**DATED 2016**

**(1) XXX Water Limited**

**- and -**

**(2) NORTHUMBRIAN WATER LIMITED**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**BULK SUPPLY AGREEMENT**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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**T H I S A G R E E M E N T** is made the [ ] day of [ ]

Two thousand and sixteen

**BETWEEN:**

**(1) XXX** whose registered office is at xxx ("xxx"); and

**(2) NORTHUMBRIAN WATER LIMITED** whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ ("NWL")

**W H E R E A S :**

A NWL is appointed as a water undertaker under what is now Section 6 of the Water Industry Act 1991

B XXX Water has applied pursuant to section 7 of the Act to be the inset appointee for the Premises that are within the area of appointment of NWL as a water undertaker but which is not currently provided with water supply services by NWL

C XXX Water and NWL have agreed the terms and conditions as hereinafter set out for a Bulk Supply of water and provision of other services

D XXX Water is in the process of applying to the Authority to be the water undertaker in respect of the Premises.

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

**1 DEFINITIONS**

1.1 In this Agreement:

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

**“Authority”** means the Water Services Regulation Authority appointed under the provisions of the Act

**“Best Industry Practice”** means the best and most up to date technical specification within the water industry for the design, laying and construction of water mains and associated infrastructure and complying with the Code of Practice for the Self-Laying of Water Mains and Services 1st Edition published by WRc plc for UKWIR Limited and dated April 2004 and any subsequent revision

**“Bulk Supply”** means the bulk supply of water by NWL to XXX Water which shall consist of a supply of water for domestic purposes as defined by Section 218 of the Act

**“Business Day”** means a day (other than a Saturday or Sunday) on which the banks are ordinarily open for business in the City of London

**“Charges”** means the charges payable by XXX Water to NWL for the Bulk Supply and in accordance with (i) Clause 6 and (ii) Schedule 2 of this Agreement

**“Charging Year”** means the period between 1 April in one year and 31 March in the following year for the duration of this Agreement

**“Enhanced Service Standard”** means any customer service standard generally made available to its customers by NWL that exceeds the requirements of the Act or the Service Regulations

**“Force Majeure”** means events or circumstances beyond the control of a party, including but not limited to acts of God, acts or regulations of any governmental or supra-national authority, war or national emergency, accident, fire, riot, strikes, lock-outs, industrial disputes, epidemics, drought, burst or broken water main which affects NWL’s ability to provide the Bulk Supply to the extent that such event or circumstance could not have been prevented by Good Industrial Practice

**“Good Industrial Practice”** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances

**“Meter”** means the water meter, chamber and associated instrumentation supplied by NWL through which the Bulk Supply shall pass, the approximate position of which is shown on the Plan and Meters shall be construed accordingly

**“Point of Supply”** means the point of supply as defined in Clause 4 of this Agreement

**“Plan”** means the Plan appearing in Schedule 3

**“Premises”** means the premises at XXX as shown edged red on the Plan

**“Service Regulations”** means the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 as amended

**“Water Charges Scheme”** means the Water Charges Scheme made by NWL and approved by the Authority under the provisions of the Act which is in force at the time of supply of any water supplied under this Agreement to which the Charges relate

**“Water Regulations”**  means The Water Supply (Water Quality) Regulations 2000 as amended

1.2 In this Agreement:

1.2.1 unless the context otherwise requires, reference to the singular shall be deemed to include the plural and vice versa;

* + 1. reference to a statute or statutory provision includes a reference to any modification or re-enactment (with or without modification) for the time being in force; and
    2. headings are for convenience only and shall not affect the interpretation of this Agreement.

**2 DURATION**

2.1 This Agreement shall commence on the date XXX Water is appointed as a water undertaker for the premises and shall continue thereafter until terminated in accordance with Clause 9 hereof.

**3 SUPPLY OF WATER AND QUANTITY**

3.1 NWL shall:

3.3.1 subject to the terms of this agreement make available to XXX Water and XXX Water agrees to take at the Point of Supply the Bulk Supply as set out in Schedule 1 of this Agreement; and

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

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

3.2.2 Such Meter or Meters and all pipes, valves and other apparatus connecting the said meters to the Point of Supply shall be owned, installed, maintained, repaired and replaced as necessary by NWL when found to be defective or failing to register within the prescribed limits of error in the Measuring Equipment (Cold-Water Meters) Regulations 1988.

3.2.3 Subject to the provisions of this clause the amount of water supplied by NWL shall be taken to be that shown on the register of such Meter or Meters.

3.2.4 If XXX Water is of the opinion that the amount shown on the register of such Meter or Meters is inaccurate it may give NWL notice requiring such equipment or any part thereof to be tested by NWL. XXX Water shall be entitled to be present at such test by an official or agent nominated in writing.

The expenses of and incidental to any such test shall be met by NWL if the equipment is found not to be within the said prescribed limits of error and by XXX Water if the equipment is found to be within the said prescribed limits of error.

3.2.5 If the equipment fails or is found not to be within the said prescribed limits of error in accordance with a test carried out under Clause 3.2.4 the quantity of water supplied by NWL shall be taken to be that calculated on the basis of the average daily quantity supplied during the equivalent period of the previous calendar year (if any) or any other relevant data available or such other basis as NWL and XXX Water shall agree or in default of such agreement as the Authority shall determine.

3.3 Both parties agree to be bound by the additional provisions with regard to water quality as set out in Schedule 6, or such modified version of such provisions as may be agreed in writing by the Parties.

**4 POINT OF SUPPLY**

* 1. The indicative Point of Supply and location of the Meter for the Bulk Supply is shown on the Plan.

The first 5 metres of the new water mains laid by XXX Water from the Point of Connection to NWL’s existing water mains shall be deemed to have been laid by and vested in NWL.

**5 EMERGENCY SERVICES**

5.1 NWL shall also provide to XXX Water in respect of the Premises the Emergency Services details of which are set out in Schedule 4 of this Agreement.

**6 CONSIDERATION AND PAYMENT**

6.1 XXX Water shall pay the Charges to NWL.

6.2 NWL will invoice XXX Water for the Charges on a monthly basis and six monthly in respect of the infrastructure charges referred to in Schedule 2. XXX Water shall make payment to NWL within 21 days of receipt of an invoice from NWL. Where such invoices are made on an estimated basis any subsequent payment based on actual supply volumes shall be made within 21 days of the date of receipt of an agreed invoice (such agreement not to be unreasonably withheld or delayed by XXX Water) or where an overpayment has been made by XXX Water NWL shall within 21 days of demand make a refund to XXX Water to the extent of the overpayment or if agreed to by XXX Water issue a credit note. XXX Water shall pay interest to NWL on overdue invoices from the date payment became due from day to day until payment is made at a rate of 2% above Bank Rate from time to time in force and shall accrue at such rate after as well as before any judgement.

6.3 All sums payable under this Agreement unless otherwise stated are exclusive of Value Added Tax which where applicable shall be added and payable in addition to such sums.

6.4 NWL reserves the right to require XXX Water to provide a security deposit in cash or some other form of security reasonably acceptable to NWL equivalent to 30 days of average charges ("the Security Deposit"). Average charges shall be based upon those payable in the previous Charging Year or where not possible a reasonable estimate of charges to be paid in the current Charging Year. A Security Deposit may be required where NWL considers it reasonably appropriate having regard to Charges due to and XXX Water’s credit rating and financial resources ("the Credit Rating"). The requirement for security may be reviewed by NWL or at the request of XXX Water to reflect changes in the volume of services provided or adjustments to the Credit Rating. Where a Credit Rating improves the Security Deposit may be cancelled and any money deposited repaid. Where XXX Water’s Credit Rating deteriorates NWL may require XXX Water to provide a Security Deposit. Interest will be paid by NWL on any cash paid to it as the Security Deposit at the rate applying to sums deposited as security under s42(4) of the Act.

**7 OBLIGATIONS OF XXX WATER**

* 1. XXX Water shall enforce the Water Supply (Water Fittings) Regulations 1999 as appropriate insofar as the Regulations apply in relation to the Points of Supply or the Premises.
  2. XXX Water shall construct all water mains and associated apparatus used for supplying water to its customers in accordance with Best Industry Practice.
  3. XXX Water shall usereasonable endeavours to promptly rectify or procure the prompt rectification of leaks.
  4. XXX Water shall apply its policy relating to the aforesaid 1999 Regulationsto ensure the distribution system on the Premises does not give rise to any risk of contamination or back-syphonage that could give rise to water quality failures in NWL’s system. Where NWL is reasonably satisfied that this is a real risk it shall have the right to temporarily suspend supply without prior notice.
  5. XXX Water shall procure that NWL shall be allowed, at all reasonable times and for all reasonable purposes, access to such metering facilities as are referred to in Clause 3 (including, without limitation, for the purpose of carrying out such maintenance, repair and replacement).
  6. XXX Water undertakes to use the water supplied by NWL hereunder only for the purposes of fulfilling its statutory duty to maintain an efficient and economical system of water supply within the area for which it holds an appointment as a water undertaker under the Act for the premises on the date this agreement commences and for no other purpose save where it is under a statutory duty or obligation to make water available in the NWL area of appointment as a water undertaker.
  7. XXX Water shall take all steps necessary to impose upon its customers a hosepipe ban or other restrictions on the use of water as may from time to time be applied to NWL’s customers in the area surrounding XXX Water’s area of appointment as a water undertaker whether under S76 of the Act or any other power now or in the future within the power of NWL to apply (save for ordinary and emergency drought orders which are dealt with below). NWL shall give such notice to XXX Water as is reasonable in the circumstances where it proposes to introduce such restrictions.
  8. Where NWL is proposing to apply for an ordinary or emergency Drought Order under Part II Chapter 111 of the Water Resources Act that will restrict the use of water in the area surrounding XXX Water’s area of appointment as a water undertaker it shall notify XXX Water of its intention. XXX Water shall take all necessary steps to apply for an ordinary or emergency Drought Order in equivalent or at its option more stringent terms to that applied for by NWL and impose restrictions on the use of water by its customers no less than those applied by NWL to its customers. NWL shall give such notice to XXX Water as is reasonable in the circumstances where it proposes to apply for an ordinary or emergency Drought Order and the terms sought.
  9. XXX Water shall ensure that in accordance with Best Industry Practice it uses materials for water mains that are appropriate for the ground conditions in which the water mains are laid. At NWL’s request XXX Water shall free of charge supply copies of all ground investigation reports prepared and the materials selected for use.
  10. XXX Water shall furnish NWL free of charge within a reasonable time of request its projected demands for water consumption on the Premises to enable NWL to undertake asset management and water resource planning in accordance with NWL’s regulatory obligations.

**8 OBLIGATIONS OF NWL**

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

* 1. NWL shall have no obligation to provide the Bulk Supply in excess of any of the limits as to quantity and quality and rate specified in this Agreement.
  2. Subject to the proviso in clause 8.4 below NWL shall have no obligation or liability in respect of or arising in consequence of a reasonable need exercising Good Industrial Practice to shut down or curtail, for whatever reasonable period, the provision of the Bulk Supply during any maintenance, repair, improvement, replacement or renewal of any plant or other equipment (including without prejudice to the generality of the foregoing, all pipes, tanks, meters, treatment works, fittings, conduits and apparatus) on which the Bulk Supply is dependent. Except in cases of emergency, NWL shall give four days prior notice to XXX Water before shutting down or curtailing the provision of the Bulk Supply for such a purpose.
  3. NWL shall use reasonable endeavours to carry out any works referred to in clause 8.3 above exercising Good Industrial Practice so as to restore the Bulk Supply as soon as is reasonably practicable.
  4. NWL shall wherever appropriate implement the contact procedures set out in Schedule 5 hereto.
  5. NWL shall provide to XXX Water water quality details of water supplied under the Bulk Supply covering matters referred to in Schedule 4 of the Water Regulations:

8.6.1 annually on or around 28 February in every year; and

8.6.2 as soon as reasonably practicable on NWL becoming aware that any water supplied or to be supplied under the Bulk Supply does not conform to the requirements of the Water Regulations

**9 TERMINATION**

9.1 This Agreement shall terminate, by mutual agreement or if either party elects to terminate it, forthwith under the following circumstances:

9.1.1 on expiry or termination of XXX Water's appointment for the Premises; or

* + 1. upon notice given by one party to the other party if that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order; or

9.1.3 subject to the restrictions imposed under Sections 23, 24, 25 and 26 of the Act upon notice given by one party to the other party if that other party becomes insolvent or compounds with its creditors or convenes a meeting to consider a resolution that it be placed in liquidation (other than a solvent liquidation for the purposes of amalgamation or reconstruction) or suffers a petition to be presented that it be placed in liquidation or has an administrative receiver, receiver or manager appointed in respect of all or any of its assets or is adjudicated bankrupt, makes an assignment for the benefit of, or any composition with, its creditors or takes advantage of any insolvency act; or

9.1.4 by an order made by the Authority under Section 40A of the Act;

9.1.5without prejudice to any other right or remedy it may have, either party may terminate this agreement at any time by notice in writing to the other party ("Other Party"), such notice to take effect as specified in the notice if the Other Party is in material breach of this Agreement and, in the case of a breach capable of remedy, the breach is not remedied within 30 days of the Other Party receiving notice specifying the breach and requiring it to be remedied.

**10 CONSEQUENCES OF TERMINATION**

10.1 Upon termination of this Agreement:

10.1.1 XXX Water shall cease to receive the Bulk Supply of water and the emergency Services from NWL; and

10.1.2 XXX Water shall settle all outstanding payments that are due and owing to NWL under Clause 6.

* 1. Subject as otherwise provided herein and to any rights remedies or obligations which have accrued prior to termination neither party shall have any further obligation to the other under this Agreement.

**10A REVIEW**

10A.1 At any time following a material change to the statutory provisions or any relevant guidance issued by the Authority pertinent to the terms of this Agreement or on each fifth anniversary of the date of this Agreement (in either case a “Review Date”) either party may require a review of all or any of its terms with a view to establishing that the same remain reasonable and appropriate in the light of:

10A.1.1 the statutory obligations and powers of the parties;

10A.1.2 the statutory provisions and Authority guidance which would then apply if the Agreement was being negotiated; and

10A.1.3 any other relevant circumstances applying at the Review Date.

If agreement cannot be reached on any variation sought by a party the matter shall be resolved in accordance with clause 21.

**11. INSURANCE**

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

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

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

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

1. **LIABILITY**

## 12.1 Neither Party shall in any circumstances have any liability whatsoever for any indirect or consequential loss (including, but without limitation):

12.1 (a) loss of profit, revenue or goodwill resulting from negligence or any breach or non-performance of this Agreement;

12.1 (b) losses incurred as a result of any misrepresentation (excluding fraudulent misrepresentation) or any other tort on the part of that Party or its servants or agents;

12.1 (c) and all conditions, warranties or other terms, whether express or implied, statutory or otherwise, inconsistent with the provisions of this sub-clause 12.1 are hereby expressly excluded (subject always to sub-clauses 12.4 and 12.5 ).

## 12.2 Each Party’s liability in respect of the direct consequences and, in the event that it is not entitled (for any reason) to rely upon the provisions of sub-clause 12.1, the indirect consequences (including, but without limitation, loss of profit, revenue or goodwill) resulting from negligence or any breach or non-performance of this Agreement or any misrepresentation or any other tort on the part of that Party or its servants or agents shall be limited to one hundred thousand pounds (£100,000) for any incident or series of related incidents and all conditions, warranties or other terms, whether express or implied, statutory or otherwise, inconsistent with the provisions of this sub-clause 12.2 are hereby expressly excluded (subject always to sub-clauses 12.4 and 12.5).

## 12.3 Where a Party becomes aware of any claim, difference, dispute or proceedings (actual or threatened) which it reasonably expects may lead to a liability to the other Party under this Agreement, that Party shall provide such information as the other Party may reasonably require and shall consult with the other Party as to the conduct of such claim, difference, dispute or proceedings (whether actual or threatened).

## 12.4 Nothing in this Agreement shall exclude or limit the liability of either Party for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.

## 12.5 Save as otherwise expressly provided in this Agreement, this clause 12 (insofar as it excludes or limits liability) shall override any other provision in this Agreement provided that nothing in this clause 12 shall exclude or restrict or otherwise prejudice or affect any of the rights, powers, duties and obligations of either party hereto which are conferred or created by the Act, any licence granted pursuant to the Act or any subordinate legislation made under it.

## 12.6 For the avoidance of doubt the parties expressly agree that NWL shall only be liable to compensate XXX Water for any payments XXX Water may be required to make under the Service Regulations where the breach of the Service Regulations was caused by NWL’s negligence in failing to operate its water undertaking in accordance with Good Industrial Practice. In no circumstances shall NWL be required to compensate XXX Water for any poor service payments it chooses to make to its customers as enhanced rights and benefits above the requirements of the Service Regulations.

## 12.7 XXX Water has advised NWL that it does not wish NWL to provide a back-up supply. NWL shall have no liability to XXX Water in respect of any events, conditions or circumstances including any payments XXX Water may be required to make under the Service Regulations to the extent that such events, conditions or circumstances could with reasonable expectation have been avoided or mitigated had a back-up supply been in place.

## 12.8 This clause 12 shall survive the termination of this Agreement for whatever cause.

## 12.9 Each party hereby acknowledges and agrees that the provisions of this clause 12 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

1. **FORCE MAJEURE**

13.1 If either party (the “Affected Party”) is unable to carry out any of its obligations under this Agreement due to circumstances of Force Majeure this Agreement shall remain in effect but, save as otherwise provided in this Agreement, both parties’ obligations shall be suspended without liability for the period during which the circumstance of Force Majeure prevails provided that:

(a) the Affected Party gives the other party prompt notice describing the circumstance of Force Majeure, including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure;

(b) the suspension of performance is of no greater scope and of no longer duration than is strictly required by the circumstance of Force Majeure; and

(c) the Affected Party uses all reasonable efforts to mitigate the impact of the circumstances of Force Majeure and to remedy its inability to perform as quickly as possible.

13.2 Immediately after the end of the circumstance of Force Majeure, the Affected Party shall notify the other party in writing of the same and each party shall resume performance of its obligations under this Agreement.

**14** **MISCELLANEOUS**

14.1XXX Water shall not assign or otherwise part with its obligations or the benefits under this Agreement except to another appointed water undertaker and with the prior written consent of NWL (such consent not to be unreasonably withheld or delayed).

14.2 If any provision of this Agreement shall be held to be invalid or unenforceable in whole or in part or to any extent by a judgement or decision of any court of competent jurisdiction or any authority whose decisions shall have the force of law binding on the parties to this Agreement, the remainder of this Agreement and, where that provision is invalid or unenforceable in part or to any extent, the remaining part or extent of that provision, shall remain valid and enforceable to the fullest extent permitted by law.

**15** **VARIATION**

15.1 This Agreement may only be varied following a review pursuant to clause 10A and such variation shall be recorded in writing signed by each of the parties.

15.2 If it becomes apparent that a variation or variations to this Agreement have become necessary by virtue of changes to the statutory obligations of either of the parties or otherwise to give effect to changes to applicable law, the parties shall agree such variation as is necessary to give effect to any such changes but only to the extent that such variation would not alter the substantive purpose and commercial arrangements embodied in this Agreement. If such changes cannot be so made, any variation shall be dealt with in accordance with sub-clause 15.3.

15.3 If the parties cannot agree upon a proposed variation, such disagreement will be regarded as a dispute and settled under the provisions of clause 21.

**16** **CONFIDENTIALITY**

16.1 Each party shall treat as confidential all information (including but not limited to all documents, materials and other information, whether technical or commercial, supplied to it by or on behalf of the other party to this Agreement under or pursuant to or in connection with this Agreement) obtained as a result of entering into or performing this Agreement which relates to:

(A) the provisions of this Agreement;

(B) the negotiations relating to this Agreement;

(C) the subject matter of this Agreement; or

(D) the other party.

In particular, each party shall keep secure any information which it holds (whether electronically stored or otherwise) in relation to the other party or the other party’s operations.

16.2 Notwithstanding the other provisions of this paragraph, either party may disclose confidential information:

(A) if and to the extent required by law or for the purpose of any judicial proceedings or for dispute resolution as provided for in this Agreement;

(B) if and to the extent required by any regulatory or governmental body to which that party is subject wherever situated, whether or not the requirement for information has the force of law;

(C) to such of its agents, contractors, professional advisers, auditors, insurers and bankers (including lenders, security trustees and other financial institutions) who need to know it upon obtaining from such persons an undertaking as to confidentiality substantially equivalent to that contained in this Clause 16.2;

(D) if and to the extent the information has come into the public domain through no fault of that party; or

(E) if and to the extent the other party has given prior written consent to the disclosure.

Any information to be disclosed pursuant to sub-paragraphs (A), (B) or (C), shall be disclosed only after consultation with the other party, where reasonably practicable.

16.3 The restrictions contained in this paragraph shall apply without limit in time and shall survive the termination of this Agreement for whatever reason.

**17** **NOTICES**

17.1 Except where otherwise stated, any notice, request or other communication to be made by one party to the other under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by recorded delivery, special delivery, courier or fax to that party to the address and for the attention of the relevant person set out in sub-clause 17.2. For the avoidance of doubt, notice given under this Agreement shall not be validly served if sent by email or if they comprise writing on the screen of a visual display unit

17.2 Notices under this Agreement shall be sent to a party at its address or number and for the attention of the individual set out below:

|  |  |  |
| --- | --- | --- |
| Party, title of contact | Address | Email address |
| Northumbrian Water Limited  Attention: Regulation Manager | Boldon House, Wheatlands Way, Pity Me, Durham, DH1 5FA | competition@nwl.co.uk |
| XXX Water Limited  Attention: XXX Water Director | xxx | xxx |

or to any such other persons, addresses or fax numbers as may from time to time be notified by one party to the other in accordance with this paragraph (provided such notification shall only be effective five Business Days from receipt).

17.3 Any notice given under this Agreement shall, in the absence of earlier receipt, be deemed to have been duly given as follows:

(A) if delivered personally, on delivery;

(B) if sent by recorded delivery or special delivery, two clear Business Days after the date of posting;

(C) if sent by email, when despatched.

Any notice given under this Agreement outside normal working hours in the place to which it is addressed shall be deemed not to have been given until the start of the next period of normal working hours in such place.

**18** **ENTIRE AGREEMENT**

18.1 This Agreement shall supersede all arrangements or agreements relating to all matters which are referred to and which were previously entered into or made between the parties hereto and all such arrangements or agreements are hereby terminated.

18.2 This Agreement represents the entire agreement between the parties and no modification or alteration hereto shall have effect unless the same is agreed in writing between the parties.

## 18.3 In the event that any provision of this Agreement shall be void or unenforceable by reason of any provision or applicable law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and, if necessary, be so amended as shall be necessary to give effect to the spirit of this Agreement so far as reasonably practicable.

## **19 EXERCISE OF RIGHTS**

19.1No delay or omission by any party to this Agreement in exercising any right, power or remedy provided by law or under this Agreement or any other documents referred to in it shall:

(A) affect that right, power or remedy; or

(B) operate as a waiver thereof.

19.2 The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.

19.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

## **20 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

20.1 The parties to this Agreement do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement.

**21** **SETTLEMENT OF DISPUTES**

21.1The parties will use their best endeavours, in good faith and in a timely manner, to negotiate a settlement to any claim or dispute between them arising out of or in connection with this Agreement including the involvement of the respective Managing Directors. If the matter is not resolved by negotiation either party shall be entitled to refer the dispute to the Authority in accordance with section 40A of the Act.

**22 GOVERNING LAW**

22.1 This Agreement shall be governed by and construed in all respects in accordance with English Law

**AS WITNESS** the hands of the duly authorised representatives of the parties hereto the day and year first before written

SIGNED BY

Signature ………………………………………………

Name ………………………………………………

Position ………………………………………………

duly authorised for and on behalf of

**XXX WATER LIMITED**

SIGNED BY

Signature ………………………………………………

Name ………………………………………………

Position ………………………………………………

duly authorised for and on behalf of

**NORTHUMBRIAN WATER LIMITED**

**SCHEDULE 1**

Type of Supply: A supply of water adequate for domestic purposes as defined by Section 218 of the Act.

Quantity: Peak flow rate required: zzz litres per second

Anticipated annual demand: ZZZ cubic metres. NWL to accommodate reasonable variations from this amount.

Quality: Water will be treated to comply at the Point of Supply with the Water Regulations

PressureAt the Point of Connection: minimum pressure of 20 metres gauge

**SCHEDULE 2**

**The Charges**

1. **Wholesale Water Charges**

Charges will be in accordance with the wholesale charges for water supplies set out in NWL’s published charges scheme as amended from time to time unless there are material reasons why this approach to charging should not apply.

**2. Infrastructure Charges**

A charge payable that equates to the water infrastructure charge that would be payable to NWL under s146 of the Act and Condition C of NWL’s Instrument of appointment and the Water Charges Scheme for each premises connected to XXX Water’s water mains if NWL was the appointed water undertaker for the Premises in place of XXX Water.

XXX Water shall keep records of the date upon which premises are first connected to its water mains and shall notify NWL on 1 April and 1 October in each Water Charges Year of the premises and date of connection. NWL shall issue half yearly invoices for payment of charges due under this paragraph.

**SCHEDULE 3**

Plan showing the area of the Premises and approximate location of the Point of Supply

**SCHEDULE 4**

**Emergency Services**

1. NWL shall subject to the terms of this Schedule make an emergency supply of water by bowser, temporary mains, bottled water or otherwise (“an alternative supply of water”) compatible with the obligation imposed on XXX Water under the Security and Emergency Measures Direction 1998 to the Premises where either

* the Bulk Supply or water in XXX Water’s mains are contaminated and unfit for public supply; or
* planned works or damage to NWL’s water infrastructure or to XXX Water’s mains prevents either the Bulk Supply being made or if available being distributed by XXX Water within the Premises.

1. Where an alternative supply of water is requested by XXX Water in circumstances where XXX Water’s ability to supply water to its customers is compromised by a problem occurring on XXX Water’s side of the Point of Connection and is made available by NWL (NWL being under no obligation if it does not have available resources to deploy due to the need to address an operational incident in its area of appointment as a water undertaker) XXX Water shall reimburse to NWL all costs and expenses in providing the alternative supply incurred by NWL including such sum as may be reasonable in respect of establishment charges and overheads. The alternative supply shall be provided by NWL at such locations as may be reasonable within the Premises to facilitate access to the alternative supply by XXX Water’s customers.
2. Where an alternative supply of water is required due to the carrying out of planned works (and not when required to address supply interruptions caused by the circumstances outlined in paragraphs 4 and 5 below) by NWL pursuant to clause 8.3 and an obligation arises either under the provisions of the Act or the Service Regulations to make an alternative water supply available the alternative supply shall be provided by NWL (NWL being under no obligation if it does not have available resources to deploy due to the need to address an operational incident in its area of appointment as a water undertaker) at its cost at such location within the Premises as may be requested by XXX Water for XXX Water to distribute to its customers. At XXX Water’s request and cost (including such sum as may be reasonable in respect of establishment charges and overheads) NWL shall distribute and make available the alternative supply of water direct to XXX Water’s customers by distributing the alternative supply of water within the Premises.
3. Where an alternative supply of water is required due to an unplanned problem with the Bulk Supply on NWL’s side of the Point of Connection then, subject to paragraph 5 below, and subject to an obligation arising either under the provisions of the Act or the Service Regulations to make an alternative water supply available such alternative supply shall be provided by NWL at its cost at or near the Point of Connection for XXX Water to distribute and make available at such locations within the Premises as may be reasonable to facilitate access to the alternative supply by XXX Water’s customers. At XXX Water’s request and cost (including such sum as may be reasonable in respect of establishment charges and overheads) NWL shall distribute and make available the alternative supply of water direct to XXX Water’s customers by distributing the alternative supply of water within the Premises.
4. Where an alternative supply of water is requested by XXX Water due to an unplanned problem with the Bulk Supply on NWL’s side of the Point of Connection that could not have been prevented by NWL exercising Good Industrial Practice or where force majeure applies then subject to an obligation arising either under the provisions of the Act or the Service Regulations to make an alternative water supply available the alternative supply shall be provided by NWL (NWL being under no obligation if it does not have available resources to deploy due to the need to address an operational incident in its area of appointment as a water undertaker) at its cost at such location within the Premises as may be requested by XXX Water for XXX Water to distribute to its customers. At XXX Water’s request and cost (including such sum as may be reasonable in respect of establishment charges and overheads) NWL shall distribute and make available the alternative supply of water direct to XXX Water’s customers by distributing the alternative supply of water within the Premises.
5. Nothing in this Schedule shall require NWL to make available an alternative supply of water unless XXX Water has one month before the first properties on the Premises are connected to XXX Water’s water mains given notice to NWL that it wishes the provisions of this Schedule to apply.

**SCHEDULE 5**

**Contact Procedures for Operational Incidents**

# Water supply problem reported by NWL

1. NWL contacts XXX Water Customer Contact Centre using priority number, quotes their Priority Customer ID Number and advises XXX Water of the problem.
2. XXX Water contacts its customers.

Water supply problem reported by XXX Water

1. XXX Water contacts NWL and advises NWL of the problem.
2. NWL investigate and provide updates.

**Contact Details**

**Northumbrian Water Limited**

Account Manager: To be confirmed

Control Room 24 hour Number is 0845 782 0999

[Missing details to be confirmed by NWL 30 days prior to providing the bulk supply]

**XXX Water Limited**

Customer Contact Centre [ ]

[Details to be confirmed by XXX Water 30 days prior to first taking the bulk supply]

Schedule 6

(Additional Requirements in respect of Water Quality)

*Note: this document is to allow water quality agreements to be used in conjunction with existing bulk transfer arrangements. New arrangements should be developed in accordance with the model agreement being developed by Ofwat.*

*The text in the main body of the agreement provides the general terms and context. Schedule 1 allows both parties to modify the arrangement to reflect conditions locally.*

**Bulk Supply Water Quality Agreement**

1. **Regulations**
   1. In respect of Potable Water the Bulk Supply must, as a minimum, comply with the requirements imposed by the Act and the Water Supply (Water Quality) Regulations 2000 (as amended) (“the 2000 Regulations”), except where a particular standard is subject to an Authorised Departure or Undertaking.
   2. If a standard is subject to an Authorised Departure or Undertaking, compliance with the terms of the Authorised Departure or Undertaking will be deemed to have met the relevant quality standard imposed by the Act or the 2000 Regulations. Compliance with the terms of Notices will be deemed to have met the requirements imposed by the Act or the 2000 Regulations.

1.2.1 The Supplier must provide the Recipient with a copy of any Authorised Departure, Undertaking, and Notice associated with the Bulk Supply.

1. **Risk assessments**
   1. The Bulk Supply must be detailed in the Drinking Water Safety Plan risk assessment and report made under Regulations 27 and 28 of the 2000 Regulations of both parties; and

2.1.1 The Supplier must provide the Recipient details of the source to tap chain (including asset details), Unacceptable Risks, and mitigation actions (including Acknowledged Actions) associated with the Bulk Supply; and

2.1.2 The Supplier must provide the Recipient details of any risk based monitoring (e.g. pesticides) so that monitoring programmes of the parties can, where appropriate, be aligned; and

2.1.3 Parties should share material updates in adherence to Regulation 28 of the 2000 Regulations.

**3. Notifications**

3.1 Notification between the parties must occur in the following circumstances. These notifications should provide sufficient information to enable the parties to undertake a risk assessment relevant to their own circumstances:

3.1.1 Relating to treated water bulk supplies:

3.1.1a Exceedence of a quality standard at any point in the source to tap chain where assessment identifies a potential impact to the Bulk Supply as defined in Schedule 4.

3.1.1b Detection of other relevant water quality related parameters[[1]](#footnote-1) where assessment identifies a potential impact on the Bulk Supply as defined in Schedule 4.

3.1.2 Relating to non potable water bulk supplies:

3.1.2a Significant change in parameter value from expected level where assessment identifies a potential impact to the receiving treatment works or the final treated supply as defined in Schedule 1.

3.1.2b Detection of an abnormal aesthetic issue where assessment identifies a potential impact on the Bulk Supply.

3.1.2c Significant alarms from an intake protection system where there could be a potential impact to the quantity or quality of the bulk supply.

3.1.3 Relating to both treated water and non potable water bulk supplies:

3.1.3a If an event is notified to the Regulator, and/or local and health authorities, where assessment identifies a potential impact on the Bulk Supply.

3.1.3b Other relevant water quality issues, events or parameters, at any point in the “source to tap” chain, where assessment identifies a potential impact on the Bulk Supply (e.g. a security breach).

3.1.3c An unusual change in the number or type of water quality customer contacts (e.g. taste and odour, discolouration) where assessment identifies a potential link to the Bulk Supply.

3.1.3d Planned work which, following assessment, identifies a potential impact on the Bulk Supply.

**4. Communication**

4.1 Parties should ensure that there is an appropriate communications protocol established which should include:

4.1.1 Where a water quality issue is identified (9.4), notification between parties should be made initially by telephone (to a previously agreed telephone number), followed by written notification (to a previously agreed address). Communication details are contained in Schedule 2; and

4.1.2 Telephone contact between parties must be available 24 hours a day; and

4.1.3 Supplier must inform Recipient if source to tap arrangements are to be substantially changed from the normal source to tap chain agreement (prior to implementation), except in the case of emergencies; and

4.1.4 Where a water quality issue has been identified and notified to the other party, an ongoing dialogue regarding impacts and remedial actions should be conducted (information to flow in both directions between parties); and

4.1.5Any specific issues arising from Authorised Departures, Undertakings and Notices.

4.2 Both parties will operate as reasonable and prudent operators to ensure their assets or operations do not contaminate drinking water supplies.

**5. Review**

5.1 The contents of this agreement will be reviewed as necessary by both parties and may only be amended with the agreement of both parties.

**6. Schedules**

6.1 Company specific arrangements relating to the Bulk Supply are detailed in Schedule 1.

**7. Agreement**

7.1 The Recipient acknowledges that it has conducted a full and appropriate water quality risk assessment regarding the quality of the Bulk Supply prior to commencement of this agreement. The parties agree that Regulation 15 of the 2000 Regulations applies to the Bulk Supply. In accordance with Regulation 15 of the 2000 Regulations the Recipient confirms that it is satisfied that no water quality issues are anticipated through receipt of the Bulk Supply due to interaction with treatment processes and/or the distribution network under its control, or from the mixing of different water types in its area of responsibility.

7.2 This water quality protocol applies to the following existing agreement:

|  |  |
| --- | --- |
| Name of Existing Contract: |  |
| Date Existing Contract Signed: |  |
| Name of Supplying Company: |  |
| Name of Receiving Company: |  |

7.3 The contents of this section are in addition to any water quality arrangements documented in the existing agreement. Details of existing water quality arrangements are documented in Schedule 4.

7.4 This protocol will remain active for the life of the existing agreement unless both parties consent to its removal.

7.5 This protocol does / does not\* form a legally binding agreement between the undersigned parties.

*\*Delete as appropriate*

Supplier:

On behalf of (Name of Water Company):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name (Printed):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Above signatory must be Director or person with relevant delegated authority*

Recipient:

On behalf of (Name of Water Company):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name (Printed):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Above signatory must be Director or person with relevant delegated Authority.*

**Schedule 1: Local agreements with regards to Water Quality.**

**Existing Arrangements**

Where an agreement is already in place between the parties, detail below any existing/contractual water quality requirements:

**Additional Arrangements**:

Any specific arrangements to be detailed here

*(For example notification if a particular parameter varies from expected level (where assessment identifies an impact to the Bulk Supply), triggers for a parameter that may change downstream of the Bulk Supply point (e.g. nitrite), or parameters that don’t feature in the 2000 Regulations such as hydrocarbons, Cryptosporidium. Data sharing could include conservative parameters for supply point monitoring.)*

**Schedule 2: Communication Protocol**

**Contact Details**

Where notification is required, contact will be initiated via the below channels. In all cases notification must be by telephone and followed by email.

|  |  |  |  |
| --- | --- | --- | --- |
| **Company** | **Time** | **Contact** | **Telephone and Email** |
| xxxxxx  (Supplier) | Office Hours  (09:00 – 17:00) |  |  |
| Out of Hours  (17:00 – 09:00) | Control Centre |  |
| Day to day contact |  |  |
| xxxxxx  (Recipient) | Office Hours  (09:00 – 17:00) |  |  |
| Out of Hours  (17:00 – 09:00) |  |  |
| Day to day contact |  |  |

**Communication Responsibility**

The responsibility for flow of information is;

Where the supply problem is identified by the Supplier

1. Supplier contacts Recipient and advises of the nature of the problem and remedial steps being taken.
2. Recipient contacts their customers as appropriate.
3. Supplier and Recipient to maintain regular dialogue concerning impacts and remedial actions (information to flow in both directions).

Where the supply problem is identified by the Recipient

1. Recipient contacts Supplier and advises of the nature of the problem and discusses remedial steps being taken.
2. Recipient contacts their customers as appropriate.
3. Supplier and Recipient to maintain regular dialogue concerning impacts and remedial actions (information to flow in both directions).

**Appendix 1: Glossary**

‘Acknowledged Action’ means a mitigation measure recognised by DWI and documented in a report submitted under Regulation 28 of the Water Supply (Water Quality) Regulations 2000 (as amended) to the Drinking Water Inspectorate

‘Act’ means the Water Industry Act 1991;

‘Agreement’ means this agreement and includes any schedules and annexes

‘Authorised Departure’ is an authorisation for a water company to temporarily supply water exceeding a drinking water standard granted by the authorities only when there is no risk to human health.

‘Bulk Supply’ means the supply of potable or non-potable water by the Supplier to the Recipient.

‘Material Updates’ refer to occasions where there is a requirement to make a submission under Regulation 29 of the Water Supply (Water Quality) Regulations 2000 (as amended).

‘Non-potable Water’ means water that is not required to meet the standards of wholesomeness specified under section 67 of the Act; and includes raw water and partially treated water.

‘Notice’ refers to an instruction served by the Secretary of State under Regulation 28 requiring specific actions to be taken by the recipient in a specified timescale.

‘Potable Water’ means water that is required to meet the standards of wholesomeness specified under section 67 of the Act.

‘Regulator’ refers to those external authorities responsible for enforcement of the all regulations affecting the abstraction and supply of water

‘2000 Regulations’ refer to the Water Supply (Water Quality) Regulations 2000 (as amended).

‘Source to Tap Chain’ means the water supply networks of the Parties and includes any catchment, source of supply, treatment works, pipes or other apparatus.

‘Standard’ refers to the prescribed concentration and/or value defined in Schedule 1 of the Water Supply (Water Quality) Regulations 2000 (as amended), specification concentration and/or volume, environmental quality standard, or specific local triggers documented in Schedule 1.

‘Unacceptable Risks’ are actual or potential issues identified and documented within Regulation 28 submission to the Drinking Water Inspectorate.

‘Undertakings’ are legally binding programmes of work agreed between a water company and the Chief Inspector of Drinking Water to address actual or potential water quality issues.

1. Examples include, but are not limited to, detection of fly larvae at any point in the distribution network, cryptosporidium detection in the potable water or hydrocarbon contamination, abnormal taste and odour results in the non potable or potable water. [↑](#footnote-ref-1)