

SWW BULK DISCHARGE AGREEMENT

SPECIAL CONDITIONS (THIRD EDITION)

[DRAFTING NOTE: Items highlighted in Green will be provided by the NAV based on responses to the Bulk Discharge Agreement Questionnaire. Items highlighted in Blue will be provided by SWW following SWW's review of NAV's application. The Special Conditions added by SWW have been numbered as S clauses (S1 – S18). These are not numbered sequentially but instead the number relates to the WaterUK template General Condition that the Special Condition amends or affects]

[check section 5 re Nature of Effluent clause – is this needed?]

Definitions

<i>Appendix</i>	The appropriate appendix to this agreement which is attached to these Special Condition, namely: <ol style="list-style-type: none"> 1. Plan and Discharge Point; 2. Operational Contact Details.
<i>Charging Date</i>	The date on which the Meter is read or as otherwise agreed between the parties, (invoices to be sent out in the middle of the next month) to be notified from time to time by the <i>Water Company</i> .
<i>Development Limit</i>	[] household properties and [] non household properties.
<i>Discharge Point</i>	The discharge point marked "X" on the Plan being the point where the Water Company will accept effluent from the New Appointee under this Agreement. For a single point of connection] The discharge point marked "A" on the Plan being the point where the Water Company will accept effluent from the New Appointee under this Agreement. [For multiple points of connection] The discharge points marked "A", "B" and "C" [and so on] on the Plan being the points where the Water Company will accept effluent from the New Appointee under this Agreement.
<i>Maximum Rate of Discharge</i>	[] litres per second at peak demand litres per second at peak demand. [adapt where there are multiple points of connection, for example "...at the discharge point marked 'A' ... and ... at the discharge point marked 'B'"]
<i>Maximum Volume</i>	[number]m3 per day, subject to an annual maximum of [number]m3 per annum [adapt where there are multiple

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	<p>points of connection, for example "...at the discharge point marked 'A' ... and ... at the discharge point marked 'B'"]</p> <p>OR</p> <p>Not applicable unless or until a bulk discharge meter is fitted in accordance with Special Condition F1.</p> <p>[adapt where there are multiple points of connection, for example "...at the discharge point marked 'A' ... and ... at the discharge point marked 'B'"]</p>
<i>New Appointee</i>	[]
<i>Operational Contact Details</i>	Contact details of the parties as set out in Appendix 2.
<i>Plan</i>	The plan shown on Appendix 1.
<i>Site</i>	[] as shown edged red on the Plan.
<i>Water Company</i>	South West Water Limited with Company Number 02366665 and Registered address at Peninsula House, Rydon Land, Exeter EX1 7HR.

[SWW to confirm if any other of the Part II Optional Clauses are required.]

Application of General Conditions

This agreement incorporates Part I (Core Clauses) of the Water UK Bulk Discharge Agreement General Conditions (First Edition) with the amendments set out in special condition S below (if any).

It also incorporates the following clauses comprised within Part II (Optional Clauses) of the Water UK Bulk Discharge Agreement General Conditions (First Edition): C, E, F and G (with amendments as set out in these Special Conditions).

S: Special Conditions

The following Special Conditions apply to this agreement. For ease of reference, these are numbered in line with the underlying General Condition to which the Special Condition relates. Unless otherwise stated, a Special Condition relates to a clause in Part I of the General Conditions.

In accordance with General Condition Part I clause 1.5, in the case of any inconsistency between Part I of the General Conditions and the Special Conditions, the latter shall prevail in construing this agreement.

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S1: Special Conditions for General clause

S1.1 The following clauses are added at the end of clause 1.5:

- 1.6. At the date of this agreement, the *New Appointee* does not yet hold an *Appointment*.
- 1.7. The *New Appointee* shall notify the *Water Company* in writing when it has been granted its *Appointment*.
- 1.8. Prior to the grant of the *Appointment*:
 - 1.8.1. clauses 1, 2, 3 and 8 to 29 of General Conditions and clauses S1, S2, S3, S3A, S9 to S18 of the Special Conditions of this agreement shall come into effect and shall apply to the parties from the *Commencement Date*;
 - 1.8.2. subject to clause S1.9, clauses 4 to 7 of the General Conditions and clauses S4 to S8 of the Special Conditions of this agreement shall come into effect and shall apply to the parties from the date of the notice under clause S1.7; and,
 - 1.8.3. the *Water Company* shall provide all reasonable assistance to the *New Appointee*, where requested in writing, if the *New Appointee* needs information relating to the *Water Company's* Sewerage Network or the arrangements contemplated in this agreement to provide to the Authority as part of its application for its *Appointment*.
- 1.9. Prior to the grant of the *Appointment*, the *New Appointee* may by written notice request that the *Water Company* constructs any necessary Network Reinforcements in accordance with clause 3A.1. The *Water Company* acting reasonably, may accept the request by written notice in which case *New Appointee* shall indemnify the *Water Company* in respect of all reasonable costs, expenses and liabilities incurred by the *Water Company* in constructing the Network Reinforcements in accordance with clause 3A.1 whether or not *New Appointee* is granted an *Appointment*, provided that if *New Appointee* is not appointed and the *Water Company* is subsequently able to recover any such costs, expenses and liabilities from a third party then the *Water Company* shall repay to the *Appointee* such costs, expenses and liabilities from the third party when and to the extent that these are received by the *Water Company*.

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- 1.10 This Agreement shall terminate automatically in the event that *New Appointee* has not been granted an *Appointment* within 6 months of the *Commencement Date* or if the *New Appointee* serves written notice on the *Water Company* that it no longer intends to apply for an *Appointment*. The provisions of clause 14 shall apply to termination under this clause.

S2: Special Conditions for Acknowledgements clause

S2.1 The following clauses are added after clause 2.2:

2.3. The parties acknowledge that:

2.3.1. The *New Appointee* and the *Water Company* have duties under the *Relevant Legislation* in respect of *New Appointee’s Sewerage Network* and *Water Company’s Sewerage Network*, respectively; and,

2.3.2. the Connection and Discharge contemplated by this agreement, will create a physical and functional link from *New Appointee’s Sewerage Network* to *Water Company’s Sewerage Network*.

2.4. The *Water Company* and the *New Appointee* each commit to a general obligation to perform their respective obligations under this agreement and to operate their respective *Sewerage Networks* to the standard of a *Reasonable and Prudent Operator*.

S3: Special Conditions for Definitions and Interpretation clause

S3.1 The following terms in clause 3.1 are amended by this Special Condition as follows:

The terms “Assistance Services”, “Emergency Services”, “Reporting Date” and “Service Standards” are deleted.

The term “Charges” is amended in order to include the additional terms “Infrastructure Charge” and “Connection Charge” and to correct the cross-reference error:

<i>Charges</i>	any sum or charge by the <i>Water Company</i> to the <i>New Appointee</i> comprised within the NAV Charging Arrangements, the <i>Infrastructure Charge</i> and the <i>Connection Charge</i> or, in the event of a Material Change, such Charges as are re-negotiated or determined in accordance with clause 8.11 or 15 below.
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S3.2 The following additional terms shall have the meanings set out below:

<i>Appointment</i>	the licence and appointment of a sewerage undertaker by Ofwat to the Site pursuant to section 7 of the Act.
<i>Commencement Date</i>	the date of this Agreement.
<i>Connection Charge</i>	<p>The <i>Water Company's</i> charge for the Connection being either:</p> <ul style="list-style-type: none"> (a) the <i>Water Company's</i> charge for making the Connection if the Connection is to be made by the <i>Water Company</i>; or, (b) the <i>Water Company's</i> charge for checking the Connection if the Connection is to be made by the <i>New Appointee</i>; <p>and in either case as specified in the relevant document of the NAV Charging Arrangements which is in force at the point at which the NAV applies for the Connection or, to the extent that such charge is not so specified, then being such reasonable charge is as agreed in advance between the parties.</p>
<i>Consequential Loss</i>	any economic loss, loss of income, loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill and any indirect, special or consequential loss.
<i>Environment</i>	the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media but excluding the <i>Water Company's</i> Sewerage Network and the <i>New Appointee's</i> Sewerage Network.
<i>Indemnified Party</i>	has the meaning given in clause 9.5. as amended by Special Condition 9.

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<i>Indemnifying Party</i>	has the meaning given in clause 9.5 as amended by Special Condition 9.
<i>Infrastructure Charge</i>	a charge, in accordance with section 146(2) of the Act for the indirect connection to the Water Company's Sewerage Network (via the New Appointee's Sewerage Network) of premises for the drainage for domestic sewerage purposes of premises which have never at any previous time been connected to the Water Company's Sewerage Network, as specified in the relevant document of the NAV Charging Arrangements which is in force at the point at which the <i>New Appointee</i> applies for the Connection or, to the extent that such charge is not so specified, then being such reasonable charge is as agreed in advance between the parties.
<i>NAV Contact Protocol</i>	the document issued by the <i>Water Company</i> to the <i>New Appointee</i> from time to time setting out the operational arrangements for the parties to work together in relation to operational matters.
<i>Reasonable and Prudent Operator</i>	a person seeking in good faith to perform its contractual obligations in accordance with all <i>Relevant Legislation</i> , 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.
<i>Relevant Authority and Relevant Authorities</i>	the Authority, the Environment Agency, the Drinking Water Inspectorate, the Health and Safety Executive, or any other competent regulatory authority for the purposes of the Relevant Legislation.
<i>Relevant Legislation</i>	(a) all relevant licences, consents, permissions that are binding on a party (including a party's Instrument of Appointment); (b) the primary legislation of the UK Parliament and the European Union (to the extent applicable), and any secondary legislation made thereunder; and (c) any binding order, decision, determination, direction, policy or guidance of a <i>Relevant</i>

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	<i>Authority</i> which applies generally or specifically to the parties or to the subject matter of this agreement.
<i>Sewerage Network</i>	New Appointee's Sewerage Network or the Water Company's Sewerage Network, as the context requires, and " <i>Sewerage Networks</i> " shall mean both New Appointee's Sewerage Network and the Water Company's Sewerage Network.
<i>Sewerage Services</i>	the reception, treatment and disposal by the <i>Water Company</i> of the effluent.

S3.3 The following clauses are added after clause 3.8:

- 3.9. A reference to the Charging Rules, NAV Charging Arrangements, *NAV Contact Protocol* and other documents is a reference to that document as issued and published from time to time, unless otherwise stated.
- 3.10. Any reference to sewers includes "accessories" as defined in section 219 of the Act and any pumping stations required in connection with the Discharge.
- 3.11. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 3.12. Except where a notice is given under clause 7 or in accordance with the *NAV Contact Protocol*, any notice required under this agreement shall be sent and received in accordance with clause 18.

S3A: Special Conditions after clause 3

The following clause is added after clause 3 as clause 3A:

3A Off-Site Network Reinforcements and Connection to Discharge Point

- 3A.1. Subject to the *New Appointee* paying any *Connection Charge* in accordance with clause 3A.5, the *Water Company* undertakes to construct any Network Reinforcements in order that the *Water Company* can receive the Discharge at the Discharge Point.
- 3A.2. Following confirmation by the *Water Company* of completion of the Network Reinforcements, the *New Appointee* may serve written

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notice on the *Water Company* of its intention to make the Connection, in which case:

- 3A.2.1. The *Water Company* may within 5 Working Days notify the *New Appointee* of its intention to make the Connection itself; or
- 3A.2.2. The *Water Company* may within 5 Working Days notify the *New Appointee* that it refuses to permit the Connection if it appears to the *Water Company*, acting reasonably, that the mode of construction or condition of the drain or sewer to be connected does not satisfy the standards reasonably required by the *Water Company* or is such that the making of the Connection would be prejudicial to the *Water Company's* Sewerage Network. If the *Water Company* serves a notice under this clause 3A.2.2, the parties shall meet as soon as possible to resolve the issue and clause 22 shall apply to any dispute; or
- 3A.2.3. if the *Water Company* does not serve notice under sub-clauses 3A.2.1 or 3A.2.2 then the *New Appointee* shall serve a further notice giving the *Water Company* 5 Working Days' notice of the date when the Connection will be made by the *New Appointee* and afford the *Water Company* all reasonable facilities so as to allow the *Water Company* to inspect the making of the Connection.
- 3A.3. Subject to clauses 3A.1, 3A.2 and 3A.4 the *New Appointee* may make the Connection in accordance with the notice served under sub-clause 3A.2.3 and shall then be entitled to commence the Discharge subject to the terms of this agreement.
- 3A.4. Notwithstanding any other provision in this agreement, the *New Appointee* shall not (without the consent of the *Water Company*, which may be given or withheld at its absolute discretion) discharge effluent to the *Water Company's* Sewerage Network prior to the vesting in the *Water Company* of the Reinforcement Works.
- 3A.5. The *Water Company* shall submit an invoice for the applicable Charges for the Connection prior to starting the Reinforcement Works and such invoice will be payable by the *New Appointee* in accordance with clause 8.8 prior to the commencement of such Reinforcement Works.
- 3A.6. For the purposes of section 192(3A) of the Act, the *Water Company* consents to the construction by the *New Appointee* of a public sewer between the Site and the Discharge Point.
- 3A.7. The *New Appointee* shall ensure that no discharge is made into the *Water Company's* Sewerage Network during the construction of the *Site* and shall communicate this restriction to the *Site* developer.

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S4: Special Conditions for Management of Capacity

S4.6: The following clauses are added after clause 4.6 as a clause 4.7 and 4.8:

- 4.6 Where requested by the *Water Company* the parties shall hold an annual capacity meeting and the *New Appointee* shall provide discharge data for the Site during the previous year and such other data as the *Water Company* may reasonably request for the purpose of assessing the discharge at the Site and the impact on the *Water Company's* Sewerage Network.
- 4.7 The *New Appointee* and the *Water Company* acknowledge that the *Maximum Volume* and *Maximum Rate of Discharge* may be difficult to calculate accurately at the point of entering into this agreement due to limited information from the developer. The *Water Company* may, acting as a *Reasonable and Prudent Operator*, make changes to the *Maximum Volume* and *Maximum Rate of Discharge* as further information about the *Site* or usage at the *Site* becomes available or in line with advice from the Authority.

[S5: Special Conditions for Nature of Effluent clause

clause S5 is only needed where SWW has agreed to allow surface water and highways drainage.

S5.1. The wording in clauses 5.1.4 and 5.1.5 is deleted and replaced by the following clauses:

5.1.4. Not used;

5.1.5. Not used;

S5.2. The wording in clause 5.6 is deleted and replaced by the following clause:

5.6. Not used.]

S6: Special Conditions for Return to Sewer Assumption clause

S6.1 The wording in clause 6.1 is deleted and replaced by the following clause:

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6.1. The *Water Company* (after consultation with the *New Appointee*) may determine to calculate volumetric Charges using the Meter (where a Meter exists) or using the estimation and reconciliation process in clause 6.2, in either case with any applicable adjustments under clause 6.3.

S6.2 The wording in clause 6.2 is deleted and replaced by the following clause:

6.2. The estimation and reconciliation process shall operate as follows:

6.2.1. The *Water Company* and the *New Appointee* shall, prior to the *Charging Date* of each year, agree an estimate for the volume of Discharge for the Charging Period (1 April to 31 March) for the purposes of reporting to Ofwat and as a basis for invoicing volumetric Charges (in twelve equal instalments) for that Charging Period.

6.2.2. Following the end of that Charging Period, the *Water Company* shall, acting reasonably and in good faith and in consultation with the *New Appointee*, calculate a fair and equitable reconciliation of volumetric Charges based on aggregated actual meter readings and shall add or deduct any reconciliation amount against the next invoice.

6.2.3. The volume of Discharge to be used for calculating the volumetric Charge shall be taken as being 95% of the aggregate volume of potable water supplied to all the customers on the Site served by the Discharge Point, based on actual property level or bulk supply meters within the water network serving those premises served by New Appointee's Sewerage Network and subject to any adjustments under clause 6.3.

S6.3 In clause 6.3 the wording "in accordance with the method used under clause 6.2.1" is deleted.

S6.4 In clause 6.3.2. the word "allowance" is deleted and replaced by the word "adjustment".

S6.5 The full stop at the end of clause 6.3.2 is replaced with a semicolon and a new clause 6.3.3 is added after clause 6.3.2 as follows:

6.3.3. the *Water Company* shall apply any other relevant adjustments provided in its NAV Charging Arrangements, including but not limited to adjustments for SUDS, Surface Water, Highways Drainage or exceedances of the *Maximum Discharge Limit*.

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S7: Special Conditions for Planned and Un-planned Works, Emergencies and other incidents clause

S7.1 The wording in clauses 7.1. to 7.11. is deleted and replaced by the following clauses:

- 7.1. For the purposes of keeping each other informed about operational matters affecting the *Sewerage Networks* and the Discharge, the *Water Company* shall provide to the *New Appointee* a copy of the *NAV Contact Protocol* from time to time and the *New Appointee* shall provide to *Water Company*, and shall update as reasonably required by the *Water Company*, the contact information requested in the *NAV Contact Protocol*. The *Water Company* and the *New Appointee* shall use reasonable endeavours to comply with the requirements of the *NAV Contact Protocol*.
- 7.2. The *New Appointee* shall provide notice to the *Water Company* of planned maintenance work to the New Appointee's Sewerage Network which might materially affect either the nature, or the rate of flow, of the Discharge to the *Water Company's* Sewerage Network in accordance with *NAV Contact Protocol*. Any interruption to the reception, treatment or disposal of the effluent which is expected to take longer than 4 hours is deemed to have a material effect on the Discharge.
- 7.3. In the event of an Emergency or any Necessary Works affecting, or likely to affect, the ability of the *Water Company's* Sewerage Network to provide the *Sewerage Services*, the *New Appointee* shall, if so requested by the *Water Company*, take such steps as may be reasonably practicable to suspend, limit or restrict the Discharge so as to reduce the impact of, or mitigate against, the effects of the Necessary Works or Emergency.
- 7.4. Both the *Water Company* and the *New Appointee* shall co-operate in good faith to prevent an Emergency occurring and, in the event of an incident having occurred as a consequence of breach of the terms of this agreement or if a breach of the terms of this agreement was a contributory factor, shall co-operate in the investigation of the causes of that Emergency and shall share any lessons learned from the Emergency in order to prevent a recurrence.

S8: Special Conditions for Charging and Payment clause

S8.1 The wording in clause 8.1 is deleted and replaced with the following clause:

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8.1. The *New Appointee* shall inform the *Water Company* at the end of each month of the addresses of properties connected to the *New Appointee's* Sewerage Network during that month and, if relevant for the purposes of calculating the Relevant Multiplier, the number and type of water fittings, and the *Water Company* shall calculate the *Infrastructure Charge* consequent upon such connections and shall issue an invoice, or periodic invoices, to the *New Appointee*.

S8.2 The Wording in clause 8.2 is deleted and replaced with the following clause:

8.2. The *New Appointee* shall pay the *Water Company* the *Infrastructure Charge* on receipt of an invoice or invoices in accordance with clause 8.1 and shall pay monthly the volumetric Charges calculated in accordance with clause 6, such payments to be monthly in arrears where a Meter is used and monthly in advance where the estimation and reconciliation process in clause 6.2 is used.

[The volumetric Charges shall include an element for Surface Water and/or Highway Drainage in accordance with the NAV Charging Arrangements, where the Discharge includes Surface Water and Highway Drainage.]

S8.3 The wording in clause 8.3 is deleted and replaced with the following clause:

8.3. Not used.

S8.4 The wording in clause 8.4 is deleted and replaced with the following clause:

8.4. Where the *New Appointee* makes any payment to any of its customers under the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 then to the extent that the *New Appointee* was obliged to make such payments because of the *Water Company's* failure to provide the *Sewerage Services* then, subject to clause 9.4.3, the *Water Company* shall reimburse the *New Appointee* by way of a credit by deducting that credit from any positive volumetric Charges made within the same month. To the extent that any credits exceed the positive volumetric Charges made within the same month, the credits shall be carried forward for settlement in the next month or months as necessary.

S8.5 The wording in clause 8.5 is deleted and replaced with the following clause:

8.5. Not used.

S8.8 The wording in clause 8.8 is deleted and replaced with the following clause:

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8.8. The *New Appointee* shall pay the *Water Company* the Charges and other amounts due under this agreement by such method and by such date as NAV Charging Arrangements shall specify or, if not specified, by the method and date stated on the invoice.

S8.10 The wording in clause 8.10 is deleted and replaced with the following clause:

8.10. Not used.

S8.14 The reference at the end of clause 8.14 to clause G is deleted and replaced with a reference to clause E.

S8.15 The wording in clause 8.15 is deleted and replaced with the following clause:

8.15. Not used.

S8A: Special Conditions after clause 8

S8A.1 The following clause is added after clause 8 as clause 8A:

8A Contribution under the Water Industry (Financial Assistance) Act 2012 and section 154A of the Act

8A.1. Subject to clause 8A.4, if the customers of the *New Appointee* at the Site are eligible for a contribution under the Water Industry (Financial Assistance) Act 2012 and section 154A of the Act then the *Water Company* shall advise the *New Appointee* of the information that the *Water Company* requires to process the contribution, and the deadlines for providing the information, and *New Appointee* shall provide such information accordingly.

8A.2. Where the *New Appointee* has provided the required information under clause 8A.1 then the *Water Company* shall apply the contribution by way of a deduction to the charges.

8A.3. The *New Appointee* shall pass any contribution provided under clause 8A.2. to its customers as a deduction to their waste bills and shall explain in the waste bills the nature of the contribution to ensure its customers understand that the deduction is the result of the Water Industry (Financial Assistance) Act 2012 and section 154A of the Act.

8A.4. The *Water Company* may require the *New Appointee* to enter into a further agreement, or a variation to this agreement if, acting reasonably, it considers that this would assist the *Water Company* in administering

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contributions under the Water Industry (Financial Assistance) Act 2012 and section 154A of the Act.

8A.5. Nothing in this agreement gives rise to a right or entitlement for the New Appointee, or its customers, to benefit from the Water Industry (Financial Assistance) Act 2012 and section 154A of the Act or to any contribution or deduction from the Water Company and the New Appointee acknowledges that the Water Company will only process a contribution where the entitlement arises under the Water Industry (Financial Assistance) Act 2012 and section 154A of the Act.

S9: Special Conditions for Liability clause

S9.1 The wording in clauses 9.1 to 9.11 is deleted and replaced by the following clauses:

9.1. Nothing in this agreement shall:

9.1.1. limit or exclude a party's liability for:

9.1.1.1. death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;

9.1.1.2. fraud or fraudulent misrepresentation;

9.1.1.3. any other liability which cannot be limited or excluded by law;

9.1.2. affect any of the rights, powers, duties and obligations of either party under or by virtue of the Act or any *Relevant Legislation*.

9.2. Subject to clause 9.1, neither party shall be liable whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with this agreement for any *Consequential Loss*.

9.3. Subject to clause 9.1, each party's total liability under this agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with this agreement shall be limited to five-million pounds (£5,000,000) in any one calendar year for any incidents or series of incidents, whether related or unrelated in that calendar year.

9.4. Subject to clause 9.1:

9.4.1. the *Water Company* shall only be liable to *New Appointee* in relation to the provision of the *Sewerage Services* by the *Water Company* to the

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extent that such liability arises from a breach of an express term of this agreement and shall not be liable for breach of any duties or conditions implied by statute or otherwise implied;

9.4.2. the *Water Company* shall not be liable for any interruption, suspension or reduction in *Sewerage Services* where the interruption, suspension or reduction occurs in accordance with this agreement or as a result of an Emergency or a Force Majeure Event;

9.4.3. Neither party shall be liable to compensate the other party for any payments that may be required under the Sewerage Services (Customer Service Standards) Regulations 2008 where the breach of the Sewerage Services (Customer Service Standards) Regulations 2008 was caused by the other party failing to operate its *Sewerage Network* as a *Reasonable and Prudent Operator*.

9.5. Subject to clauses 9.2 and 9.3, a Party (the "**Indemnifying Party**") shall indemnify the other Party ("**Indemnified Party**") for material losses, in accordance with clauses 9.6, 9.9 and 9.10, incurred by the *Indemnified Party* resulting from:

9.5.1. back flow affecting the *Sewerage Network* of the *Indemnified Party*,

9.5.2. siphonage affecting the *Sewerage Network* of the *Indemnified Party*,

9.5.3. damage to third party property,

9.5.4. water quality failures affecting the *Indemnified Party* or a third party,

9.5.5. pollution or contamination of the *Environment* (in respect of which such material losses shall include costs of investigation, clean-up, remediation and fines, penalties or undertakings consequent upon enforcement by the *Relevant Authorities*),

9.5.6. illegal connections to the *Sewerage Network* of the *Indemnifying Party*,

9.5.7. connections or discharge of effluent by the *Indemnifying Party* to the *Sewerage Network* of the *Indemnified Party* without the consent of the *Indemnified Party*,

9.5.8. blockages to the *Sewerage Network* of the *Indemnified Party*,

9.5.9. damage to the *Sewerage Network* of the *Indemnified Party*,

arising from any failure on the part of the *Indemnifying Party* to act as a *Reasonable and Prudent Operator*.

- 9.6. Any loss incurred in relation to an individual incident or series of connected incidents exceeding £5,000 shall be considered to be a material loss within the meaning of Clause 9.5.
- 9.7. Either party may refer acts or omissions that constitute breaches of this agreement to the Authority or other *Relevant Authority* for the purpose of enforcement of the *Relevant Legislation* in respect of such acts or omissions or for determination by the Authority in accordance with section 110A of the Act.
- 9.8. Where either party becomes aware of any incident, claim, dispute or proceedings which it reasonably expects may lead to a liability to the other party under this agreement, it shall notify the other party as soon as reasonably practicable and shall provide such information as the other party may reasonably require and shall consult with the other party as to the conduct of such claim, dispute or proceedings.
- 9.9. Any liability under this agreement on the part of either party shall be reduced to the extent that the other party has itself (or through its employees, agents and contractors) caused or contributed to the same.
- 9.10. Each party shall use all reasonable endeavours to mitigate its losses.
- 9.11. Save as otherwise expressly provided in this agreement, this clause 9 shall override any other provision in this agreement.
- 9.12. Each party hereby acknowledges and agrees that the provisions of this clause 9 are fair and reasonable having regard to the circumstances as at the date of this agreement.
- 9.13. This clause 9 shall survive termination of this agreement.

S10: Special Conditions for Force Majeure clause

S10.1. The wording in clause 10 is deleted and replaced by the following clauses:

- 10.1. Subject to clause 10.4 and provided it has complied with clause 10.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event, the party affected shall not be in breach of this agreement or otherwise liable for any such failure or delay and the time for performance shall be extended accordingly.
- 10.2. Subject to clause 10.4, the corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the party affected by the Force Majeure Event.

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10.3. The Party affected shall:

10.3.1. as soon as reasonably practicable notify the other party in writing of the Force Majeure Event, its likely duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations; and,

10.3.2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

10.4. Clauses 10.1 and 10.2 shall not apply to any obligation to pay under this agreement and such obligations shall continue in force during any Force Majeure Event.

S12: Special Conditions for Provision of Information clause

S12.1. The right to request and obligation to provide data or information in clause 12 shall not apply to the following data or information:

S12.1.1. information or data that is protected by legal privilege;

S12.1.2. information or data that the party which receives the request would not disclose under the Environment Information Regulations 2004, for example because the information or data is commercially sensitive;

S12.1.3. information or data that is not reasonably related to this agreement;

S12.1.4. information or data in relation to meter readings of individual premises used to calculate charges for water supplied to those premises;

provided that the providing party may nevertheless choose to supply the data or information to the requesting party subject to such additional requirements as that party may specify.

S12.2 A new clause 12.5 is added after clause 12.4:

12.5. Where requested by the *New Appointee*, the *Water Company* shall separately provide meter reading services under the terms of the *Water Company's* meter reading agreement in accordance with section 205 of the Act to enable the *New Appointee* to invoice its customers on the Site for the provision of Sewerage Services based on the *Water Company's* meter readings.

S14: Special Conditions for Term clause

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S14.1 The following wording is added at the end of clause 14.4.1. before the semicolon:

“and the *New Appointee* hereby grants to the *Water Company* a licence for the *Water Company* and its employees, contractors and agents to access the New Appointee’s Sewerage Network to carry out such steps”

S14.2. The wording at clause 14.2.2. is deleted and replaced by the following wording:

14.2.2. Not used;

S15: Special Conditions for Change Management clause

S15.1. The first word of clause 15.1 is deleted and replaced with the following wording:

“Subject always to clause 15.10, where”

S15.2. A new clause 15.10. is added after clause 15.9:

15.10. Without prejudice to any other provisions of this agreement, where the *Water Company* considers, acting in good faith, that urgent changes to this agreement are necessary to maintain *Water Company’s* compliance with the *Relevant Legislation* because of:

15.10.1. any changes to the *Relevant Legislation*;

15.10.2. any variation or modification of the environmental permit or discharge consent granted to it by a *Relevant Authority*;

15.10.3. any changes to the *Water Company’s* policies in respect of Biosolids or other waste from the *Water Company’s* Sewerage Network;

15.10.4. any review by the *Water Company* or a *Relevant Authority* of the *Water Company’s* Sewerage Network or the discharge or disposal of biosolids or other waste from the *Water Company’s* Sewerage Network;

then the *Water Company* shall notify the *New Appointee* in writing of the necessary urgent changes provided that such changes shall not alter the substantive purpose and commercial arrangements set out in this agreement. The urgent necessary changes shall take effect as a binding variation to this agreement 14 Working Days after receipt of the notice. Any dispute in relation to a variation

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under this clause 15.10 shall be resolved under the provisions of clause 22 and such variation shall remain in force until the dispute is settled or determined, as the case may be.

S18: Special Conditions for Notices clause

S18.1. Clause 18 shall not apply to or otherwise affect any communications or notices which are provided for in the *NAV Contact Protocol*.

S18.2. Notices shall not be sent by fax.

SE: Special Conditions for Security Clause

SE.1. The first word of clause E1 is deleted and replaced with the following wording:

“Where requested by the Water Company, the”

SF: Special Conditions for Discharge Meter Clause

SF1. The wording in clause F1 is deleted and replaced with the following wording:

“F1. At any time on giving reasonable notice, the Water Company may at its own cost install a Meter vested in it and capable of accurately measuring (within the range deemed acceptable by MCerts) both the volume and the rate of flow of the Discharge is fitted at such Discharge Point.”

SF5. The wording in clause F5 is deleted and replaced with the following wording:

“F5. Such Meter shall be used by the *Water Company* for monitoring the *Maximum Volume, the Maximum Rate of Discharge.*”

SG: Special Conditions for Logger Data Sharing Clause

SG.1. The wording at clause G1 is deleted and replaced with the following:

Where a logger forms part of the Meter, the *Water Company* will provide to the *New Appointee* data from the logger forming part of the Meter in such form, on such terms and at such times as may be from time to time be agreed between them.

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Signed by:

South West Water Limited

Signature:

Name: Dr Lisa Gahan

Position: Regulatory Director

Date:

[insert name of the NAV]

Signature:

Name:

Position:

Date:

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APPENDIX 1

Plan showing *Site* and Discharge Point

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APPENDIX 2

Operational Contact Details

Day to day contact and contract management (including contact under the NAV Contact Protocol, unless otherwise provided) between the Parties shall be as set out below. Details may be updated or amended from time to time and should be notified to the other party as reasonable.

Company	Time	Contact Name/Team	Telephone	Email
Water Company	Office Hours (09:00 - 17:00) Out of Hours (17:00 - 09:00)	NAV Wholesale Support Team	0344 248 0575	nav@southwestwater.co.uk
Company	Office Hours (09:00 - 17:00) Out of Hours (17:00 - 09:00)	Water Operations Out Of Hours	 [insert details]	 [insert details]

Upon calling the Water Company's call centre, the Company's water operations centre should identify themselves as a NAV and to quote the Premise ID for the relevant Site.

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