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**Dated:**

(1) Severn Trent Water Limited

(2) Xx

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**Bulk Supply Agreement –**

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DRAFT

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**THIS AGREEMENT** is made the            day of

2018

**BETWEEN:**

**(1)**            **Severn Trent Water Limited** whose registered office is Severn Trent Centre, 2 St John's Street, Coventry CV1 2LZ ("**STW**")

and

**(2)**            **Xx** whose registered office is at **XXXX** ("**xxx**")

**BACKGROUND:**

- (a)            STW is the water and sewerage undertaker for the area set out in its Instrument of Appointment which includes the Site;
- (b)            XXX is seeking to become the water undertaker for the Site pursuant to the Act;
- (c)            subject to the new appointments being granted to XXX, STW has agreed to provide a bulk supply of water to XXX on the terms of this Agreement;
- (d)            in order to facilitate this Agreement, XXX will enter into a separate agreement with STW for connection of XXX's water network to STW's water network. Schedule 3 to this Agreement contains details of the provisional points of connection and capacity information.

**NOW IT IS HEREBY AGREED** as follows:

**1.            DEFINITIONS**

1.1            In this Agreement:

<b>"Act"</b>	means the Water Industry Act 1991;
<b>"Affiliate"</b>	means, in relation to a company, any holding company or subsidiary of that company or any other subsidiary of any such holding company. The expressions "holding company" and "subsidiary" shall have the meanings given to them in the Companies Act 2006;
<b>"Appointment"</b>	means the appointment of XXX as the water undertaker in respect of the Site by the WSRA pursuant to section 7 of the Act and "Appointed" shall be construed accordingly;
<b>"Area of Appointment"</b>	means the area for which a party has been appointed as a water undertaker under its Instrument of Appointment;
<b>"Authorised Departure"</b>	has the meaning given by Regulation 22 of the Water Supply (Water Quality) Regulations 2016;
<b>"Charging Year"</b>	means the period between 1 April and 31 March in any year of this Agreement;
<b>"Closing Read"</b>	means the meter reading taken on the Reading Day at the end of which a Monthly Billing Period ends;
<b>"Commencement Date"</b>	means the date on which this Agreement is signed by the parties or such other date as is specified in this Agreement;
<b>"Competent Authority"</b>	means the WSRA or its successor in name or function or any local, national or supra-national agency, authority, department, inspectorate, minister, official court, tribunal or public or statutory person of the United Kingdom or the European Union which has jurisdiction over STW or XXX or the subject of this Agreement (including, without limitation, the Environment Agency, the Health and Safety Commission, the Health and Safety Executive, or the Drinking Water Inspectorate (or, in each case, the nearest equivalent successor body));

<b>"Confidential Information"</b>	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 to which the recipient may be exposed by reason of or in connection with this Agreement;
<b>"Customer"</b>	means a customer who receives a water supply;
<b>"Disputed Amount"</b>	has the meaning as set out in clause 11.5.1;
<b>"Due Date"</b>	means the date on which payment of a Monthly Bill must be made by XXX to STW (which date shall be 30 days from XXX's receipt of the Monthly Bill);
<b>"Emergency"</b>	includes, for the avoidance of doubt, a major failure of the integrity of the STW Network or the XXX Network, such as a burst or a process breakdown, and any major contamination or pollution event or potential danger to public health, safety or property for which either STW or XXX could be responsible under Relevant Legislation;
<b>"Exit Point"</b>	means the controlling stop valve being the point on the water supply network where XXX is permitted to draw off a supply of water to the Site;

<b>"Force Majeure"</b>	means any event (other than an Emergency) beyond the reasonable control of a party to this Agreement and not reasonably foreseeable nor avoidable by the exercise of reasonable diligence and foresight; including but not limited to an act of God, decree of government, drought, or regulation of government, fire, flood, explosion, war, rebellion, sabotage, terrorism, riot, civil commotion, industrial disputes or actions (not involving the employees of the party seeking to excuse non-performance on the basis of Force Majeure);
<b>"Infrastructure Charges"</b>	a charge for the first time connection to a water supply of premises which have never at any previous time been connected to a supply of water provided for domestic purposes including an indirect connection to STW's Water Network via XXX's Water Network;
<b>"Instrument of Appointment"</b>	means the Instrument of Appointment held by either STW or XXX as a statutory undertaker under the terms of the Act;
<b>"Maximum Annual Volume"</b>	means the volume measured in cubic metres per Charging Year specified in the Site Schedule;
<b>"Maximum Daily Volume"</b>	means the volume measured in cubic metres per day specified in the Site Schedule;
<b>"Maximum Flow Rate"</b>	means the maximum volume measured in litres per second specified in the Site Schedule;
<b>"Meter"</b>	means a Water Meter;
<b>"Metering Regulations"</b>	means the Measuring Instruments Regulations 2016 and if applicable the Water (Meters) Regulations 1988;
<b>"Month"</b>	means one (1) calendar month;
<b>"Monthly Bill"</b>	means the bill provided by STW to XXX in accordance with clause 11;
<b>"Monthly Billing Period"</b>	shall have the meaning given to it in clauses 9.25 and 11.8;
<b>"Necessary Works"</b>	has the same meaning as in section 93 of the Act;
<b>"Network"</b>	means a Water Network;
<b>"Opening Read"</b>	means the meter reading taken on the Reading Day at the end of which a Monthly Billing Period starts;

<b>“Physical Design Parameters”</b>	the Maximum Flow Rate, Maximum Annual Volume and Maximum Daily Volume;
<b>“Reading Day”</b>	means the day in each month on which STW takes a reading of a meter;
<b>“Reasonable and Prudent Operator” or “RPO”</b>	means a person seeking in good faith to perform its obligations in accordance with all Relevant Legislation, exercising that degree of care, prudence and foresight which would reasonably be expected from a skilled and experienced operator engaging in the same type of undertaking under similar circumstances;
<b>“Regulation 28 Notice”</b>	means a notice served under Regulation 28 Water Supply (Water Quality) Regulations 2016;
<b>“Relevant Legislation”</b>	<p>means:</p> <ul style="list-style-type: none"> <li>i. the primary legislation of the UK Parliament and the European Union, and any secondary legislation made thereunder;</li> <li>ii. any lawful order, decision, determination or direction of the WSRA or any other Competent Authority, which applies generally or applies to the parties in respect of their rights or obligations concerning this Agreement;</li> <li>iii. any relevant codes of practice or guidance issued by the WSRA, the Environment Agency, the Health and Safety Executive or the Drinking Water Inspectorate (or in each case the nearest equivalent successor body);</li> <li>iv. any and all relevant licences, consents, permissions or laws, including XXX’s Instrument of Appointment and STW’s Instrument of Appointment (as the case may be);</li> </ul>
<b>“Scheme of Charges”</b>	means the Scheme of Charges published by STW under the provisions of Section 143 of the Act detailing the charges for providing its services as amended from time to time;

<b>"SEMD"</b>	means The Security and Emergency Measures (Water and Sewerage Undertakers) Direction 1998 as varied from time to time by notification and guidance issued by the Secretary of State;
<b>"Services"</b>	means Water Services;
<b>"Site"</b>	means the Site shown on a Site Plan and (to the extent applicable) as described in the Site Schedule and known as Blythe Valley Park, Solihull;
<b>"Site Plan"</b>	means the plan attached to and forming part of the Site Schedule showing the extent of the Site and the agreed location of the Entry and Exit Points;
<b>"Site Schedule"</b>	means the Site Schedule(s) included at Schedule 1 to this Agreement;
<b>"special administration order"</b>	has the meaning given by section 24 of the Act;
<b>"the Supply"</b>	means the supply of water in bulk;
<b>"Taxes"</b>	means any UK tax, duty, Value Added Tax or impost;
<b>"Undertaking"</b>	means an undertaking made under section 19 of the Act;
<b>"Water Charges"</b>	means the charges payable by XXX to STW for the provision of Water Services in accordance with this Agreement;
<b>"Water Meter(s)"</b>	means the meter(s) measuring the water supplied to the Site at the Exit Point (including the box housing the meter(s) and any logger or out-reading apparatus);
<b>"Water Network"</b>	means the water distribution network owned or vested in and operated by either STW or XXX as the context requires for the conveyance of water through relevant pipes and accessories (as defined in section 219 of the Act);
<b>"Water Services"</b>	means the provision of a bulk supply of water;
<b>"Working Day"</b>	means any day when clearing banks in the City of London are open for general banking business;
<b>"WSRA"</b>	means the Water Services Regulation Authority or any successor or other government body which serves as the economic regulator for the water industry in England and Wales.



- 1.2 The index and headings to the clauses and Schedules of this Agreement shall not affect its construction.
- 1.3 Where the context so requires or admits, the masculine shall include the feminine and the neuter, and the singular shall include the plural and vice versa.
- 1.4 Any reference to "writing" includes reference to any communication effected by email.
- 1.5 Any reference in this Agreement to a clause or Schedule is a reference to a clause of or a Schedule to this Agreement and references to paragraphs are to paragraphs in the Schedule in which such paragraph appears.
- 1.6 The expression "person" means any individual, firm, company, incorporated association, partnership, government, state, or agency of state, or joint venture.
- 1.7 Any reference to a statute or statutory provision, Appointment or instrument of appointment shall be construed as a reference to the same as from time to time amended, consolidated, modified, extended, re-enacted or replaced provided that in the case of amendments, consolidation, modifications, extensions, re-enactments or replacements made after the date of this Agreement they have not effected a substantive change to that provision such as might be construed as frustrating the purposes of this Agreement.
- 1.8 The Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement will include the Schedules.

## 2. **CONDITIONS PRECEDENT**

2.1 This Agreement is conditional on the following conditions being satisfied –

2.1.1 the Appointment taking effect;

2.1.2 satisfactory payment for and completion of the requisite enabling, reinforcement and connection works to connect XXX's Water Network to STW's Water Network in order to provide the Services.

## 3. **BULK SUPPLY OF WATER**

3.1 STW will provide the Supply to XXX, in accordance with the terms of this Agreement and as described in the Site Schedule.

## 4. **OBLIGATIONS OF XXX**

4.1 XXX shall perform its obligations hereunder:-

4.1.1 in accordance with the lawful requirements of each relevant Competent Authority and Relevant Legislation; and

- 4.1.2 to the standard of a Reasonable and Prudent Operator.
- 4.2 XXX shall promptly advise STW of any changes to its Appointment and/or any change in status of XXX complying with Relevant Legislation in so far as such changes are material to the performance of XXX's obligations under this Agreement.
- 4.3 XXX shall use reasonable endeavours to ensure that its usage of water at an Exit Point does not exceed the Maximum Daily Volume in any Day, the Maximum Annual Volume in any Charging Year and the Maximum Flow Rate at any time during the term of this Agreement.
- 4.4 XXX shall maintain systems and controls necessary to ensure it has sufficient control over the Supply to enable it to comply with its obligations relating to Maximum Daily Volume, Maximum Annual Volume and Maximum Flow Rate. Subject to a separate agreement, STW will on request by XXX install a pulse output and splitter cable as necessary to permit XXX to fit their own logging device and / or to provide data from STW's logger (if fitted) in an electronic format.
- 4.5 If XXX uses the Supply at a rate in excess of the Maximum Daily Volume on 3 or more days within any period of 14 days then, notwithstanding any other rights accruing to STW under this Agreement, STW shall be entitled by written notice to require XXX to pay and, if required, XXX shall pay a sum equal to the reasonable costs of carrying out any reinforcements to STW's Water Network that may reasonably be required in order to provide the Supply at the volume actually used by XXX on the day which gave rise to STW's right to serve notice on XXX under this clause 4.5 and the 12 Months prior to that day.
- 4.6 If XXX uses the Supply at a rate in excess of the Maximum Flow Rate at any time on 3 or more days within any period of 14 days then, notwithstanding any other rights accruing to STW under this Agreement, STW shall be entitled by written notice to XXX to require XXX to pay and, if required, XXX shall pay a sum equal to the reasonable costs of carrying out any reinforcements to STW's Water Network that may reasonably be required in order to provide the Supply at the highest rate of flow of usage recorded during a period comprising the day which gave rise to STW's right to serve notice on XXX under this clause 4.6 and the 12 Months prior to that day, subject always to the proviso that STW will take into account in calculating the cost of such reinforcements the level of Infrastructure Charges paid to STW in relation to premises located within the Site.
- 4.7 For the purposes of clauses 4.5 and 4.6, a day shall not be counted as a day on which XXX's usage is in excess of the relevant limit if an event of Force Majeure or an Emergency caused the excess usage on that day.
- 4.8 If XXX uses the Supply at a rate in excess of the Maximum Annual Volume in any Charging Year then, notwithstanding any other rights accruing to STW under this Agreement, STW shall be entitled by written notice to XXX to require XXX to pay and, if required, XXX shall pay a sum equal to the reasonable costs of carrying out any reinforcements to STW's Water

Network that may reasonably be required in order to provide the Supply at the volume actually used by XXX in the relevant Charging Year.

- 4.9 XXX shall be entitled by notice to STW to require STW to supply and, if required, STW (at its cost) shall supply information which sets out the basis for the calculation of any sums demanded by STW under clauses 4.5, 4.6 or 4.8.
- 4.10 Any sums payable by XXX under clauses 4.5, 4.6 or 4.8 shall be added to the next Monthly Bill issued by STW to XXX under clause 11 after the date of the relevant notice given by STW under clauses 4.5, 4.6 or 4.8.
- 4.11 For the avoidance of doubt, STW shall be entitled to recover the costs of particular reinforcement works (including any inflation in such costs between the date on which they were incurred and the date on which they are claimed under this clause 4.11) from XXX only once even if the requirement for those specific reinforcement works, and the right of STW to recover the reasonable costs of the same from XXX, arose under more than one notice issued under clauses 4.5, 4.6 or 4.8.
- 4.12 If XXX uses the Supply at a rate in excess of the Maximum Daily Volume or the Maximum Flow Rate then it shall:
- 4.12.1 notify Severn Trent Water of the existence and cause of the excess as soon as reasonably practicable after the same have come to XXX's attention (acting as a Reasonable and Prudent Operator); and
  - 4.12.2 keep Severn Trent Water notified of the steps being taken to reduce its use to levels less than the Maximum Daily Volume or the Maximum Flow Rate (as the case may be).
- 4.13 XXX shall, at all times, comply with its obligations under the SEMD and shall promptly advise STW of any material adverse change in XXX's compliance with the same.
- 4.14 Without prejudice to the generality of clause 4.1, XXX shall act as a Reasonable and Prudent Operator with regard to ensuring that XXX's Water Network –
- 4.14.1 does not cause any back syphonage or contamination of the water in STW's Water Network;
  - 4.14.2 does not affect the flow pressure or hydraulic stability of water in STW's Water Network;
  - 4.14.3 does not affect the ability of STW to supply wholesome water from STW's Water Network.
- 4.15 XXX shall wherever appropriate implement the contact procedures set out in Schedule 2.

4.16 XXX shall provide STW within 5 days of the end of each Month with meter readings for water supplied at each Exit Point.

5. **OBLIGATIONS OF STW**

5.1 STW shall provide the Services in accordance with the terms of this Agreement.

5.2 STW shall perform its obligations hereunder:-

5.2.1 in accordance with the lawful requirements of each relevant Competent Authority and Relevant Legislation; and

5.2.2 to the standard of a Reasonable and Prudent Operator.

5.3 STW shall promptly advise XXX of any change to STW's Instrument of Appointment insofar as it affects STW's ability to fulfil its obligations under this Agreement and/or any change in status of STW complying with Relevant Legislation in so far as such change is material to the performance of STW's obligations under this Agreement.

5.4 Insofar as it materially affects STW's ability to perform its obligations hereunder, STW shall at all times comply with its obligations under the SEMD and shall promptly advise XXX of any material adverse change in STW's compliance with the same.

5.5 STW shall wherever appropriate implement the contact procedures set out in Schedule 2.

5.6 Without prejudice to the generality of clause 5.2 STW shall act as a Reasonable and Prudent Operator with regard to ensuring that the STW Water Network does not cause any contamination of the water in the XXX Water Network, does not affect the flow pressure or hydraulic stability of water in the XXX Water Network and does not affect the ability of XXX to supply wholesome water from the XXX Water Network.

5.7 STW shall promptly notify XXX where STW becomes aware of any breach of clause 5.6.

5.8 Subject to clause 12.4 below, STW shall use every reasonable endeavour to make the Supply to XXX at an Exit Point provided that no liability shall rest upon STW if, having acted as a Reasonable and Prudent Operator, it fails to do so, whether as the result of an Emergency, an event of Force Majeure or otherwise. In particular, STW shall have no obligation or liability in respect of or arising in consequence of the need to shut down or curtail, for whatever reasonable period, the provision of the 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) provided always that STW shall use reasonable endeavours to minimise the frequency and length of such periods so as to minimise inconvenience caused to Customers.

## 6. CURTAILMENT OR INTERRUPTION OF WATER SERVICES

6.1 Where there is an unplanned interruption to the provision of the Services, STW shall as soon as reasonably practicable advise XXX:

6.1.1 where the Services will be restricted; and

6.1.2 a telephone number via which XXX can obtain further information;

and provide XXX with information regarding the steps being taken to continue or, as the case may be, to recommence the provision of the Services.

6.2 In the event of an interruption to the provision of the Services coming to the attention of a party, that party shall:

6.2.1 notify the other party of the existence and, if known, the cause of the interruption, as soon as reasonably practicable after the same having come to its attention (acting as a Reasonable and Prudent Operator); and

6.2.2 provide the other party with information regarding the steps being taken to continue or, as the case may be, to recommence the provision of the Services.

6.3 The parties shall co-operate as Reasonable and Prudent Operators in seeking to ensure that any Emergency, event of Force Majeure or other similar incident does not affect the provision of Services to either party's Customers and shall co-operate in investigating the cause of such Emergency, event of Force Majeure or similar incident, sharing any lessons learned so as to seek to prevent a recurrence in so far as is permitted under applicable Relevant Legislation.

6.4 Subject to clauses 6.5 and 6.6, STW shall give XXX 10 Working Days' notice of any planned work or planned Necessary Works to the STW Network that may (in STW's opinion as a RPO) materially affect the provision of the Services.

6.5 Except in the event of an Emergency, STW shall give XXX at least 72 hours' notice of any planned work or planned Necessary Works that do not fall within clause 6.4 and which are likely to require XXX to make payments under the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008.

6.6 For the avoidance of doubt, any interruption to the Supply expected to be greater than 4 hours long is deemed to materially affect the Supply within the meaning of clause 6.4.

6.7 STW shall use all reasonable endeavours to remedy breakdowns affecting the Supply:

6.7.1 by the time and date specified in any notice validly issued by STW to XXX in accordance with regulation 17E(2) of the Customer Service Standards

Regulations (as if XXX was the "consumer" and the Exit Point was the "premises" for the purposes of section 60(3) of the Act);

6.7.2 within 48 hours after it first became aware that the Supply was interrupted or cut off, if the Supply was interrupted or cut off because of a leak or burst in a strategic main; or

6.7.3 within 12 hours after it first became aware that the Supply was interrupted or cut off in all other cases.

6.7.4 "Strategic main" in this clause shall have the meaning given to it in the Customer Service Standards Regulations.

6.8 Subject to complying with clause 6.4, STW may interrupt the provision of the Services without obligation or liability during planned work or Necessary Works, and without prior notice during the following events:

6.8.1 an Emergency;

6.8.2 a Force Majeure event; or

6.8.3 unplanned works where it is necessary as a RPO to interrupt or disconnect the provision of Services for operational reasons (which includes the circumstances described in clause 6.9).

6.9 Except as otherwise expressly provided in this Agreement, STW shall have no responsibility for the maintenance, repair, condition or provision 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) which is not part of its Water Network.

## 7. **WATER FLOW AND PRESSURE**

7.1 Subject to the exceptions set out elsewhere in this Agreement, STW shall use every reasonable endeavour to ensure that the pressure of the Supply at an Exit Point complies with section 65 of the Act.

7.2 STW shall use reasonable endeavours to maintain a water pressure at an Exit Point between the maximum and minimum water pressure set out in the Site Schedule; and

7.3 STW shall promptly notify XXX where STW becomes aware of any breach of clause 7.1 or clause 7.2 above.

7.4 A party shall immediately notify the other party of any material adverse changes in the flow rate or pressure of the water supplied to XXX from STW's Water Network of which the notifying party becomes aware. "Material" in this clause is that specified in the Site Schedule.

7.5 In this Agreement, for the avoidance of doubt, any reference to a reduction or interruption to the Supply shall include a reference to a reduction in pressure.

## 8. **WATER QUALITY**

8.1 Subject to the following provisions of this clause 8, STW shall ensure that the Supply, at the Exit Point, will meet the standards of wholesomeness specified in section 68 of the Act.

8.2 STW shall provide XXX with a certified copy of any Authorised Departure, Undertaking or Regulation 28 Notice in relation to the Supply.

8.3 STW may make a Supply of a different nature or composition, or with different characteristics from that previously supplied where -

8.3.1 STW is required to increase the fluoride content of the Supply pursuant to the Act; or

8.3.2 the difference results from the characteristics of the source or sources from which the Supply is taken or from the characteristics of STW's Water Network; and

8.3.2.1 the difference is beyond the reasonable control of STW acting as an RPO; or

8.3.2.2 if in the due discharge of its duty to supply water STW considers it necessary to do so, acting as an RPO.

8.4 A party shall immediately notify the other party, in accordance with the water quality protocols described in Schedule 4, of any breach or suspected breach of clause 8.1 of which the notifying party becomes aware.

8.5 It is specifically agreed between the parties that STW will have no liability or obligation under this Agreement for water quality downstream of an Exit Point, and section 68(3) of the Act shall not apply in respect of the quality of the Supply downstream of an Exit Point.

8.6 If either party suspects that the Supply is failing to meet or is likely to fail to meet the standards referred to in clause 8.1, then that party shall notify the other party immediately and share the findings of any investigation with the other party including any report submitted to the Chief Inspector of Drinking Water.

8.7 XXX shall enforce the Water Supply (Water Fittings) Regulations 1999, acting as an RPO, insofar as the Regulations apply in relation to premises at the Site.

8.8 XXX shall use reasonable endeavours to promptly rectify or procure the prompt rectification of leaks, both on XXX's Network and on service pipes within the Site.

## 9. **METERS**

- 9.1 STW shall at its expense provide and install at or near the Exit Points and thereafter operate, maintain and renew Water Meters.
- 9.2 XXX shall provide to STW free of charge such sites for the installation of Water Meters and associated facilities for their operation as STW may reasonably require.
- 9.3 XXX shall at its expense provide and maintain such protection for the Water Meters as STW may reasonably require.
- 9.4 STW may provide and install telemetry or other flow management devices at Exit Points as it, in its sole discretion, deems desirable. STW shall bear the costs of installing and operating the telemetry or other flow management devices. XXX will be provided with remote access to such telemetry systems.
- 9.5 XXX shall use its reasonable endeavours to ensure that no seal incorporated into a Water Meter shall be broken. In the event that any such seal is broken XXX shall promptly inform STW of the time and date on which the seal was broken (insofar as XXX is aware of such detail).
- 9.6 Water Meters are and remain the sole property of STW and XXX shall not, subject to clause 9.7 below, alter, adapt or tamper with a Water Meter without the express prior written permission of STW.
- 9.7 XXX shall not attach any flow logging device to a Water Meter without the prior written permission of STW, such permission not to be unreasonably withheld. XXX shall bear the costs of installing and operating any such flow logging device.
- 9.8 STW shall conduct and be responsible for all routine maintenance of Water Meters and shall maintain the Water Meters to the acceptable standard of an RPO. Where permission for STW to gain access to a party's equipment or a Site is required from a third party then XXX shall use reasonable endeavours to assist in the procurement of any required permission.
- 9.9 XXX shall notify STW promptly of XXX becoming aware of problems or potential problems, including a requirement for maintenance, with any Water Meter which may affect its accurate operation.
- 9.10 Within five (5) additional days of being notified under clause 9.9, STW shall perform an initial assessment of the Water Meter. Any necessary repairs or maintenance shall be conducted within a further ten (10) Working Days.
- 9.11 STW shall ensure that each Water Meter complies with Relevant Legislation and in particular the Metering Regulations.



- 9.12 STW may, in its sole discretion, inspect any Water Meter to confirm the accuracy of its measurement, provided that if access is required to be granted by XXX, STW shall provide reasonable notice to XXX prior to any proposed inspection.
- 9.13 XXX may ask for a Water Meter to be tested to confirm its operation within the prescribed limits of error as defined in the Metering Regulations.
- 9.14 Subject to clause 9.15, the register of any Water Meter shall be prima facie evidence of the volume of water supplied through that Water Meter in accordance with this Agreement and used to calculate the Water Charges and the Sewerage Charges.
- 9.15 Where a Water Meter is examined and found to be inaccurate to a degree exceeding the aforesaid prescribed limits of error then:-
- 9.15.1 the Water Meter shall be assumed to have registered inaccurately to the degree so found since the penultimate date on which (otherwise than in connection with the examination) the Water Meter was read except in a case where it is proved to have begun to register inaccurately as described on some other date; and
  - 9.15.2 an estimated read shall be made and used to calculate the relevant Water Charges and Sewerage Charges for the period since the date specified in sub-clause 9.15.1.
- 9.16 Where any Water Meter is removed for the purpose of being examined in accordance with this clause 9 the expenses incurred in removing, examining and replacing the Water Meter and fixing any substituted Water Meter shall, if the examination is made at the request of XXX and the Water Meter is found to register accurately or to register inaccurately to a degree not exceeding the limits of error prescribed by the Measuring Instruments Regulations 2016 (or, if applicable, the Water (Meters) Regulations 1988) be paid by XXX; otherwise such expenses shall be paid by STW.
- 9.17 The examination of any Water Meter under the provisions of this clause 9 shall be conducted by a suitably qualified person or organisation.
- 9.18 In respect of a Site, meter reads for all Water Meters detailed in the Site Schedule shall be taken on the same or nearest Working Day in each Month by STW or its nominated representative.
- 9.19 STW shall also record the following information relating to each Water Meter and shall promptly notify XXX if applicable:
- 9.19.1 whether the Water Meter is stopped;
  - 9.19.2 any damage to the Water Meter; and
  - 9.19.3 such other information as STW may from time to time reasonably specify.

- 9.20 Reading Days shall comprise a day in each Month, commencing with the Month following that in which this Agreement comes into effect in accordance with clause 14.1 and shall then comprise a day in each subsequent Month up to and including the Month in which the Supply is terminated or such other date as the parties may agree in writing.
- 9.21 Meter reads, the date of the Reading Day and other information recorded in accordance with clause 9.19 shall be communicated to XXX by email to be sent no later than five (5) Working Days following the relevant Reading Day.
- 9.22 Emails sent in accordance with clause 9.21 shall be completed in the format initially specified by STW or as subsequently amended by agreement between the parties.
- 9.23 Where some or all of the Meter reads are not made in accordance with clause 9.18 then STW may make estimated reads for any or all of such Water Meters in accordance with clause 9.24, and each day on which an estimated read is made shall constitute a Reading Day for the purposes of this Agreement. For the avoidance of doubt, STW shall notify XXX of any estimated reads in accordance with clause 9.21.
- 9.24 STW shall, acting as a Reasonable and Prudent Operator, make an estimated read for the relevant period in accordance with this clause 9.24 using the information available to it including (without limitation):
- 9.24.1 the average daily quantity of water supplied through the relevant Water Meter(s):
    - 9.24.1.1 during the same Month in the previous year;
    - 9.24.1.2 during the period from the most recent 1<sup>st</sup> April to the date of the most recent validated Meter read;
    - 9.24.1.3 during the period from the last 1<sup>st</sup> May or the last 1<sup>st</sup> October (whichever is the most recent) to the date of the most recent validated Meter read;
  - 9.24.2 Meter reads for the relevant Water Meter(s) made closest in time to the Reading Day in respect of which the estimated read is being made; and
  - 9.24.3 the increase in the number of occupied properties on the Site over the period since the most recent validated Meter read. XXX shall provide any information reasonably requested by STW to enable STW to determine this number.
- 9.25 Subject to clause 9.26 Monthly Billing Period means for any Month a period of Days commencing at the end of the Reading Day in such Month and ending at the end of the Reading Day in the following Month.
- 9.26 Subject to clause 9.27:

- 9.26.1 the first Monthly Billing Period shall be the period from the Commencement Date and ending at the end of the next following Reading Day; and
- 9.26.2 the final Monthly Billing Period shall be the period commencing at the end of the Reading Day immediately preceding the termination of this Agreement and ending at the end of the termination date.
- 9.27 Where there is no Reading Day between the Commencement Date and the termination date the Monthly Billing Period shall be the period commencing on the Commencement Date and ending at the end of the termination date.
- 9.28 The Opening Read for any Water Meter and for any Monthly Billing Period means the Meter reading taken on the Reading Day at the end of which the Monthly Billing Period starts (or, if applicable, the estimated read for such Reading Day).
- 9.29 The Closing Read for any Water Meter and for any Monthly Billing Period means the Meter reading taken on the Reading Day at the end of which the Monthly Billing Period ends (or, if applicable, the estimated read for such Reading Day) provided that the Closing Read for the final Monthly Billing Period shall be the Meter reading taken at the end of the day on which this Agreement terminates.

## 10. **CHARGES**

- 10.1 The Water Charges payable by XXX to STW are calculated on the volumes of water supplied to the Site, and are set out in STW's Wholesale Scheme of Charges for Charging Year 2018-2019, as described therein for supplies to new appointments and variations, or a replacement or equivalent charge in subsequent Charging Years. For the avoidance of doubt the Parties acknowledge that the Water Charges may need to change to reflect any Charging Rules published from time to time by the WSRA in relation to bulk supply agreements.
- 10.2 XXX shall pay Infrastructure Charges to STW based on STW's published Infrastructure Charges from time to time, but subject to any credit allowable under STW's Infrastructure Charge Discount Scheme in effect from time to time. XXX will notify STW at the end of each Month during which new connections have been made of the number of such new connections.
- 10.3 Invoices for the Water Charges and Infrastructure Charges shall be raised by STW for each Monthly Billing Period.
- 10.4 There shall be added to all Water Charges and Infrastructure Charges any Taxes which may apply thereto.

11. **PAYMENT**

- 11.1 Payments by XXX under this Agreement shall be made in Pounds Sterling (£) without conditions and without deductions, by direct bank transfer or equivalent instantaneous transfer of funds to a UK bank account nominated by STW from time to time.
- 11.2 Should the Due Date not be a Working Day then the Due Date for payment shall be the nearest prior Working Day.
- 11.3 Where any sum due in accordance with the provisions of this clause 11 is the subject of a bona fide dispute (and the dispute is notified to STW before the Due Date) the undisputed portion shall be promptly paid and after settlement of the dispute any amount agreed or determined to be payable shall be paid within ten (10) Working Days after such agreement or determination.
- 11.4 If a Monthly Bill is disputed by XXX under clause 11.3, XXX shall specify in writing the portion of the Monthly Bill in dispute and shall provide full details of the reason why it is disputed.
- 11.5 Interest on Disputed Amounts shall accrue at the Base Lending Rate of Lloyds Bank Plc (or its successor) in London for sterling applicable from time to time plus 2% compounded annually from a date forty-two (42) days after the Due Date for such payment until the date when the same is paid. For the avoidance of doubt:
- 11.5.1 any sum which has been notified to XXX as owing but which has not been paid after the relevant Due Date shall be a Disputed Amount; and
- 11.5.2 interest will not accrue on any Disputed Amount which, following the dispute resolution process detailed in clause 25, is determined not to be payable.
- 11.6 In the event that any payment due from XXX in accordance with this Agreement is not paid within forty-two (42) days of the Due Date and is not the subject of a bona fide dispute notified to STW in accordance with this Agreement then
- 11.6.1 interest shall accrue on the outstanding amount at the rate of 4% compounded annually from a date forty-two (42) days after the Due Date for such payment until the date when the same is paid, and/or
- 11.6.2 STW may give notice to terminate this Agreement in accordance with clause 14 below.
- 11.7 STW may require and XXX shall if requested provide copies of accurate billing records in relation to the water supplies to premises at the Site detailing the volumes supplied.

11.8 Monthly Billing Period means for any Month a period of days commencing at the end of the Reading Day in such Month and ending at the end of the Reading Day in the following Month.

11.8.1 The first Monthly Billing Period shall be the period from the Commencement Date and ending at the end of the next following Reading Day; and

11.8.2 the final Monthly Billing Period shall be the period commencing at the end of the Reading Day immediately preceding the termination of this Agreement and ending at such termination.

## 12. **SECURITY OF SUPPLY AND THE PROVISION OF INFORMATION**

12.1 XXX shall comply with all reasonable requests for information made by STW that are necessary for STW to fulfil its statutory duties or to comply with the lawful demand or requirement for such information made by the WSRA or any other Competent Authority.

12.2 STW shall comply with all reasonable requests for information made by XXX that are necessary for XXX to fulfil its statutory duties or to comply with the lawful demand or requirement for such information made by the WSRA or any other Competent Authority.

12.3 XXX acknowledges and agrees that, in the event of restrictions being enforced by STW (acting as an RPO) within its Area of Appointment, it shall use reasonable endeavours forthwith either to impose similar restrictions on its Customers or (as the case may be) to obtain a drought permit or drought order on like terms in respect of supplies to Customers within its Area of Appointment.

12.4 XXX acknowledges that where a drought order or similar permit is in force in respect of the adjacent STW area that STW acting as an RPO and on a non-discriminatory basis, and subject to XXX obtaining an appropriate permit or order under clause 12.3, shall be entitled to adjust the Supply accordingly.

12.5 In the event of a hosepipe ban under section 76 of the Act being imposed within an adjacent STW area XXX acknowledges and agrees that, subject to any contrary legislative duty, it shall forthwith enforce a hosepipe ban on its Customers within the whole or a relevant part of its Area of Appointment.

12.6 Each party shall publish or make available to the other party a copy of its drought plan and water resources management plan in relation to neighbouring areas. Without prejudice to the other provisions in this clause 12, the parties, in the event of any drought affecting either the STW Water Network or the XXX Water Network, shall co-operate as Reasonable and Prudent Operators to ensure that each party is able to follow the terms of its drought plan insofar as is reasonably practicable in the circumstances.

13. **NETWORK MAINTENANCE**

13.1 In the event that:

13.1.1 the Supply is unavailable, contaminated or otherwise unfit for human consumption at an Exit Point; or

13.1.2 Necessary Works, planned system maintenance or damage to STW's Water Network or to XXX's Water Network prevents the Supply being made to an Exit Point;

then STW shall use reasonable endeavours acting as a RPO to allow the Supply to recommence.

13.2 No less than every twelve (12) Months, the parties shall exchange annual maintenance programs to avoid, as much as is reasonably practicable, operational conflicts and disruption to the Services.

14. **TERM AND TERMINATION**

14.1 Subject to the provisions of clause 2, this Agreement shall commence on the Commencement Date and (subject to earlier termination pursuant to this clause 14) shall continue in force until the twenty-third (23<sup>rd</sup>) anniversary of the Commencement Date and thereafter shall continue unless and until terminated by one party giving to the other not less than two (2) years' prior written notice to that effect, such notice not to be served prior to the expiry of the said twenty-third (23<sup>rd</sup>) anniversary of the Commencement Date.

14.2 If a Site Schedule has not been executed by the parties prior to the second (2<sup>nd</sup>) anniversary of the Commencement Date then either party shall have the right to terminate this Agreement with immediate effect upon written notice to the other party.

14.3 STW may, without prejudice to any of its other rights arising hereunder, terminate this Agreement with immediate effect by notice to XXX if:

14.3.1 XXX ceases to be Appointed in respect of the Site or if XXX ceases to be the holder of its Appointment as a water undertaker;

14.3.2 XXX is in material breach of the terms or conditions of this Agreement and such breach (if capable of remedy) continues for thirty (30) days after notice in writing, specifying the breach and requiring the same to be remedied, has been given;

14.3.3 XXX fails to make payment of any sum due under this Agreement within forty-two (42) days of the Due Date and such payment is not the subject of a bona fide dispute in accordance with clause 25;

- 14.3.4 XXX relies on the existence of the circumstance of Force Majeure to excuse performance under this Agreement for a continuous or cumulative period of more than ninety (90) days;
- 14.3.5 subject to the restrictions imposed under Sections 23, 24, 25 and 26 of the Act, an order is made or a resolution is passed for the winding up of XXX other than a voluntary winding up for the purposes of a scheme of reconstruction or amalgamation the terms of which have previously been approved in writing by STW;
- 14.3.6 an administration order or a special administration order is made in respect of XXX or a petition for such an order is presented;
- 14.3.7 a receiver (which expression shall include an administrative receiver) is appointed in respect of XXX or all or any of its assets;
- 14.3.8 XXX is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
- 14.4 XXX may, without prejudice to any of its other rights arising hereunder, terminate this Agreement:
- 14.4.1 by not less than twenty-eight (28) days' notice to STW;
- 14.4.2 by notice with immediate effect if STW ceases to be the holder of its Appointment as a water undertaker; or
- 14.4.3 STW is in material breach of the terms or conditions hereof and such breach (if capable of remedy) continues for thirty (30) days after notice in writing, specifying the breach and requiring the same to be remedied, has been given.
- 14.5 Except where expressly stated to the contrary, the rights and obligations of the parties under this Agreement shall cease immediately upon its termination. However, termination shall not affect any rights, obligations or remedies which have accrued on or before the date of termination.

## 15. **CONSEQUENCES OF TERMINATION OR EXPIRY**

- 15.1 Upon termination of this Agreement:
- 15.1.1 XXX shall cease and (unless otherwise agreed by STW) shall procure that its Customers cease to take the Supply;
- 15.1.2 subject to the accrued rights and remedies specified in clause 14.5, each party shall settle all outstanding payments that are due and owing to the other party under this Agreement.

16. **LIABILITIES**

- 16.1 Neither party shall in any circumstances be liable to the other party in respect of any breach of this Agreement for any indirect or consequential loss, loss of profit, economic loss, loss of revenue, loss of use, loss of contract or loss of goodwill, and whether or not foreseeable at the Commencement Date.
- 16.2 Nothing in this Agreement shall limit or exclude either party's liability for death or personal injury caused by negligence or for fraudulent misrepresentation.
- 16.3 Nothing in this clause 16 shall prevent either party from or restrict it in enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.
- 16.4 Without prejudice to the provisions of Relevant Legislation, nothing in this Agreement shall be construed as imposing upon either party any obligation or duty to, or enforceable by, the other party's Customers, and neither party shall make any commitment to any Customer binding on or purporting to bind the other party.
- 16.5 The parties acknowledge that nothing in this Agreement shall require STW to provide the Services or procure reinforcement of the STW Water Network in excess of the Physical Design Parameters.
- 16.6 In addition to other remedies which may be available to STW, in the event of a breach of Clause 4 XXX agrees to reimburse STW for all reasonable direct loss or damage suffered by STW. Such loss or damage would include, without prejudice to the generality of the foregoing, the costs of:
- 16.6.1 cleaning, repair or replacement of damaged assets;
  - 16.6.2 increased costs of asset operation;
  - 16.6.3 additional labour;
  - 16.6.4 increased sludge disposal;
  - 16.6.5 environmental inspection and remediation (including Environment Agency costs);
  - 16.6.6 any fine levied by a Competent Authority; and
  - 16.6.7 any legal expenses.

For the avoidance of doubt, the parties agree that any loss or damage payable to STW under or pursuant to this clause will be additional to any cost to which STW would ordinarily have been put had the breach not occurred.



17. **CONFIDENTIALITY**

17.1 STW and XXX hereby agree and undertake to each other:

17.1.1 to use the other's Confidential Information solely in connection with this Agreement and for no other purpose and to keep the same confidential and not to disclose the whole or any part thereof to any third party except where such disclosure is necessary for the purposes of this Agreement or the other party consents to such disclosure in writing before the disclosure is made provided that neither party shall be prevented by this Agreement from disclosing the other's Confidential Information, on the same terms of confidentiality herein contained, to:

17.1.1.1 any of its professional advisers and consultants who it is consulting in relation to this Agreement;

17.1.1.2 any members of its staff who are involved in this Agreement;  
or

17.1.1.3 any contractors or other third parties who it is using for the purpose of this Agreement;

17.1.2 not to copy or otherwise re-produce any Confidential Information other than as required for the purpose of discharging its obligations under this Agreement;

17.1.3 to maintain managerial and operational systems which prevent unauthorised access to and use of Confidential Information;

17.1.4 not to incorporate Confidential Information into any information not belonging to the receiving party so as to prejudice its confidential nature in any way;

17.1.5 in the event that this Agreement expires or is terminated for any reason, to return all Confidential Information to the disclosing party forthwith together with all copies thereof in whatever form the same has been supplied or held;

17.1.6 to continue to observe the agreements and undertakings set out in this clause at all times hereafter unless and until any Confidential Information to which they apply enters the public domain other than in consequence of any breach of any such agreements or undertakings.

17.2 The obligation of confidentiality in clause 17.1 shall not apply to any information that would otherwise be Confidential Information to the extent that:

17.2.1 it is disclosed through no fault of the disclosing party;

- 17.2.2 it is received by a party from a third party entitled to disclose it;
- 17.2.3 it is known to a party before receipt from the other;
- 17.2.4 it is developed by a party independently from the other;
- 17.2.5 its disclosure is required by Relevant Legislation or is ordered by the WSRA, a court, tribunal or other Competent Authority or where such disclosure is necessary to give effect to clauses 20 or 25.
- 17.3 Where any disclosure is required under clause 17.2.5 then the parties shall use reasonable endeavours to ensure that Confidential Information is treated as such by other parties insofar as such treatment is possible.
- 17.4 Neither party shall, without the prior written consent of the other, use the name, any trade name or any registered trade mark of the other party in any advertising or communication, in any format, such consent not to be unreasonably withheld.
- 17.5 Neither party shall, without the prior written consent of the other, make any publicity releases or announcements regarding this Agreement, such consent not to be unreasonably withheld.
- 17.6 If either party becomes aware of any breach of clause 17.5 above, it shall forthwith notify the other in writing thereof, giving all available details and the party which has made the publicity release or announcement shall, at its own cost and at the other party's direction, take such steps as the other party may reasonably decide to minimise the loss which the other party may otherwise suffer as a result of such breach.
- 17.7 Nothing in this clause 17 shall constitute a representation, warranty or guarantee to the receiving party by the disclosing party with respect to the suitability of any Confidential Information or any part thereof for any purpose, provided always that any material errors or material omissions in the Confidential Information which are identified by the disclosing party shall be communicated to the receiving party by the disclosing party as soon as such errors or omissions are so identified.
- 17.8 Nothing in this clause 17 shall constitute a license to use any Confidential Information other than as specified in this clause.
- 17.9 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 17 and that injunctive relief is an appropriate remedy.

**18. INTELLECTUAL PROPERTY RIGHTS**

18.1 All intellectual property and data owned by or duly licensed to each party, or developed by either party during the term of this Agreement, shall remain vested in that party, and the other party shall acquire no proprietary rights in or licence to use such intellectual property or data without the express written agreement of the party in which it is vested.

18.2 Where pursuant to this Agreement XXX provides or arranges for the provision of data owned by XXX to STW:

18.2.1 such data (as provided to STW by XXX) shall remain the property of XXX; and

18.2.2 XXX hereby grants to STW a fully paid up, (subject to clause 18.3) non-transferable, non-exclusive licence (which may exclude the right to grant any sub-licences) in respect of such data and (to the extent permissible) all intellectual property rights therein to use such data for the duration of this Agreement for the sole purpose of providing the Services but for no other purpose.

18.3 For the avoidance of doubt, STW may transfer its rights and obligations under the licence specified in clause 18.2.2 to an Affiliate to the extent necessary to give effect to clause 18.1.

18.4 Where pursuant to this Agreement STW provides or arranges for the provision of data owned by STW to XXX:

18.4.1 such data (as provided to XXX by STW) shall remain the property of STW; and

18.4.2 STW hereby grants to XXX a fully paid up, (subject to clause 18.5) non-transferable, non-exclusive licence (which may exclude the right to grant any sub-licences) in respect of such data and (to the extent permissible) all intellectual property rights therein to use such data for the duration of this Agreement for the sole purpose of performing its obligations under this Agreement but for no other purpose.

18.5 For the avoidance of doubt, XXX may transfer its rights and obligations under the licence specified in clause 18.4.2 to an Affiliate to the extent necessary to give effect to clause 18.1.

19. **INSURANCE**

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

19.1.1 public liability insurance for a minimum amount of cover of ten million pounds (£10,000,000);

19.1.2 employer's liability insurance for a minimum amount of cover of five million pounds (£5,000,000).

19.2 Each party shall use reasonable endeavours to ensure that the terms of any policy procured pursuant to this clause 19 shall not limit the number of claims allowed during the relevant period of cover.

19.3 Upon the reasonable request of either party, the other party shall produce documentary evidence that the policy or policies referred to in clause 19.1 are in force.

19.4 If either party fails to comply with its obligations under clause 19.1, the other party shall be entitled (but not obliged) to procure equivalent insurance and to claim the cost of such insurance from the party at fault (including without limitation by deduction of such costs from any sums due to the party at fault).

20. **ENVIRONMENTAL INFORMATION REGULATIONS ("EIR")**

20.1 The parties recognise that they are or may be subject to legal duties, which may require the release of information under the EIR, and the parties may be under an obligation to provide information on request. Such information may include matters relating to or arising out of this Agreement.

20.2 The parties recognise that each request for information received by either of them must be considered individually.

20.3 Notwithstanding anything in this Agreement to the contrary including, but without limitation, the general obligation of confidentiality imposed on the parties pursuant to clause 18 above, in the event that either party ("the Relevant Party") receives a request for information under the EIR, the Relevant Party shall be entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the EIR provided always that where the information requested is information that has been given to the Relevant Party by the other party ("the Other Party") or which relates to the Other Party, the Relevant Party:

20.3.1 shall use reasonable endeavours to consult the Other Party as soon as reasonably practicable;

20.3.2 in relation to any information that the parties have agreed is commercially sensitive, shall seek to rely on the relevant EIR exemption and shall use reasonable endeavours to ensure that such commercially sensitive information remains withheld.

20.4 Should either party become specified and subject to the requirements of the Freedom of Information Act regarding disclosure, then references to EIR in this clause shall include references to Freedom of Information Act where appropriate.

21. **NOTICES, COMMUNICATION AND REVIEW**

21.1 Any notice to be given by either party under this Agreement shall, subject to clause 21.2, be sent by email or first class post to the addresses below:-

21.1.1 Nominated contact for STW:

[REDACTED]

Severn Trent Centre

2 St John's Street

Coventry

CV1 2LZ

email: [REDACTED]

NAVenquiries@severntrent.co.uk

21.1.2 Nominated contact for XXX:

Address:

email:

Tel:

21.2 A party may, in writing and acting reasonably, specify different contact details and representatives for the purposes of notices of different kinds or relating to different matters and shall ensure that all contact details are kept up to date.

21.3 Every notice or other communication to be given by one party to the other under this Agreement shall be in the English language.

21.4 Any notice given under this Agreement shall be deemed to have been received at the following times unless proved to the contrary:

- 21.4.1 on the next Working Day after dispatch, in the case of a letter sent by pre-paid first class post; or
- 21.4.2 immediately, in the case of an email provided that no automatic electronic notification is received by the sender within 24 hours after sending the email informing the sender that the email has not been delivered to the recipient (in which case the email will be deemed not to have been served).
- 21.5 The parties will meet annually to review the operational arrangements between the parties, to ensure that appropriate practices and protocols are in place to maintain an effective service delivery between the parties.

## 22. **ASSIGNMENT**

- 22.1 Subject to clause 22.2, either party shall have the right to assign any or all of its rights and obligations hereunder to an Affiliate provided that such assignment is made with the prior consent of the other party, such consent not to be unreasonably withheld or delayed, and provided further that such assignee is legally entitled to perform its services as contemplated by this Agreement pursuant to the Act or Relevant Legislation.
- 22.2 No assignment of a party's interest in this Agreement shall be made under clause 22.1 unless the assignor and the assignee execute a document whereby the assignee covenants with the assignor to be bound by this Agreement with effect from the date of the assignment.

## 23. **FORCE MAJEURE**

- 23.1 Neither party shall be held liable to the other where a party is unable to perform its obligations under this Agreement by reason of Force Majeure provided that the party claiming to be prevented or delayed in the performance of its obligations by reason of Force Majeure shall act as a Reasonable and Prudent Operator and use reasonable endeavours to bring the Force Majeure event to a close or to find a solution by which the obligations contained in this Agreement may be performed.
- 23.2 Subject to clause 23.3, the parties shall not be relieved by reason of Force Majeure from any obligation to indemnify or to make payment.
- 23.3 A party shall be entitled on the basis of Force Majeure to be relieved from any liability arising from a delay in performing an obligation to indemnify or to make payment where that delay is for a period of less than fifteen (15) Working Days.
- 23.4 A party claiming relief from its obligations under this Agreement as a result of Force Majeure shall:

- 23.4.1 as soon as reasonably practicable and in any event within ten (10) Working Days after any failure to perform any one or more of its obligations hereunder notify the other party of the nature of the Force Majeure; and
- 23.4.2 upon request provide within twenty (20) Working Days a report to the other party containing all relevant available information relating to the Force Majeure and details of the measures it is taking to overcome or circumvent such Force Majeure.
- 23.5 Without prejudice to the provisions of clause 23.1, if the Force Majeure continues for a period of six (6) Months then either party may give the other fourteen (14) days' written notice terminating this Agreement, and the provisions of clause 15 shall then apply.
- 23.6 Neither party may rely on this clause 23 where the Force Majeure has arisen either directly or indirectly because of that party's failure to act as a Reasonable and Prudent Operator.

## 24. **VARIATION**

- 24.1 Any variation of this Agreement shall be in writing signed by each of the parties.
- 24.2 Either party shall at any time be entitled to propose amendments to this Agreement by notice in writing to the other party. The parties shall negotiate in good faith the terms of any such variation.
- 24.3 If it becomes apparent that a variation or variations to this Agreement have become necessary by virtue of changes to Relevant Legislation, the parties shall negotiate in good faith with a view to agreeing such variation or variations.
- 24.4 If the parties cannot agree upon a proposed variation within a period of twenty-eight (28) days from the date the variation is first proposed, or any longer period that the parties shall agree, such disagreement (including any disagreement over any proposal by either party for a longer period than twenty-eight (28) days to agree a proposed variation) will be regarded as a dispute and settled under the provisions of clause 25 hereof.

## 25. **DISPUTE RESOLUTION**

- 25.1 All questions, disputes, or differences which may arise at any time between the parties in relation to this Agreement shall be referred in the first instance to a senior manager of each party who will attempt in good faith to resolve any issue arising out of this Agreement but failing resolution within fourteen (14) days either party may:
- 25.1.1 (if the dispute is within the jurisdiction of the WSRA) refer the dispute to the WSRA for determination;
- 25.1.2 (if the dispute is within the jurisdiction of the Secretary of State (the "SoS")) refer the dispute to the SoS for determination;

25.2 Failing resolution within 14 days of a referral under clause 25.1 above, either party may commence court proceedings or, if both parties agree in writing to do so, the parties may attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Either party may withdraw from mediation and/or commence court proceedings at any time.

25.3 Nothing in this clause 25 will prevent or delay either party from:

25.3.1 seeking orders for specific performance, interim or final injunctive relief;

25.3.2 exercising any rights it has to terminate this Agreement; or

25.3.3 commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.

## 26. **GENERAL**

26.1 This Agreement is without prejudice to any overriding rights and obligations of the parties conferred by or owed to any Competent Authority in relation to this Agreement. Exercise of or compliance with such rights or obligations shall not constitute a breach of this Agreement.

26.2 Nothing herein contained shall be construed as giving rise to the relationship of principal and agent.

26.3 The parties to this Agreement do not intend that any provision of this Agreement should be enforceable by any person by virtue of the Contracts (Rights of Third Parties) Act 1999.

26.4 Nothing in this Agreement and no action taken by the parties under this Agreement shall constitute a legal partnership, association, joint venture or other co-operative entity between the parties.

26.5 If any provisions (or part thereof) of this Agreement are held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remainder shall survive unaffected and shall remain in full force and effect.

26.6 The failure by either party to insist upon the strict performance of any provision, term or condition of this Agreement or to exercise any right or remedy consequent upon the breach thereof shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

26.7 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).



26.8 This Agreement will be construed in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.

**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 )

**Severn Trent Water Limited** )

for and on behalf of )

**Xx** )

DRAFT

**SCHEDULE 1**

**Site Schedule**

**Exit Point**

Maximum Flow Rate [            ]

Maximum Daily Volume [                            ]

Maximum Annual Volume [                            ]

Pressure minimum [     ]; maximum [     ]

Site Plan [                    ]

Grid reference [                    ]

Signed on behalf of STW

Signed on behalf of XXX

## **SCHEDULE 2**

### **Customer Contact Arrangements**

1. XXX shall be the principal contact for XXX Customers with respect to general enquiries and complaints.
2. XXX shall be solely responsible for all contact with XXX Customers with respect to billing and collection of debts owed by XXX Customers to XXX.
3. With the exception of complaints arising from equipment or other assets owned by STW or as detailed in paragraph 6 below, XXX shall be solely responsible for all contact and liaison with XXX Customers with respect to complaints made by XXX Customers in relation to the provision of Services to those Customers, billing and debt collection and operational issues. Where an XXX Customer's complaint arises from equipment or other assets owned by STW, XXX shall notify STW of the complaint and shall provide reasonable information and assistance requested by STW to enable STW to investigate and resolve the complaint.
4. Where XXX has requested STW to investigate a problem or potential problem on STW's Network, XXX shall be solely responsible for communicating the results and desired actions, if appropriate, with XXX Customers.
5. In the event of a Customer contacting STW or XXX (as the case may be) erroneously, STW or XXX (as the case may be) shall provide the Customer with the appropriate contact details for the other party.
6. In the event of an emergency or where there is a risk to the integrity of the provision of either Service, STW or XXX (as the case may be) shall contact the other party's Customers directly and notify the other party if such contact is made.

### **SCHEDULE 3**

#### **Connection**

Subject to formal application(s) and approval(s), the provisional connection details are as set out in the attached letter(s) from STW to XXX.

DRAFT

**SCHEDULE 4**

**Water Quality Protocols**

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