

**THIS BULK SUPPLY AGREEMENT FOR WHOLESALE SERVICES** is made the \_\_\_ day of \_\_\_\_\_ 20\_\_

**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) **<Company Name>** a company incorporated in England and Wales (No. **<Company No.>**) whose registered office is at **<Company Address>** ("The Company").

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

**WHEREAS:**

- (1) NWL is the water undertaker for the area set out in its Instrument of Appointment, which takes effect under section 6 of the Act;
- (2) The Company is the water undertaker for the site known as **<NAV Site Name>** pursuant to the Act;
- (3) The parties wish to enter into an Agreement for NWL to provide the Bulk Supply to The Company at the Site and, more particularly, at the Point of Connection on the terms of this Agreement, as set out in the Site Schedule.

**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;

**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;

<b>Alternate Connection Point</b>	means an additional connection point to NWL's Water Supply Network that increases the security & resilience of supply, the location of which as more particularly described in the Site Schedule and as shown on the Site Plan Schedule;
<b>Appointed</b>	means appointment of The Company as the water undertaker in respect of a Site by the Authority pursuant to Section 7 of the Act;
<b>Authorised Departure</b>	means an authorisation granted by the Secretary of State under regulations 22 and 23 of the Water Regulations to temporarily supply water exceeding a drinking water standard when there is no risk to human health and while remedial work is being carried out to improve the quality of the supply;
<b>Authority</b>	the Water Services Regulation Authority (Ofwat);
<b>Bulk Supply</b>	means the bulk supply of water made available by NWL to The Company which shall consist of a supply of water for domestic purposes as defined by Section 218 of the Act to the specification set out in the Site Schedule;
<b>Bulk Supply Meter</b>	means the water meter, chamber and associated instrumentation located at the boundary of the Site and supplied by NWL through which the Bulk Supply shall pass, the approximate position of which is shown on the Plan and Bulk Supply Meters shall be construed accordingly;
<b>Charges</b>	means the charges payable by The Company to NWL for the Bulk Supply and in accordance with the Wholesale Charges Scheme;
<b>Charging Year</b>	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 Water Supply Network and The Company's water supply network are physically connected so as to enable provision of the Bulk Supply 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 water supply services from either NWL or The Company (as the case may be);

**Emergency**

means any circumstances beyond the reasonable control of NWL (acting reasonably and in good faith) whereby the capacity within NWL's Water Supply Network to, treat and process potable water comprising the Water Supply Services is reduced because of a burst or break in any pipe forming part of NWL's Water Supply Network, plant or process breakdown;

<b>Equivalent Customers</b>	means NWL's customers in NWL's area of appointment who purchase services to an equivalent or similar quantity to The Company;
<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>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 water 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 Water Supply Network</b>	means the water supply network vested for the time being in the NWL, including any pipework, metering equipment, pumping stations and ancillary apparatus in each case, through which the water supply is to be made;

<b>Point of Connection</b>	means the location of the Connection as more particularly described in the Site Schedule and as shown on the Site Plan Schedule;
<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 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);</p>
<b>Service Regulations</b>	means the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 as amended

<b>Site</b>	The site known as <NAV Site Name> as described in the Site Schedule;
<b>Site Plan</b>	means the plan showing the extent of the Site and the location of the Point of Connection and any Alternate Connection Point as shown in the Site Plan Schedule;
<b>Schedules</b>	means the relevant Schedules that are appendices to this Agreement, that are the; <ul style="list-style-type: none"> <li>A. Site Schedule</li> <li>B. Charges Schedule</li> <li>C. Site Plan Schedule</li> <li>D. Emergency Services Schedule</li> <li>E. Contact Protocol Schedule</li> </ul>
<b>The Company's Water Supply Network</b>	means the water supply network vested for the time being in The Company, including any pipework, man holes, pumping stations and ancillary apparatus in each case to which the Bulk Supply is to be made;
<b>Undertaking</b>	means an undertaking given by NWL under the provisions of section 19 of the Act, being a legally binding programme of work by NWL and agreed by the Chief Inspector of Drinking Water to address actual or potential water quality issues;
<b>Water Mains</b>	includes "accessories" as defined in Section 219 of the Act and any pumping stations required in connection with the Water Supply Services;
<b>Water Regulations</b>	means the Water Supply (Water Quality) Regulations 2016 as amended;
<b>Water Supply Services</b>	means the supply of potable drinking water;
<b>Water Quality Protocol</b>	means the Water UK's protocol template for bulk supply agreements published in December 2012 as amended;
<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';

**Working Day** 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 reference to a statute or statutory provision includes a reference to any modification or re-enactment (with or without modification) for the time being in force;
  - 1.2.5 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;
  - 1.2.6 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;
  - 1.2.7 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);
  - 1.2.8 A reference to a contractor includes contractors and subcontractors of any tier;
  - 1.2.9 Headings are for convenience only and do not affect the interpretation or construction of this Agreement;

1.2.10 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;

1.2.11 Words of inclusion are without limitation;

1.2.12 A reference to month or months is a reference to a calendar month or months.

### 1.3 **COMMENCEMENT**

1.3.1 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 The Company (or any Affiliate to whom this agreement has been assigned in accordance with Clause 17) ceases to be a water 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;

2.1.4 Upon notice given by one party to the other party if that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;

2.1.5 Upon notice given by one party to the other party if that other party becomes insolvent or compounds with its creditors or convenes a meeting to consider a resolution that it be placed in liquidation (other than a solvent liquidation for the purposes of amalgamation or reconstruction) or suffers a petition to be presented that it be placed in liquidation or has an administrative receiver, receiver or manager appointed in respect of all or any of its assets or is adjudicated bankrupt, makes an assignment for the benefit of, or any composition with, its creditors or takes advantage of any insolvency act; or

2.1.6 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 11 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 Upon termination of this Agreement:

2.3.1 the termination shall be without prejudice to the accrued rights of either Party;

2.3.2 The Company shall cease to receive the Bulk Supply of water and the Emergency Services from NWL; and

2.3.3 The Company shall settle all outstanding payments that are due and owing to NWL under Clause 10.

### **3. INSURANCE**

3.1 Both parties shall maintain in force for the duration of this Agreement, at their own cost, such insurance policies as are reasonable and adequate having regard to their obligations and liabilities under this Agreement but including without limitation:

3.1.1 Public liability insurance for a minimum amount of cover of five million pounds (£5,000,000).

3.1.2 Employers' liability insurance for a minimum amount of cover of five million pounds (£5,000,000).

3.2 Such policies where required shall be unlimited in terms of the number of claims during the period of cover.

### **4. SUPPLY OF WATER AND QUALITY**

4.1 NWL shall subject to the terms of this agreement make available to The Company and The Company agrees to take at the Point of Connection the Bulk Supply as set out in Site Schedule of this Agreement;

4.2 NWL shall have no obligation to provide the Bulk Supply other than at the Point of Connection.

4.3 NWL shall have no obligation to provide the Bulk Supply in excess of any of the limits as to quantity and quality and rate specified in this Agreement unless a variation is agreed.

- 4.4 Subject to the proviso in Clause 4.5 below NWL shall have no obligation or liability in respect of or arising in consequence of actions taken as a Reasonable and Prudent Operator to shut down or curtail, for whatever reasonable period, the provision of the Bulk Supply during any maintenance, repair, improvement, replacement or renewal of any plant or other equipment (including without prejudice to the generality of the foregoing, all pipes, tanks, meters, treatment works, fittings, conduits and apparatus) on which the Bulk Supply is dependent. NWL will endeavor to give notice of interruption to supply to The Company before shutting down or curtailing the provision of the Bulk Supply in accordance with Clause 9.
- 4.5 NWL shall use reasonable endeavours to carry out any works referred to in Clause 4.4 above exercising acting as a Reasonable and Prudent Operator so as to restore the Bulk Supply as soon as is reasonably practicable.
- 4.6 NWL shall wherever appropriate implement the contact procedures set out in Schedule 5 hereto.
- 4.7 Prior to the execution of this agreement The Parties will agree a water quality protocol which shall be based upon the Water UK Water Quality Protocol (the Water Quality Protocol). The Water Quality Protocol may be varied from time to time by agreement in writing between the parties. Both parties agree to be bound by the additional provisions with regard to water quality as set out in the Water Quality Protocol, except where a particular standard is subject to an Authorised Departure or Undertaking. Compliance with the terms of the Authorised Departure or Undertaking will be deemed to have met the relevant quality standard imposed by the Water Supply (Water Quality) Regulations 2016.
- 4.8 Without prejudice to the requirements of the Water Quality Protocol NWL shall provide to The Company water quality and related details of water supplied under the Bulk Supply (including information held in respect of the matters referred to in Regulation 34 of the Water Regulations):
- 4.8.1 where required by The Company to comply with its regulatory obligations, including the Water Regulations and the Water Industry (Suppliers' Information) Direction 2017 (the "2017 Direction") (and in particular under paragraph 5 "annual provision of information" of the 2017 Direction);
  - 4.8.2 otherwise, not less than annually on later than the 31 January in every year;
  - 4.8.3 as soon as reasonably practicable on NWL becoming aware that any water supplied or to be supplied under the Bulk Supply does not or may not conform to the requirements of the Water Regulations; and

4.8.4 on the occurrence of any other event which The Company may be legally required to itself report under the 2017 Direction.

## **5. METERING**

5.1 Arrangements for the measurement of water supplied shall be as follows:

5.1.1 All water supplied by NWL under this Agreement shall pass through and be measured by a Meter or Meters as may be reasonably determined by NWL;

5.1.2 Such Meter or Meters and all pipes, valves and other apparatus connecting the said meters to the Point of Connection and any Alternate Point of Connection upstream thereof (together, the "Metering Equipment") shall be owned, installed, maintained, repaired and replaced as necessary by NWL when found to be defective or failing to register within the prescribed limits of error in the Measuring Equipment (Cold-Water Meters) Regulations 1988;

5.1.3 Subject to the provisions of this Clause the amount of water supplied by NWL shall be taken to be that shown on the register of such Meter or Meters;

5.1.4 If The Company is of the opinion that the amount shown on the register of such Meter or Meters is inaccurate it may give NWL notice requiring such Metering Equipment or any part thereof to be tested by NWL. The Company shall be entitled to be present at such test by an official or agent nominated in writing. The expenses of and incidental to any such test shall be met by NWL if the Metering Equipment is found not to be within the said prescribed limits of error and by The Company if the Metering Equipment is found to be within the said prescribed limits of error;

5.1.5 If the Metering Equipment fails or is found not to be within the said prescribed limits of error in accordance with a test carried out under Clause 5.1.4 the quantity of water supplied by NWL shall be taken to be that calculated on the basis of the average daily quantity supplied during the equivalent period of the previous calendar year (if any) or any other relevant data available or such other basis as NWL and The Company shall agree (both acting reasonably) or in default of such agreement as the Authority shall determine.

## **6. ALTERNATE CONNECTION POINT**

6.1 Details of any agreed Alternative Connection Point shall be described in the Site Schedule and their location shown in the Site Plan Schedule.

## **7. EMERGENCY SERVICES**

- 7.1 NWL shall also provide to The Company in respect of the Site the Emergency Services details of which are set out in the Emergency Schedule of this Agreement.

## **8. OBLIGATIONS OF THE COMPANY**

- 8.1 The Company shall enforce the Water Supply (Water Fittings) Regulations 1999 (the "1999 Regulations") as appropriate insofar as the Regulations apply in relation to the Point of Connection any Alternate Point of Connection and the premises within the Site.
- 8.2 The Company shall own and be responsible for installing and maintaining all Water Mains and associated apparatus downstream of the Connection Point which is used for supplying water to its customers in accordance with all appropriate Regulations.
- 8.3 The Company shall use reasonable endeavours to promptly rectify or procure the prompt rectification of leaks.
- 8.4 The Company shall apply its policy relating to the 1999 Regulations to ensure the distribution system on the Site does not give rise to any risk of contamination or backflow, in each case that could give rise to water quality failures in NWL's system. Where NWL considers that there is a real risk of such water quality failures by reason of The Company's distribution system it shall:
- 8.4.1 immediately inform The Company of this, including details of the perceived extent and nature of the risk, and the parties shall meet as soon as is reasonably practical to discuss measures to address and remedy such risk; and
- 8.4.2 where reasonably satisfied that such risk is posing a current and immediate threat to the compliance of potable water in NWL's system with the Water Regulations, have the right temporarily to suspend the Bulk Supply. Except in case of emergency, NWL shall give The Company prior written notice of any proposal to temporarily suspend the Bulk Supply under this Clause and a reasonable opportunity for The Company to remedy such risk prior to such suspension.
- 8.5 The Company shall procure that NWL shall be allowed, on reasonable notice, at all reasonable times and for all reasonable purposes, access to the Metering Equipment (including, without limitation, for the purpose of carrying out such maintenance, repair and replacement in accordance with Clause 5.1.2).
- 8.6 The Company undertakes to use the water supplied by NWL hereunder only for the purposes of fulfilling its statutory duty to maintain an efficient and economical system of water supply within the area for which it holds an appointment as a water undertaker under the Act for the Site on the date this

agreement commences and for no other purpose save where it is under a statutory duty or obligation to make water available in the NWL area of appointment as a water undertaker.

- 8.7 The Company shall take all steps necessary to impose upon its customers a temporary ban on use or other necessary drought-related restrictions on the use of water as may from time to time be applied to NWL's customers in the area surrounding The Company's area of appointment as a water undertaker whether under Section 76 of the Act or any other power now or in the future within the power of NWL and The Company to apply (save for ordinary and emergency drought orders which are dealt with below). NWL shall give such notice to The Company as is reasonable in the circumstances where it proposes to introduce such restrictions.
- 8.8 Where NWL is proposing to apply for an ordinary or emergency Drought Order under Part II Chapter III of the Water Resources Act 1991 ("Drought Order") that will restrict the use of water in the area surrounding The Company's area of appointment as a water undertaker it shall notify The Company of its intention. The Company shall take all necessary steps to apply for a Drought Order in equivalent or at its option more stringent terms to that applied for by NWL and impose restrictions on the use of water by its customers no less than those applied by NWL to its customers. NWL shall give such notice to The Company as is reasonable in the circumstances where it proposes to apply for a Drought Order and the terms sought.
- 8.9 The Company shall furnish NWL free of charge within a reasonable time of request its projected demands for water consumption on the Site to enable NWL to undertake asset management and water resource planning in accordance with NWL's regulatory obligations.
- 8.10 Where NWL is the sewerage undertaker for the Site, The Company shall provide meter reads for all premises within the Site as set out in the Site Schedule.

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

- 9.1 NWL shall give The Company 10 Working Days' notice of planned work or planned Necessary Works to NWL's Water Supply Network that may (in NWL's opinion as a Reasonable and Prudent Operator) materially affect the Water Supply Services.
- 9.2 For the avoidance of doubt, any interruption to the Water Supply Services expected to be greater than 4 hours long is deemed to materially affect the Water Supply Services within the meaning of Clause 9.1.
- 9.3 Except in the event of an Emergency, NWL shall give The Company 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 Water Supply Services within 12 hours unless the breakdown comprises a failure on strategic Water Mains, 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 The Company 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 The Company notified throughout the Emergency of the steps being taken to continue or, as the case may be, to restore the Water Supply 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 water supply services to 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. CHARGES & SETTLEMENTS**

- 10.1 The Company shall pay the Charges to NWL which shall be determined in accordance with the Charges Schedule and shall be deemed to be that shown by the readings taken from the Meter(s) fitted pursuant to Clause 5.1.
- 10.2 The Company shall remain liable for all Charges payable in respect of the Bulk Supply until this Agreement has expired or been validly terminated in respect of that Site in accordance with Clause 2.
- 10.3 Any water infrastructure charges for water supply services in respect of the Site payable in accordance with the Charges Schedule will be collected by The Company and paid by The Company to NWL.
- 10.4 Any income offset charges in respect of the Site due to The Company in accordance with the Charges Schedule will be paid by NWL.
- 10.5 Where The Company provides meter reads to NWL in accordance with Clause 8.10 NWL shall pay The Company in accordance with the Charges Schedule.
- 10.6 The Company 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.

- 10.7 If The Company does not pay such accounts as are submitted by the NWL within the time specified in Clause 10.6 The Company 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.
- 10.8 Payment by The Company shall be made without conditions attached and without deduction (except to the extent required by law), whether by way of set off or otherwise.
- 10.9 Following more than one occurrence of late-payment within any six month period NWL reserves the right to require The Company 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 The Company. On expiry of the 12 month period NWL will return the deposit, or such balance that remains to The Company 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.
- 10.10 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 Water Supply Services which shall be added accordingly.

## **11 DISPUTE RESOLUTION**

- 11.1 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 19 (Notices) the Parties shall, each acting as a Reasonable and Prudent Operator, attempt in good faith to negotiate a settlement to such dispute.
- 11.2 If the dispute notified in accordance with Clause 11.1 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.
- 11.3 If the dispute notified in accordance with Clause 11.1 remains unresolved for a further 15 Working Days following the period mentioned in Clause 11.2, either Party may notify the other that the provisions of this Clause 11.3 apply, whereupon the Parties shall comply with the following provisions:

- 11.3.1 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;
- 11.3.2 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);
- 11.3.3 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 16 (Amendment);
- 11.3.4 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;
- 11.3.5 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.
- 11.4 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.

## **12 LIABILITY**

- 12.1 Without prejudice to the generality of Clause 9, NWL shall not be liable for any interruption, suspension or reduction of the Bulk Supply Services where the same is in accordance with this Agreement or the result of an Emergency or Force Majeure Event.
- 12.2 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 10.
- 12.3 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.

- 12.4 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.
- 12.5 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.
- 12.6 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.
- 12.7 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.
- 12.8 NWL shall have no liability to The Company in respect of any events, conditions or circumstances including any payments The Company may be required to make under the Service Regulations to the extent that such events, conditions or circumstances could with reasonable expectation have been avoided or mitigated had an Additional Connection Point been in place.
- 12.9 Each of the sub-Clauses of this Clause 12 shall survive termination of this Agreement.

### **13 FORCE MAJEURE**

- 13.1 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:
  - 13.1.1 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
  - 13.1.2 Acts as a Reasonable and Prudent Operator to mitigate the effects of the Force Majeure Event.

- 13.2 Neither Party may rely on Clause 13.1 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.
- 13.3 The Party seeking the protection of Clause 13.1 remains liable to perform its obligations under this Agreement as soon as the Force Majeure Event has passed.

#### **14 CONFIDENTIALITY**

- 14.1 Save as provided in Clause 14.2, 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.
- 14.2 The obligation of confidentiality in Clause 14.1 shall not apply to any information that would otherwise be Confidential Information to the extent that:
- 14.2.1 It is disclosed through no fault of the disclosing Party;
  - 14.2.2 It is received by a Party from a third party entitled to disclose it;
  - 14.2.3 It is known to a Party before receipt from the other;
  - 14.2.4 It is developed by a Party independently from the other;
  - 14.2.5 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.
  - 14.2.6 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.
- 14.3 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 14 and that injunctive relief is an appropriate remedy.
- 14.4 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.

## **15 WAIVER**

- 15.1 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.
- 15.2 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.

## **16 AMENDMENT**

- 16.1 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.
- 16.2 If agreement is not reached between the Parties after 40 Working Days following service of a notice under Clause 16.1 then this Agreement shall continue on the same terms as before and either Party may refer the matter for resolution under Clause 11.

## **17 ASSIGNMENT**

- 17.1 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 17.2 below but not otherwise.
- 17.2 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 water 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.

## **18 ENTIRE AGREEMENT**

- 18.1 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.

## 19 NOTICES

19.1 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.

19.2 The contact details referred to in Clause 19.1 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
The Company For the attention of <The Company representative job title>	<The Company's register address>

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

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

19.3.2 On the next working day after dispatch, in the case of a letter sent by registered mail or recorded delivery; or

19.3.3 In the case of email, upon the receipt by the sender of an automated acknowledgement of receipt.

## 20 SEVERANCE

20.1 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.

## **21 INFORMATION**

21.1 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:

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

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

and the Parties' obligations under this Clause 21 shall continue after termination of this Agreement for a period of 6 years.

21.2 Neither Party shall be obliged to supply information under Clause 21.1 if to do so would contravene:

21.2.1 Relevant Legislation; or

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

## **22 RIGHTS OF THIRD PARTIES**

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

## **23 GOVERNING LAW AND JURISDICTION**

23.1 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.

## **24 ENTITLEMENTS UNDER THE ACT**

24.1 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.

24.2 NWL shall inform The Company (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 supply any water services via any Bulk Supply connected to The Company's Water Supply Network, and shall notify The Company as soon as reasonably practicable once such right has been exercised or such duty discharged (as the case may be).

## **25 OWNERSHIP OF THE NWL'S / THE COMPANY'S WATER SUPPLY NETWORK**

- 25.1 Nothing within this Agreement alters NWL's ownership of NWL's Water Supply Network or its responsibility to manage and operate NWL's Water Supply Network and this Agreement does not confer any rights of ownership, maintenance or other use of NWL's Water Supply Network on The Company or The Company's Customer(s).
- 25.2 For the avoidance of doubt, NWL's Water Supply Network shall vest in NWL and The Company shall not have any rights of use of NWL's Water Supply Network. The Company's Water Supply Network shall vest in The Company and NWL shall not have any rights of use of The Company's Water Supply Network.
- 25.3 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 Water Supply Network.
- 25.4 Nothing in this Agreement shall prevent or restrict NWL from altering amending expanding developing or re-developing NWL's Water Supply Network provided that the same does not affect the Water Supply Services under this Agreement.

## **26 ONWARD SALES AND FUTURE COMPETITION**

- 26.1 It is hereby declared that nothing within this agreement precludes NWL or The Company from offering a water supply on a retail basis to any owner or occupier of the Site either by means of a supply from The Company or NWL, or any third party, provided that such a supply is permitted by English law.

## **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 The Company:

Name:

Position:

Signature:

Date:

## **Appendix A – Site Schedule**

<b>Type of Supply</b>	A supply of water adequate for domestic purposes as defined by Section 218 of the Act.
<b>Point of Connection</b>	<p>There will be &lt;No.&gt; Point of Connection(s) that will be made at the approximate location of:</p> <p>POC1- &lt;Connection description, size &amp; material&gt;</p> <p>Eastings: &lt;grid ref&gt;</p> <p>Northings: &lt;grid ref&gt;</p> <p>POC2 - &lt;Connection description, size &amp; material&gt;</p> <p>Eastings: &lt;grid ref&gt;</p> <p>Northings: &lt;grid ref&gt;</p>
<b>Site Profile</b>	<p>The Site will consist of;</p> <p>POC 1 – &lt;No.&gt; premises</p> <p>&lt;No.&gt; domestic premises</p> <p>&lt;No.&gt; commercial premises</p> <p>&lt;No.&gt; industrial premises</p> <p>POC 2 – &lt;No.&gt; premises</p> <p>&lt;No.&gt; domestic premises</p> <p>&lt;No.&gt; commercial premises</p> <p>&lt;No.&gt; industrial premises</p> <p>The annual programme of premises connected for the construction of the Site is currently estimated at &lt;No.&gt; premises per annum. The Company will notify NWL of any changes to the programme.</p>
<b>Quantity</b>	Peak flow rate requested to be accommodated by The Company is;



POC 1 – <No.> litres per second

POC 2 – <No.> litres per second

The anticipated annual demand upon completion of the Site specified by The Company is;

POC 1 – <No.> cubic metres per annum

POC 2 – <No.> cubic metres per annum

<\* There are no foreseeable off-site reinforcement works required to serve the Site at this time / or / Specify any restrictions or reinforcements and timings here>

**Quality**

Water will be treated to comply at the Point of Connection and any Alternate Point of Connection with the Water Regulations, except where a particular standard is subject to an Authorised Departure or Undertaking.

**Pressure**

Complying with section 65 Water Industry Act 1991 at the Point of Connection and any Alternate Point of Connection.

NWL's network modelling undertaken on <insert date> based on The Company's flow rate requirements provided the following results;

POC 1 – A static pressure between < > Bar at < > metres A.O.D.

POC 2 – A static pressure between < > Bar at < > metres A.O.D.

The pressures stated are not guaranteed by NWL and may change.

**Alternate Connection Point**

\*The Company has advised NWL that it does not wish NWL to provide any Alternate Connection Point(s) / \*The Company has requested that NWL provide Alternate Connection Point(s) for the Site which will be made at the approximate location of;

Eastings: <grid ref>

Northings: <grid ref>

<Connection description>

<Any supply limitations>

(\*delete as appropriate)

**Meter Reading**

\*The Company shall provide NWL with its water meter readings from all household premises within the Site;

<Frequency>

<Format>

NWL shall pay The Company;

<Payment Terms (Amount per read, within x days of receipt of data, payment method, etc.)>

(\*delete above text if NWL is not the sewerage undertaker for the Site)

Please note that quarterly meter readings will be required for all non-household premises in accordance with Appendix B – Consumptions charges. These reads will be provided free of charge to NWL.

## **Appendix B – Charges Schedule**

<b>Wholesale Water Charges</b>	Charges will be in accordance with the appropriate section of the NWL published wholesale charges scheme as amended from time to time unless there are material reasons why this approach to charging should not apply.
<b>Connection Charges</b>	<Payment status for connections e.g. fully / partial / not paid / If paid detail charges if not quote value & expiry date>
<b>Consumption Charges</b>	<p>NWL shall read the Meter(s) on a monthly basis. NWL shall invoice The Company on a quarterly basis based upon these meter reads.</p> <p>The Company shall provide NWL with the latest water meter readings from all non-domestic premises within the Site on a quarterly basis at the same time as it notifies NWL of its connections, which shall be used to calculate the invoice.</p>
<b>Infrastructure Charges</b>	<p>A charge payable that equates to the water infrastructure charge that would be payable to NWL under s146 of the Act and Condition C of NWL's Instrument of appointment and the Water Charges Scheme for each premise connected to The Company's Water Mains if NWL was the appointed water undertaker for the Site in place of The Company.</p> <p>The Company shall keep records of the date upon which premises are first connected to its Water Mains and shall notify NWL on 1 April, 1 July, 1 October and 1 January in each Water Charges Year, or more frequently at The Company's discretion, of the premises and date of connection. NWL shall issue quarterly invoices for payment of charges due under this paragraph.</p>
<b>Income Offset Charges</b>	The total income offset amount is equivalent to the number of new build houses multiplied by the offset amount per house. For properties that are not houses we use the relevant multiplier calculation, which is in Appendix D of our Charging Arrangements document. The income offset amount that we will pay is dependent on the value of the water mains proposed for the Site and will be no more than our estimate of the cost of

providing the mains had they been requisitioned.

**\*[Insert one of the following standard paragraphs below]**

\*The information provided by The Company is sufficient for us to provide an indicative income offset, which we have a high level of confidence in. If the information that provided by The Company to NWL does not change, the income offset amount that The Company can expect to receive is <£>.

**<Information from Developer Service relevant to the income offset amount to be included here e.g. mains length, no. of properties & types, etc...>**

\*The information provided by The Company to NWL is not sufficient for NWL to provide an indication of income offset for the Site at this time.

NWL shall pay The Company the income offset quarterly upon receipt of notification of premise connection notification as specified under Infrastructure Charges in this Appendix.

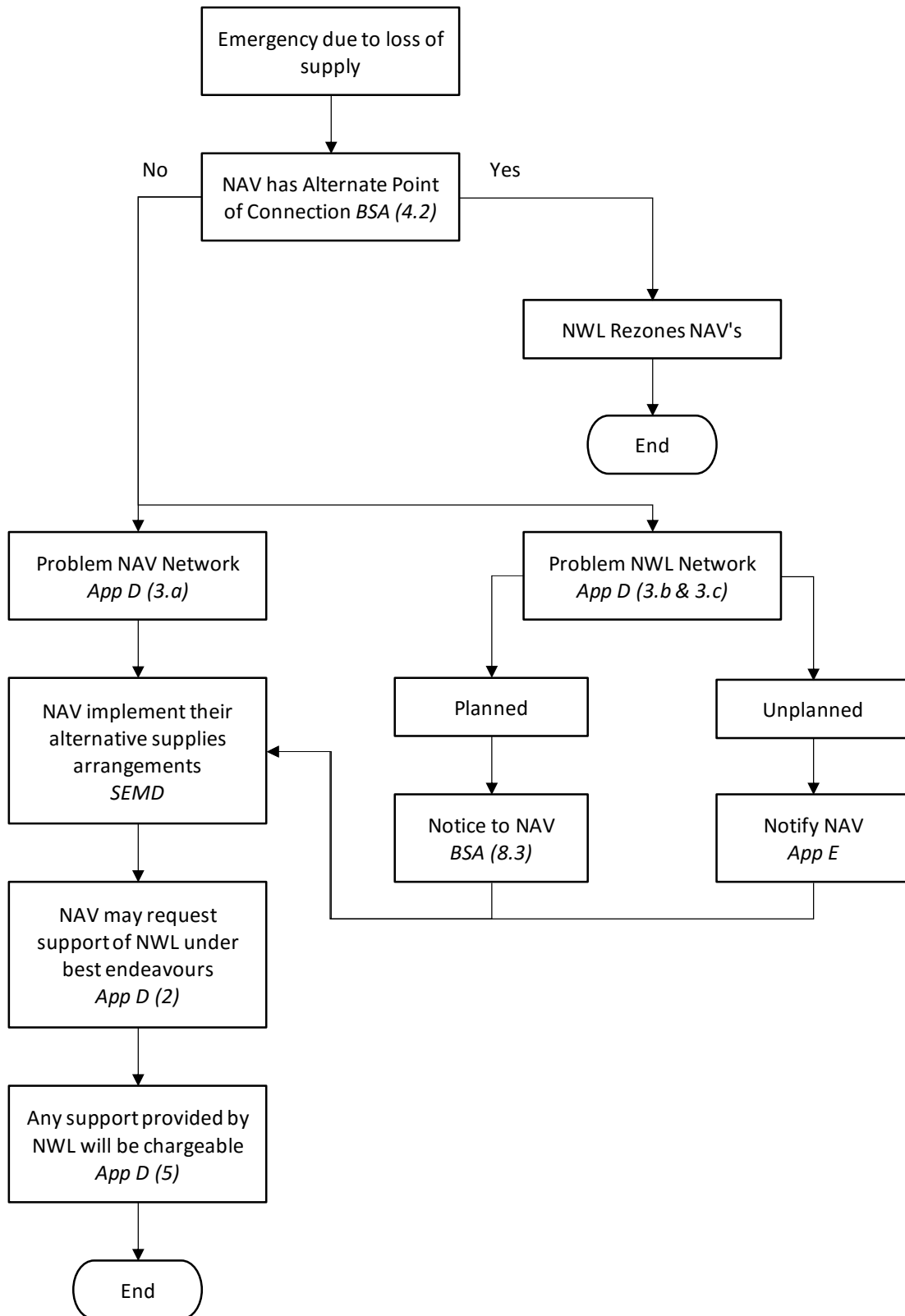
### **Appendix C – Site Plan Schedule**

Plan showing the area of the Site and approximate location of the Point of Connection(s) and any Alternate Point of Connection(s)

## **Appendix D – Emergency Services Schedule**

1. NWL shall subject to the terms of this Schedule make an emergency supply of water by bowser, temporary mains, bottled water or otherwise (“an alternative supply of water”) compatible with the obligation imposed on The Company under the Security and Emergency Measures Direction 1998 (SEMD) to the Site where either
  - a. the Bulk Supply or water in The Company’s mains are contaminated and unfit for public supply; or
  - b. planned works or damage to The Company’s mains or NWL’s water infrastructure prevents either the Bulk Supply being made or if available being distributed by The Company within the Site.
2. Any provision of alternative supplies provided by NWL is on a reasonable endeavours basis, NWL being under no obligation to provide if it does not have available resources to deploy. The Company shall have appropriate arrangements in place to discharge its obligation under SEMD without reliance upon NWL.
3. The Company may request alternative supply of water from NWL in circumstances where The Company’s ability to supply water to its customers is compromised by a problem either:
  - a. occurring on The Company’s side of the Point of Connection
  - b. due to the carrying out of planned works by NWL pursuant to Clause 4.4
  - c. due to any unplanned problem with the Bulk Supply on NWL’s side of the Point of Connection where it has not been possible to provide notice pursuant to Clause 4.4
4. Where The Company requests an alternative supply of water from NWL in these circumstances, and NWL can provide it, the alternative supply shall be provided by NWL. Separate to this schedule a ‘Site Specific Arrangement’ shall be agreed between The Company and NWL, that may be change from time to time, that will specify the location(s) within the Site that the alternative supplies shall be delivered for The Company to distribute to its customers.
5. The Company shall reimburse to NWL all costs and expenses in providing the alternative supply incurred by NWL including such sum as may be reasonable in respect of establishment charges and overheads.

## Provision of Alternative Supplies



## Appendix E - Contact Protocol Schedule

### Operational Incidents

1. Water supply problem reported by NWL
  - a. NWL contacts The Company Customer Contact Centre and advises The Company of the problem.
  - b. The Company contacts its customers.
2. Water supply problem reported by The Company
  - a. The Company contacts NWL's Operational Call Center on 0845 782 0999.
  - b. Identify yourselves as the Water Undertaker for the Site quoting your property reference number (PRN) that will be provided upon connection of the bulk supply.
  - c. NWL investigates and provides updates accordingly.
3. Contact Details

NWL

<b>Title of contact</b>	<b>Phone number</b>
In hours	ESW 0845 782 0999 NW 0345 717 1100
Out of hours	ESW 0845 782 0999 NW 0345 717 1100
Wholesale (Account Management)	0191 301 6066 (Monday – Friday 9:00 – 17:00 excluding bank holidays)

The Company

<b>Title of contact</b>	<b>Phone number</b>
In hours	Phone number
Out of hours	Phone number

It is the responsibility of both parties to ensure that the emergency contact detail are up to date and immediately notify the other party if there is any change.

This contact is protocol may be subject to review from time to time by both parties.