</b>	means the annual charges scheme published annually on the Northumbrian Water website, specifically within our 'Bulk Supply Charges for NAVs' and Development Services specifically 'Charging Arrangements';
<b>Working Day</b>	A day other than a Saturday or Sunday or a Bank or Public Holiday.

1.2 In this Agreement, unless the context otherwise requires:

- 1.2.1 Words and expressions defined in the Interpretation Act 1978 shall have the same meaning in this Agreement, unless specified in this Agreement;
- 1.2.2 The singular includes the plural (and vice versa) and a reference to either gender includes the other;

- 1.2.3 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;
- 1.2.4 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;
- 1.2.5 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;
- 1.2.6 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);
- 1.2.7 A reference to a contractor includes contractors and subcontractors of any tier;
- 1.2.8 Headings are for convenience only and do not affect the interpretation or construction of this Agreement;
- 1.2.9 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;
- 1.2.10 Words of inclusion are without limitation;
- 1.2.11 A reference to month or months is a reference to a calendar month or months.

### 1.3 **COMMENCEMENT**

- 1.4 This Agreement commences when it has been signed and dated by both Parties.

## 2. **TERM AND TERMINATION**

- 2.1 This Agreement shall continue in force in respect of the Site unless and until:
- 2.1.1 XXX (or any Affiliate to whom this agreement has been assigned in accordance with clause 18) ceases to be a sewerage undertaker within the meaning of the Act;
  - 2.1.2 A Party is in Material Breach of this Agreement and, following receipt of a notice from the other Party specifying the nature of the breach, fails to remedy such breach within 30 days of receipt of such notice;
  - 2.1.3 Both Parties terminate this Agreement by mutual consent; or
  - 2.1.4 This Agreement or any such part terminates by order, determination or direction of the Authority or any competent regulatory authority.
- 2.2 Subject to the provisions in Clause 12 of this Agreement, where a Party has committed a material breach of this Agreement, has been unable to remedy the breach within 30 days of receipt of a notice served under Clause 2.1.2 and such breach relates wholly or mainly to the rights or obligations of the Parties in respect of a particular Site and would not, in the opinion of the non-breaching Party acting a Reasonable and Prudent Operator, materially affect the rights or obligations of the non-breaching Party in respect of any other Site and the breaching Party has failed to remedy the breach as mentioned in Clause 2.1.2, any right of termination shall only apply to the particular Site and shall not extend to such other Site or Sites.
- 2.3 Any termination pursuant to this Clause shall be without prejudice to the accrued rights of either Party.

### **3. NOT USED**

- 3.1 Not Used.

### **4. CONNECTION**

- 4.1 Subject to payment of the Connection Charge, the **developer** may serve notice on NWL following receipt of which NWL shall make or permit the developer to make a connection to NWL's Sewerage Network at the Point of Connection on the date specified in the notice or as soon as reasonably practicable thereafter.

### **5. METERING**



- 5.1 XXX shall ensure that a Meter(s) is installed in a location(s) to be agreed with NWL that is adequate for measuring the quantity of water supplied to the Site.
- 5.2 XXX shall arrange for the Meter to be read monthly and the readings from the Meter shall be supplied by XXX to NWL each month to enable NWL to calculate the Sewerage Charges.
- 5.3 NWL may ask for any Meter fitted pursuant to Clause 5.1 to be tested by XXX at XXX's cost to prove (to NWL's reasonable satisfaction) that the Meter is operating within the applicable limits of deviation provided that if the Meter is found to be operating within the said limits of deviation NWL shall reimburse XXX for the costs of that test.
- 5.4 In the event that the Meter ceases to function correctly or the meter reading data is not supplied by XXX for any reason then NWL shall have the right to make estimates of the volume for the purpose of calculating the Sewerage Charges
- 5.5 If the Meter installed pursuant to Clause 5.1 is not in use at any time XXX shall notify NWL to that effect and shall use its best endeavours to have the meter repaired or replaced in a timely manner.

## **6. THE DISCHARGE**

- 6.1 NWL will provide the Sewerage Services to XXX and accept the Discharge provided that no liability shall rest upon NWL if, acting as a Reasonable and Prudent Operator (RPO), it is prevented from doing so by an Emergency or a Force Majeure Event.
- 6.2 Except in the case of an Emergency or a Force Majeure Event, XXX shall not make a Discharge at a rate in excess of the Maximum Rate of Flow.
- 6.3 XXX shall operate XXX's Sewerage Network as an RPO, so that there is no detrimental effect on NWL's network.
- 6.4 Upon receipt of notice from NWL claiming that XXX is in contravention of Clause 6.3 above, XXX and NWL shall co-operate as Reasonable and Prudent Operators to take steps immediately to remedy the matters specified in NWL's notice (including, where reasonably practicable, an immediate cessation of further Discharge).
- 6.5 NWL confirms that the Sewage Treatment Works is able to accept the Discharge from the Site.

6.6 Surface Water Discharges from the Site will connect into NWL's Sewerage Network at the maximum discharge rates and connections points more particularly defined in the Site Schedule. In the event that the Lead Local Flood Authority specify more stringent requirements than those requirements would take precedence over the discharge rates in the Site Schedule

## **7. TRADE EFFLUENT**

7.1 If XXX receives an application or consents to any discharge of trade effluent into XXX's Sewerage Network or if any discharge of trade effluent is, or is to be made to XXX's Sewerage Network and thereby to NWL's Sewerage Network as part of the Discharge at any Site, the provisions of Appendix 1 come into force immediately in respect of that Site.

## **8. SAMPLING**

8.1 XXX shall provide NWL with such samples of the Discharge as NWL may reasonably require in order to demonstrate that the Discharge complies with all Relevant Legislation and Trade Effluent Consents.

## **9. PLANNED AND UN-PLANNED WORKS, EMERGENCIES AND OTHER INCIDENTS**

9.1 NWL shall give XXX **10 Working Days' notice** of planned work or planned Necessary Works to NWL's Sewerage Network that may (in NWL's opinion as a Reasonable and Prudent Operator) materially affect the Sewerage Services.

9.2 For the avoidance of doubt, any interruption to the Sewerage Services expected to be greater than 4 hours long is deemed to materially affect the Sewerage Services within the meaning of Clause 9.1.

9.3 Except in the event of an Emergency, NWL shall give XXX at least **72 hours'** notice of any planned work or planned Necessary Works that do not fall within Clause 9.1.

9.4 NWL shall use reasonable endeavours to remedy breakdowns affecting the Sewerage Services within **12 hours unless the breakdown comprises a failure on a strategic Sewer, in which case the breakdown shall be remedied within 48 hours.**

9.5 In the event of an Emergency NWL shall:

- 9.5.1 Notify XXX of the existence and cause (if known) of the Emergency as soon as reasonably practicable after the same have come to NWL's attention (acting as a Reasonable and Prudent Operator); and
- 9.5.2 Keep XXX notified throughout the Emergency of the steps being taken to continue or, as the case may be, to restore the Sewerage Services.
- 9.6 The Parties shall co-operate as Reasonable and Prudent Operators to ensure that any Emergency, Force Majeure Event or other similar incident does not affect the reception of discharges from either Party's Customers and shall co-operate in investigating the cause of such Emergency, Force Majeure Event or similar incident, sharing any lessons learned so as to seek to prevent a recurrence in so far permitted under applicable Relevant Legislation.

## **10. SEWERAGE CHARGES**

- 10.1 The Site foul sewerage charges (including any fixed charges) that shall apply are the measured sewerage charges as set out in the NWL Wholesale Charges Scheme.
- 10.2 The Site surface water charges and any applicable highway drainage charges (including any fixed charges) that shall apply are the non-household and household surface water drainage charges as set out in the Wholesale Charges Scheme.
- 10.3 The charges referred to in clause 10.1 and 10.2 above shall collectively be referred to as ("the Sewerage Charges").

## **11. CHARGING**

- 11.1 The amount of Discharge discharged from the Site for the purposes of the Sewerage Charges shall be determined in accordance with the manner prescribed in the Site Schedule and shall be deemed to be that shown by the readings taken from the Meter(s) fitted pursuant to Clause 5.1 less any sewerage abatement as set out in the NWL Wholesale Charges Scheme.
- 11.2 XXX shall remain liable for all Sewerage Charges payable in respect of the Sewerage Services made at the Site until this Agreement has expired or been validly terminated in respect of that Site in accordance with Clause 2.
- 11.3 Any sewerage infrastructure charges for sewerage services in respect of the Site payable as set out in the NWL Wholesale Charges Scheme will be collected by XXX and paid by XXX to NWL. As XXX are providing the water

supply, NWL will not receive any water infrastructure charges. Sewerage Connection charges will be paid direct to NWL by the developer.

- 11.4 XXX shall pay all accounts submitted by NWL within 21 days of receipt of NWL's properly rendered invoice by direct debit or Bank Automated Clearing System ("BACS") to a UK bank account nominated by NWL.
- 11.5 If XXX does not pay such accounts as are submitted by the NWL within the time specified in Clause 11.4. XXX shall pay interest to NWL on overdue invoices from the date payment became due from day to day until payment is made at a rate of 2% above Base Rate from time to time in force and shall accrue at such rate after as well as before any judgement.
- 11.6 Payment by XXX shall be made without conditions attached and without deduction (except to the extent required by law), whether by way of set off or otherwise.
- 11.7 Following more than one occurrence of late-payment within any six month period NWL reserves the right to require XXX to provide a security deposit in cash or some other form of security reasonably acceptable to NWL equivalent to one billing period plus 90 days of average charges ("the Security Deposit"). Average charges shall be based upon those payable in the previous Charging Year or where not possible a reasonable estimate of charges to be paid in the current Charging Year. Such a deposit will be held by NWL for a period of 12 months and may be used during that period to discharge any outstanding balances due from XXX. On expiry of the 12 month period NWL will return the deposit, or such balance that remains to XXX and interest will be paid by NWL on any cash paid to it as the Security Deposit at the rate applying to sums deposited as security under s42(4) of the Act.
- 11.8 All payments due under this Agreement shall be exclusive of Value Added Tax and all other taxes now or in the future payable in respect of the Sewerage Services which shall be added accordingly.

## **12 DISPUTE RESOLUTION**

- 12.1 Where a dispute exists between the Parties under or in relation to this Agreement, either Party may serve upon the other a notice setting out the nature of the dispute, following deemed receipt of which in accordance with Clause 20 (Notices) the Parties shall, each acting as a Reasonable and Prudent Operator, attempt in good faith to negotiate a settlement to such dispute.

- 12.2 If the dispute notified in accordance with Clause 12.1 remains unresolved 20 Working Days after such notification, an appropriate representative of each Party's senior management shall meet to discuss and attempt to resolve the disputed matter.
- 12.3 If the dispute notified in accordance with Clause 12.1 remains unresolved for a further 15 Working Days following the period mentioned in Clause 12.2, either Party may notify the other that the provisions of this Clause 12.3 apply, whereupon the Parties shall comply with the following provisions:
- 12.3.1 The notifying Party shall apply to the Centre for Effective Dispute Resolution ("**CEDR**") or another similar organisation agreed between the Parties to appoint a Mediator;
- 12.3.2 The Parties shall meet with the Mediator within 10 Working 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 assistance from the Mediator to provide guidance on a suitable procedure);
- 12.3.3 If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by both Parties and shall take effect as an amendment to this Agreement notwithstanding the provisions of Clause 17 (Amendment);
- 12.3.4 If the Parties fail to reach agreement on the resolution of the dispute within 1 month of the Mediator being appointed (or such longer period as may be agreed in writing between the Parties) the dispute may be referred to the Courts;
- 12.3.5 Unless agreed otherwise, the mediation and all other correspondence and documentation connected with it, including any settlement or agreement relating to it shall be without prejudice to the rights of the Parties in any future proceedings.
- 12.4 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 competent regulatory authority for the enforcement of any rights or obligations of a Party or the taking by the Authority or such

competent regulatory authority of any interim or procedural steps under any Relevant Legislation at any time.

### **13 LIABILITY**

- 13.1 Without prejudice to the generality of Clauses 8 and 11.1, NWL shall not be liable for any interruption, suspension or reduction of the Sewerage Services where the same is in accordance with this Agreement or the result of an Emergency or Force Majeure Event.
- 13.2 Neither Party shall be liable to the other for Consequential Loss, but (for the avoidance of doubt) this shall not restrict either Party's liability under Clause 11.
- 13.3 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 by a Party, the Party who has caused or contributed to that liability shall indemnify the Party in respect of the same.
- 13.4 Each Party agrees to notify the other as soon as reasonably practicable following any matter coming to the attention of the notifying Party which may constitute or give rise to a breach by that Party of any provision of this Agreement.
- 13.5 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.
- 13.6 Nothing in this Clause seeks to exclude or limit either Party's liability to the other for death, personal injury or fraud, nor excludes any other liability that cannot as a matter of law be excluded.
- 13.7 This Agreement shall be without prejudice to any liability that may arise under any standards of performance which may apply at any time under any Relevant Legislation or which may be agreed in writing by an amendment to this Agreement at any time.
- 13.8 Each of the sub-Clauses of this Clause 13 shall survive termination of this Agreement.

### **14 FORCE MAJEURE**

- 14.1 Neither Party shall be liable to the other for any delay or failure in the performance of this Agreement to the extent that such delay or failure was

because of a Force Majeure Event, provided that the Party seeking the protection of this Clause:

14.1.1 Notifies the other Party in writing of the nature of the Force Majeure Event and how long it expects the Force Majeure Event to last, explaining the steps it intends to take to mitigate the effects of the Force Majeure Event; and

14.1.2 Acts as a Reasonable and Prudent Operator to mitigate the effects of the Force Majeure Event.

14.2 Neither Party may rely on Clause 14.1 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.

14.3 The Party seeking the protection of Clause 14.1 remains liable to perform its obligations under this Agreement as soon as the Force Majeure Event has passed.

## **15 CONFIDENTIALITY**

15.1 Save as provided in Clause 15.2, neither Party shall disclose Confidential Information to any other person during the course of this Agreement and for a period of five (5) years thereafter.

15.2 The obligation of confidentiality in Clause 15.1 shall not apply to any information that would otherwise be Confidential Information to the extent that:

15.2.1 It is disclosed through no fault of the disclosing Party;

15.2.2 It is received by a Party from a third party entitled to disclose it;

15.2.3 It is known to a Party before receipt from the other;

15.2.4 It is developed by a Party independently from the other;

15.2.5 Its disclosure is required to give effect to any Relevant Legislation or is ordered by the Authority, a Court, tribunal or other competent regulatory authority or where such disclosure is necessary to give effect to Clause 11.

15.2.6 It is disclosed to a Party's officers, agents, employees, professional advisers or Affiliates for the purposes of this Agreement and under

substantially the same obligations of confidentiality as apply under this Agreement.

- 15.3 Without prejudice to any rights in damages or other causes of action arising under or in connection with this Agreement, each Party recognises that damages will not be an adequate remedy for breach of this Clause 15 and that injunctive relief is an appropriate remedy.
- 15.4 In addition, the parties acknowledge that, in the interpretation of the Environmental Information Regulations 2004 (Or any other Legal Requirement which gives any discretion to the party as to whether disclosure should be made) the presumption will be in favour of disclosure.

## **16 WAIVER**

- 16.1 No obligation under this Agreement shall be considered waived by either Party unless such waiver is executed in writing. No waiver shall be a waiver of any past or future default, breach or modification of the terms of this Agreement unless expressly set forth in such waiver.
- 16.2 No failure or delay in enforcing any obligation or exercising any right under this Agreement shall be construed as a waiver of the same or of any causes of action or rights in damages that may have accrued in respect of any breach.

## **17 AMENDMENT**

- 17.1 Without prejudice to amendments required as a result of direction from the Authority or to reflect changes in Relevant Legislation, each Party may serve a notice upon the other once per annum setting out its proposals for amendment of this Agreement generally or in its application to a Site and, upon receipt of such notice by the other Party, the Parties shall consider the proposals, acting as Reasonable and Prudent Operators.
- 17.2 If agreement is not reached between the Parties after 40 Working Days following service of a notice under Clause 17.1 then this Agreement shall continue on the same terms as before and either Party may refer the matter for resolution under Clause 12.

## **18 ASSIGNMENT**

- 18.1 This Agreement may be assigned by means of a Transfer Scheme under Schedule 2 of the Act in the event that either Party ceases to be a water undertaker under the Act, or under clause 18.2 below but not otherwise.



18.2 This Agreement may be assigned or novated by either Party to any Affiliate for the purposes of any solvent re-organisation or restructuring of the Party’s corporate group, provided that the assignee is a licensed sewerage undertaker under the Act and provided such assignment or novation is made with the consent of the other Party, such consent not to be unreasonably withheld or delayed.

**19 ENTIRE AGREEMENT**

19.1 This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes and extinguishes any representations and understandings, whether written or oral, previously given or made (save for any found to have been made fraudulently) other than those contained herein.

**20 NOTICES**

20.1 Any notices to be given under this Agreement must be sent in writing to the Company Secretary of the recipient using the following contact details or to such other person using such other details as the relevant Company Secretary may nominate in writing in advance.

20.2 The contact details referred to in Clause 20.1 are as follows:

<b>Party and Contact Name</b>	<b>Address</b>
NWL For the attention of the Company Secretary	Abbey Road, Pity Me, Durham, DH1 5EJ
XXX For the attention of xxxxx	xxxx

20.3 Any notices to be given under this Agreement will be deemed to have been received at the following times unless proved to the contrary:

20.3.1 On delivery, in the case of a letter delivered in person; or

- 20.3.2 On the next working day after dispatch, in the case of a letter sent by registered mail or recorded delivery; or
- 20.3.3 Immediately, in the case of a facsimile transmission and, in the case of email, upon the receipt by the sender of an automated acknowledgement of receipt.

## **21 SEVERANCE**

- 21.1 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, the Authority or competent 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.

## **22 INFORMATION**

- 22.1 If either Party reasonably requests, the other Party shall supply (and shall procure that any of its contractors supplies) to the requesting Party such information (including documentary information and electronic data) in connection with its or its contractors activities under this Agreement as may be required to enable the requesting Party:

- 22.1.1 to comply with the lawful demand or requirement for such information by the Authority or any other competent regulatory authority; or

- 22.1.2 to make any application or representation to the Authority in connection with this Agreement;

and the Parties' obligations under this Clause 22 shall continue after termination of this Agreement for a period of 6 years.

- 23.2 Neither Party shall be obliged to supply information under Clause 22.1 if to do so would contravene:

- 23.2.1 Relevant Legislation; or

- 23.2.2 a contractual confidentiality obligation that is not subject to a contrary overriding requirement under Relevant Legislation.

## **23 RIGHTS OF THIRD PARTIES**

23.1 This Agreement is for the benefit of the Parties only and the Contracts (Rights of Third Parties) Act 1999 does not apply.

## **24 GOVERNING LAW AND JURISDICTION**

24.1 This Agreement shall be constructed and interpreted in accordance with the law of England and any dispute arising under, out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the English courts.

## **25 ENTITLEMENTS UNDER THE ACT**

25.1 Nothing in this Agreement shall prevent NWL from exercising any entitlement or discharging any duty under Relevant Legislation except as may be allowed under the terms of such Relevant Legislation.

25.2 NWL shall inform XXX (save in the case of an Emergency) as soon as reasonably practicable prior to the exercise of a right or the discharge of a duty under Relevant Legislation involving an interruption or disconnection or refusal to accept discharges from any premises connected to XXX's Sewerage Network, and shall notify XXX as soon as reasonably practicable once such right has been exercised or such duty discharged (as the case may be).

## **26 OWNERSHIP OF THE NWL'S / XXX'S SEWERAGE NETWORK**

26.1 Nothing within this Agreement alters NWL's ownership of NWL's Sewerage Network or its responsibility to manage and operate NWL's Sewerage Network and this Agreement does not confer any rights of ownership, maintenance or other use of NWL's Sewerage Network on XXX or XXX's Customer(s).

26.2 For the avoidance of doubt, NWL's Sewerage Network shall vest in NWL and XXX shall not have any rights of use of NWL's Sewerage Network. XXX's Sewerage Network shall vest in XXX and NWL shall not have any rights of use of XXX's Sewerage Network.

26.3 For the avoidance of doubt any apparatus installed by the developer for the purposes of making the Connection shall not form part of NWL's Sewerage Network.

26.4 Nothing in this Agreement shall prevent or restrict NWL from altering amending expanding developing or re-developing NWL's Sewerage Network

provided that the same does not affect the Sewerage Services under this Agreement.

## **27 COMPLIANCE WITH RELEVANT LEGISLATION**

- 27.1 Each Party shall be responsible for ensuring that all operations or activities carried out by it or others engaged by it in pursuance of this Agreement comply at all times with all Relevant Legislation.
- 27.2 Each Party shall use its reasonable endeavours to ensure that at all times it is kept fully and accurately informed of all Relevant Legislation and shall comply fully with the same insofar as the same applies to it.

27.3 Each Party shall from time to time upon the request of the other Party provide assistance and do any other acts or things which may reasonably be required to implement the provision or the purposes of this Agreement.

IN WITNESS whereof the duly authorised representatives of the parties have executed this Agreement the date and year first before written

For and on behalf of Northumbrian Water Limited:

Name:

Position:

Signature:

Date:

For and on behalf of XXX:

Name:

Position:

Signature:

Date:

## APPENDIX I - Trade Effluent Provisions

### DEFINITIONS

1.

1.1. For the purposes of this Schedule the following words and expressions shall have the meanings hereby assigned them:

<b>Applicant</b>	means a person making an Application;
<b>Application</b>	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) and includes any information or documentation provided in support of such application;
<b>Biosolids</b>	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;
<b>Support</b>	means the provision of all reasonably necessary data and information and, in the event of any proceedings, the provision of witnesses to attend Court and give evidence relating, <i>inter alia</i> , to the control of Trade Effluent and any other relevant matter connected with NWL's Sewerage Network or XXX's Sewerage Network, as the case may be, and an obligation to provide support is subject to the Party requesting 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;
<b>Trade Effluent</b>	has the same meaning as in Section 141 of the Act;
<b>Trade Effluent Consent</b>	means a permission to discharge Trade Effluent given in accordance with Chapter III of Part IV of the Act;

**Trade Effluent Services** means the reception, treatment and disposal of the Trade Effluent;

**Wholesale Charges Scheme** means the annual charges scheme published annually on the Northumbrian Water website, specifically within our 'Bulk Supply Charges for NAVs' and Development Services specifically 'Charging Arrangements'.

1.2. Words and expressions not defined in this Appendix 1 shall have the meanings given them elsewhere in this Agreement.

## **2. TRADE EFFLUENT CONTROL**

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

## **3. XXX TRADE EFFLUENT CONSENTS**

3.1. XXX shall deal with, issue and take reasonable endeavours to enforce all Trade Effluent Consents granted to occupiers of trade premises which discharge indirectly into NWL's sewerage network via the Connection.

3.2. XXX shall provide NWL with a copy of any Application by any of XXX's Retailers or traders directly consented by XXX.

3.3. NWL shall notify the XXX of the conditions it believes as a Reasonable and Prudent Operator should be included in any Trade Effluent Consent granted within 20 Working Days of receiving the copy Application referred to in Paragraph 3.2 of this Appendix 1.

3.4. If the Application is referred to the Environment Agency under Section 120 of the Act, XXX shall notify NWL of such referral and the outcome of the same before the procedure set out in Paragraph 3.3 of this Appendix 1 shall apply.

3.5. XXX shall provide NWL 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, NWL shall provide all support reasonably requested by XXX 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 request that XXX include any written or

other submissions that NWL may wish to make in respect of the appeal where NWL cannot make those submissions on its own behalf.

#### **4. CHARGING**

- 4.1. XXX will notify NWL of any Application made to it and, if the Application is granted, of the terms to be included within the Trade Effluent Consent.
- 4.2. XXX will indemnify NWL in respect of the reasonable costs and expenses it incurs as a Reasonable and Prudent Operator in modifying NWL's Sewerage Network so that NWL can provide the Trade Effluent Services in accordance with any Relevant Legislation.
- 4.3. The reasonable costs and expenses referred to in Paragraph 4.2 of this Appendix 1 may include administration costs, overheads and any additional charges made by the Environment Agency in respect of any licence, permit, consent or registration (including the cost of applying for variations to any of the same).
- 4.4. XXX shall provide NWL with such samples of any Trade Effluent discharged into the XXX's Sewerage System as the NWL may reasonably require in order to determine the strength of such Trade Effluent.
- 4.5. If at any time the charges in respect of the Sewerage Services as determined in accordance with Clause 11 of this Agreement are no longer reflective of the reasonable costs of providing the Trade Effluent Services, NWL or XXX may serve on the other under Clause 17 of this Agreement with proposals to increase or decrease the charges.
- 4.6. Where a notice is served in accordance with Paragraph 4.5 of this Appendix 1, the provisions of Clause 17 of this Agreement shall apply as if the words "once per annum" in Clause 17.1 and the entirety of Clause 17.2 were omitted.

#### **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 Appendix 1:
  - 5.2.1. XXX shall administer, issue and enforce all Trade Effluent Consents in accordance with Relevant Legislation;



- 5.2.2. Each Party shall notify the other as soon as reasonably practical when it becomes aware of any matter being discharged that is capable of injuring any part of NWL's Sewerage Network or XXX's 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 content;
- 5.2.3. Each Party shall provide all support reasonably requested by the other to respond to any enforcement action brought by the Environment Agency, the Authority or any other enforcement agency under any Relevant Legislation, or to bring any enforcement action against any third party under any Relevant Legislation;
- 5.2.4. 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 and the operation and management of each Party's obligations under it.
- 6.2. Without prejudice to Paragraph 6.1 of this Appendix 1, 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 Appendix 1, and the Parties shall use their reasonable endeavours to agree a date, time and venue for such meeting and to attend the same.

## APPENDIX 2 - SITE SCHEDULE

### Bulk Discharge Schedule

For the Site Known As: **xxxx** more particularly delineated in the plan annexed hereto

**This Site Schedule, when signed and dated by each of the Parties below, creates rights and obligations between NWL and XXX named below in accordance with the Agreement between those Parties dated [ << >> ]**

Grid Ref: **The connection points for both foul and surface water discharges from the Site are set out in the attached table entitled "**xxxx** Discharge Rates and Connection Points" and the manhole references for the points of connection are shown in Drawings **xxxx x** to **x** annexed.**

Billing Reference Number	[ ]
Annual Discharge	[Tranches of capacity to be specified in Program of Development in line with build rate ]
Maximum Rate of Flow	[Foul flow - <b>xx</b> litres per second at the discharge rates set out in the attached table entitled " <b>xxxx</b> Discharge Rates and Connection Points"]  [Surface water flow - at the discharge rates set out in the attached table entitled " <b>xxxx</b> Discharge Rates and Connection Points".]
Connection Charge	[ ]
<b>Construction Start Date:</b>	[ ]
<b>Annual Profile of Property Connection:</b>	[ ]

Number of Years to Complete Development:[ ]  
(all properties connected)

Name of Supplier: **Northumbrian Water Limited**  
Signed by the fully authorised representative of NWL

Name  
Position  
Signature  
Date

Name of Purchaser: **xxxx**  
Signed by the fully authorised representative of XXX

Name  
Position  
Signature  
Date

**APPENDIX 2A - XXXX DISCHARGE RATES AND CONNECTION POINTS**

Development Cell	Plots Served	Foul Water		Surface Water	
		Discharge rate l/s	Connection point	Max discharge rate l/s	Connection point

**APPENDIX 2B - XXXX SUPPLY METER LOCATIONS**

<i>Meter Location</i>	<i>Plots Served</i>	<i>Meter Details</i>		<i>Meter Co-ordinates</i>	
		<i>Serial No</i>	<i>Manufacturer</i>	<i>Eastings</i>	<i>Northings</i>

**APPENDIX 3 - SITE PLAN**

## **APPENDIX 4 – CONTACT PROTOCOL**

### **Sewerage Services emergencies**

To contact NWL:

- to inform of an emergency or operational incident that could potentially impact upon the sewerage systems of NWL;
- to notify in the case of a suspected hydraulic restriction or blockage in the NWL system resulting in the restriction of XXX's sewers; or
- to request any other assistance from NWL during a major incident:

NWL Emergency number **0345 717 1100**

The event of NWL needing to contact XXX in relation to an emergency relating to the sewerage system of XXX, NWL will contact;

- XXXX
- XXXX
- XXXX