

DATED

2022

## **MODEL WATER ADOPTION AGREEMENT**

**AFFINITY WATER LIMITED**

**-and-**

**-and-**

**-and-**

**-and-**

Reference Number:

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5. \_\_\_\_\_, a company registered  
in England and Wales, Registered Number \_\_\_\_\_ whose registered  
office is at \_\_\_\_\_

(**“the Adjoining Owner”**), being the owner of land adjoining the Site, in which  
Self-Lay Works are also to be undertaken;

each a "Party" and together the "Parties".

## **BACKGROUND**

- A. Ofwat issued a code (August 2018) known as the ‘*Code for agreements for water and sewerage companies operating wholly or mainly in England*’ (**“the Code”**). The Code requires a set of terms and conditions which govern the agreement between the Parties for the connection of a water main and associated infrastructure to the Network in accordance with section 51A Water Industry Act 1991 (**“WIA”** or the **“Act”**).
- B. This Water Adoption Agreement (**“WAA”**), together with its completed Schedules and the Water Sector Guidance, is in the form prescribed by Ofwat in the Code and is the only agreement between the parties in respect of the Self-Lay Works.
- C. The Water Company is a water company appointed under section 6 or 7 of the WIA, in which the Self-Lay Main will vest.
- D. The Water Company will carry out the Water Company Works in accordance with its obligations in this WAA and the Water Sector Guidance.
- E. The Developer will carry out the Developer Works at the Site in accordance with its obligations in this WAA and the Water Sector Guidance.
- F. The Developer has appointed the Self Lay Provider (**“SLP”**) which is Accredited for construction of mains and services and/or routine mains connections. The SLP will carry out the SLP Works at the Site in accordance with its obligations in this WAA and the Water Sector Guidance.

- G. The Developer and/or SLP as appropriate, wish to vest the Self-Laid Main in the Water Company.
- H. The Water Company will Adopt the Self-Laid Main subject to its completion in accordance with this WAA and the Water Sector Guidance.

## GENERAL TERMS AND CONDITIONS

THE PARTIES agree as follows:

### 1 DEFINITIONS & INTERPRETATION

1.1 In this WAA, the definitions and rules of interpretation shall have the following meanings:

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| <b>Accredited and Accreditation</b>                 | Means in respect of Contestable Work and Services, demonstrating competence, at all relevant times, by satisfying the following:<br><br>(i) accreditation under WIRS; and/or<br><br>(ii) the Water Company's local accreditation arrangements, agreed with the SLP in relation to a specified activity, published in its Annual Contestability Summary (ACS), pursuant to section 3.2 of the Water Sector Guidance. |
| <b>Act or WIA</b>                                   | The Water Industry Act 1991 (as amended).   |
| <b>Adjoining Land</b>                               | Land, owned by a person other than the Developer or the Owner of the Site, not being an adopted highway, where part of the Water Company Works or Self-Lay Works are to be undertaken which adjoins the Site, as shown on the SLP Accepted Design or the Water Company Design.  |
| <b>Adjoining Owner</b>                              | The owner of the Adjoining Land.  |
| <b>Adopted Self-Laid Main or Adopted Section(s)</b> | The Self-Laid Main (or each Section) after the Adoption Date.   |
| <b>Adopt, Adoption or Adopted</b>                   | The Adoption Date on which ownership of the Self-Laid Main or any Section of it is transferred to, and vests in the Water Company under section 179 of the Act.   |
| <b>Adoption Date</b>                                | Being the date of the Final Connection stated on the Declaration of Vesting issued by the Water Company in accordance with Clause 11.   |
| <b>Annual Contestability Summary ("ACS")</b>        | The standard format document published annually (or more frequently) by the Water Company on its website setting out which works' and services are Contestable Works and Services and which are Non-contestable Works and Services.   |

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| <p><b>Applicable Law</b></p> | <p>All relevant, applicable, legislation, whether primary or secondary, regulations or codes of practice having the force of law, determinations of any governmental authority in force from time to time (or other body exercising similar functions), rulings of any UK court applicable to this WAA and includes amongst others:</p> <ul style="list-style-type: none"> <li>(i) Bribery Act 2010;</li> <li>(ii) Criminal Finance Act 2017;</li> <li>(iii) Construction (Design and Management) Regulations (CDM) 2015;</li> <li>(iv) Control of Pollution Act 1974;</li> <li>(v) Control of Pollution (Amendment) Act 1989</li> <li>(vi) Environment Act 1995;</li> <li>(vii) Environmental Permitting (England and Wales) Regulations 2007;</li> <li>(viii) Environmental Protection Act 1990;</li> <li>(ix) Finance Act 2008;</li> <li>(x) Fire and Rescue Services Act 2004;</li> <li>(xi) General Data Protection Regulation 2016 and compliance with the law relating to the use of personal data;</li> <li>(xii) Health and Safety at Work Act 1974;</li> <li>(xiii) Highways Act 1980;</li> <li>(xiv) New Roads and Street Works Act 1991 (NRSWA), Regulations and Codes of Practice;</li> <li>(xv) public safety (including signing, pedestrian re-routing, barriers);</li> <li>(xvi) Traffic Management Act (and permit schemes) 2004;</li> <li>(xvii) UK Modern Slavery Act 2015</li> <li>(xviii) Water Industry Act 1991;</li> <li>(xix) Water Industry Act 2003;</li> <li>(xx) Water Industry Act 2014;</li> <li>(xxi) Water Supply (Water Fittings) Regulations 1999;</li> <li>(xxii) Water Supply (Water Quality) Regulations 2016;</li> </ul> |
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|  | (xxiii)Waste Duty of Care Code of Practice 2016.   |
| <b>Charging Arrangements</b>             | The Water Company's published charges for new connection services in accordance with the Charging Rules for New Connection Services (English Undertakers) 2018.  |
| <b>Code for Agreements or the "Code"</b> | The code which is binding on all water companies entitled ' <i>Code for Agreements – For water and sewerage companies operating wholly or mainly in England</i> ' published by Ofwat in August 2018 as updated or amended.       |
| <b>Communication Pipe(s)</b>             | That part of the Service Pipe which is the responsibility of the Water Company to maintain, and transfers water from the Network to the boundary to the Premises.  |
| <b>Confidential Information</b>          | All information (whether written, oral or in some other form) disclosed to or obtained by one party (whether directly or indirectly) from the other (whether before or after the signing of this WAA), including all information |



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|                                    | <p>relating to that other's business, operations, systems, processes, products, trade secrets, know-how, contracts (including but not limited to this WAA), finances, plans, strategies or current, former or prospective clients, Clients, partners or consultants (together with copies made of any of the foregoing) and which information is marked as being confidential or might reasonably be assumed to be confidential, but excluding information which is:</p> <ul style="list-style-type: none"> <li>(i) available to the public other than because of any breach of this WAA;</li> <li>(ii) when it is supplied, already known to whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others; or</li> <li>(iii) independently obtained by whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others.</li> </ul> |
| <b>Data Protection Legislation</b> | All applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) and the guidance and codes of practice issued by the relevant supervisory authority and applicable to a party.  |
| <b>Day(s)</b>                      | Any working day other than a Saturday or Sunday, or Christmas Day, Good Friday or any day which is a bank holiday in England, under the Banking and Financial Dealings Act 1971.   |
| <b>Declaration of Vesting</b>      | The certificate confirming the Adoption Date of the Self-Laid Main or Section by the Water Company issued in accordance with clause 11.  |
| <b>Defect</b>                      | <p>A defect includes:</p> <ul style="list-style-type: none"> <li>(i) work not constructed in accordance with the Technical Specification;</li> <li>(ii) faults caused by poor workmanship not in accordance with Good Industry Practice, or a flaw in the installed materials;</li> <li>(iii) or damage resulting from the rectification of defects during the Defects Correction Period by the SLP and/or Developer.</li> </ul>   |

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| <b>Defects Correction Period</b>                      | The period commencing on the Adoption Date and: <ul style="list-style-type: none"> <li>(i) with respect to Defects relating to permanent reinstatement of the highway (as defined by the Highways Act 1980), expiring on the second anniversary (24 months) of the Adoption Date; and</li> <li>(ii) with respect to all other Defects, expiring on the first anniversary (12 months) of the Adoption Date.</li> </ul>                             |
| <b>Delivery Date</b>                                  | Is the date specified in Schedule 1 for the provision of a viable Source of Water connection for Testing, being not less than twenty-eight 28 calendar days from the Day the Water Company receives the signed WAA, or if that date is not a (working) Day, on the next Day.  |
| <b>Delivery Hours</b>                                 | 09:00 to 17:00 on a day which is not a Saturday or Sunday or Christmas Day, Good Friday or any day which is a bank holiday in England and Wales, as defined by the Banking and Financial Dealings Act 1971.   |
| <b>Design &amp; Construction Specification or DCS</b> | The specification for design and delivery of the Self-Lay Works published and updated by the Water Company on its website at least annually.  |
| <b>Developer Works</b>                                | Those parts of the Self-Lay Works listed in the Schedule 1 to be carried out and completed by the Developer.  |
| <b>Encumbrance</b>                                    | Any charge, lien, restriction, hire purchase agreement, option, conditional sale or credit sale agreement or any other interest or right of any other person.   |
| <b>Existing Main</b>                                  | Is any part of the Network which is not the subject of this Adoption Agreement.   |
| <b>Final Connection</b>                               | The commissioning of the Self-Laid Main by means of the connection between that main and the Existing Main.   |
| <b>Force Majeure</b>                                  | Any act, event or circumstances beyond the reasonable control of a Party including those which arise from or are attributable to: <ul style="list-style-type: none"> <li>(i) a Network Emergency; or</li> <li>(ii) fire, explosion, earthquake, storm or other natural disaster; or</li> <li>(iii) civil commotion, hostilities (whether war is declared or not), sabotage, terrorist attack, chemical, biological or nuclear warfare.</li> </ul> |

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| <b>Good Industry Practice</b>               | The exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the same type of undertaking, under the same or similar circumstances.   |
| <b>Insolvency Event</b>                     | A Party ceasing to trade or having a receiver, administrative receiver, administrator, trustee or manager appointed over the whole or any substantial part of its assets or undertaking, or becoming insolvent or going into liquidation (unless such liquidation is for the purposes of a solvent reconstruction or amalgamation), or making any arrangement or composition with any class or all of its creditors generally, or otherwise being unable to meet its debts as they fall due or taking or suffering any similar action in consequence of debt. |
| <b>Intellectual Property Rights (IPR's)</b> | Copyright, patent, trademark, service marks, design rights, registered designs, sui generis rights, know-how, confidential information, trade or business names or other similar rights together with applications for any of the foregoing.  |
| <b>Land Rights</b>                          | Rights, free from Encumbrances in, under or over land for the construction, installation, operation, repair, inspection, maintenance, renewal or use of the Self-Lay Works and/or the Water Company Works or for access to them.  |
| <b>Land Rights Criteria</b>                 | The reasonable criteria issued by the Water Company on or before the date of this WAA, providing the Water Company's requirements for Land Rights.  |
| <b>Levels of Service (LoS)</b>              | The service levels set out in Appendix G of the WSG against which the Water Company's performance is measured.  |
| <b>Water Adoption Agreement ("WAA");</b>    | This document including its Schedules.  |
| <b>Network</b>                              | The Water Company's water supply assets comprising: <ul style="list-style-type: none"> <li>(i) any reservoirs and other places of water storage and any treatment works developed or maintained by the Water Company for the purpose of compliance with its duty under section 37 of the Act;</li> <li>(ii) any water mains and other pipes which it is the Water Company's duty to develop and maintain by virtue of section 37 of the Water Industry Act 1991;</li> </ul>   |

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|  | <p>(iii) any pipes of the Water Company which are used for the purposes of supplying water outside the Water Company's area pursuant to section 66A (8) of the Water Industry Act 1991;</p> <p>(iv) those assets marked on a map of waterworks pursuant to section 198 WIA.</p>  |
| <b>Network Emergency</b>                 | <p>In this context refers to events falling within any of:</p> <p>(i) the Security and Emergency Measures (Water and Sewerage Undertakers) Direction 1998 ("SEMD");</p> <p>(ii) the Security and Emergency Measures (Water Undertakers) Direction 2006;</p> <p>(iii) advice and guidance issued under the provisions of section 208 of the Water Industry Act 1991 and/or the Civil Contingencies Act 2004 or a national security event.</p> |
| <b>Non-Contestable Work and Services</b> | <p>Work and/or Services which is the responsibility of the Water Company but may, at the sole discretion and consent of the Water Company, be undertaken by the SLP.</p>   |
| <b>NRSWA</b>                             | <p>New Roads and Street Works Act 1991;</p>  |
| <b>Ofwat</b>                             | <p>The Water Services Regulation Authority;</p>  |
| <b>Plan</b>                              | <p>A plan forming part of the SLP Accepted Design or Water Company Design showing the routing of the Self-Laid Main.</p>   |
| <b>Point of Connection (POC)</b>         | <p>The point (or points) of connection to the Network at which a supply of water can flow between the Self-Lay Works and the Network as set out in Schedule 1 (Technical Specification) of this WAA.</p>   |
| <b>Premises</b>                          | <p>Buildings or parts of buildings and land within the curtilage of those buildings to which the Water Company provides or will provide (directly or indirectly) a supply of water.</p>  |
| <b>Schedule(s)</b>                       | <p>The schedules forming part of this WAA;</p>   |
| <b>Section(s)</b>                        | <p>Any part of the Self-Laid Main which the SLP requests the Water Company to Adopt.</p>   |
| <b>Self-Laid Main</b>                    | <p>The new water main and/or any Existing Main which is to be diverted, which is the subject of this WAA (including accessories as defined in the Water Industry Act 1991) to be constructed by the SLP as part of the Self-Lay Works along the route shown approximately</p>  |

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|   | on the Plan and is intended to be Adopted by the Water Company.   |
| <b>Self-Laid Main Phasing Programme</b> | The SLP programme of works, where known, listed in Schedule 4 and where known, provided for indicative purposes only in accordance with clause 7 as maintained and updated from time to time.   |
| <b>Self-Lay Works</b>                   | Works and services undertaken by the SLP and/or Developer in connection with the provision of the Self-Laid Main required to serve the Site, together with all necessary works of reinstatement to the land or to any street.   |
| <b>Service Pipe</b>                     | That pipe comprised of the Communication Pipe and the Supply pipe, being the pipe from the property boundary to the property inside stop tap.   |
| <b>Site</b>                             | The land and other places shown on the Plan at, on, under, over or through which the Self-Lay Works are to be constructed or installed, or work is to be carried out.   |
| <b>SLP or Self-Lay Provider</b>         | The Accredited Self-Lay Provider constructing the Self-Laid Main.   |
| <b>SLP Accepted Design</b>              | A version-controlled design issued for construction of the Self-Laid Main and such other plans and drawings listed in Schedule 1, showing the Site, the Adjoining Land and the layout of the Self-Lay Works, which has been produced by the Accredited SLP or its Accredited subcontractor. |
| <b>SLP Works</b>                        | Those parts of the Self-Lay Works to be carried out by the SLP.   |
| <b>Source of Water Connection</b>       | A source of water made available to the SLP for the purpose of Testing.   |
| <b>Start Date</b>                       | The date agreed by the Parties in writing being the date that the Self-Lay Works shall commence;  |
| <b>Statutory Consents</b>               | All consents, licences, permissions and approval of any kind required under any statute or subordinate legislation including planning permission and building regulation approval but excluding any which are made or given under Street Works Legislation.                                 |
| <b>Street Works Legislation</b>         | New Roads and Street Works Act 1991 (“ <b>NRSWA</b> ”), Traffic Management Act 2004 and any other Act governing the carrying out of Street Works in a Street. (“Street”, “Street Authority” and “Street Works” shall be defined accordingly).   |
| <b>Technical Specification</b>          | The design and technical requirements for the Self-Lay Works in Schedule 1, which contains:   |

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|                                      | <ul style="list-style-type: none"> <li>i. either the Water Company Design or the SLP Accepted Design as appropriate, set out in Schedule 1;</li> <li>ii. the Water Company's published DCS in force at the date of this WAA;</li> <li>iii. agreed deviations from the DCS and Site-specific Technical Specifications;</li> <li>iv. Land Rights (including confirmation by Developer of the affected landowner(s));</li> <li>v. a table in Schedule 1, clearly identifying which elements of the Self-Lay Works are Developer Works and SLP Works respectively and allocating responsibility for them.</li> </ul> |
| <b>Testing</b>                       | The collection of pressure, bacteriological and chemical tests required by a Water Company in the DCS and analysed by an accredited laboratory in accordance with Drinking Water Testing Specification ISO 17025.  |
| <b>Vests or Vesting</b>              | Conferring ownership of the relevant Self-Laid Main and/or the adoptable element of a Service Pipe on the Water Company.   |
| <b>Water Company Charge</b>          | The sum(s) listed in Schedule 2 due to the to the Water Company in respect of the Water Company Works.   |
| <b>Water Company Design</b>          | A version-controlled design issued for construction of the Self-Laid Main and such other plans and drawings listed in Schedule 1, showing the Site, the Adjoining Land and the layout of the Self-Lay Works, which has been produced by the Water Company.   |
| <b>Water Company Works</b>           | The items listed in Schedule 2 to be carried out and completed by the Water Company. Such activities will normally be Non-contestable Work and Services. Where no Water Company Works are to be undertaken, this shall be specifically stated in Schedule 2.   |
| <b>Water Fittings Regulations</b>    | The Water Supply (Water Fittings) Regulations 1999 or the Water Supply (Water Quality) Regulations 2016 or any other regulations made by the Secretary of State in accordance with section 74 of the Act.  |
| <b>Water Sector Guidance ("WSG")</b> | The document (as amended from time to time) approved by Ofwat under paragraph 3.2.4 of the Code.   |
| <b>Weekly Whereabouts Schedule</b>   | The weekly works schedule submitted by the SLP to the Water Company, in accordance with clause 7.2.  |
| <b>WIRS</b>                          | The Water Industry Registration Scheme operated by Lloyds Register EMEA on behalf of Water UK and its members, which certifies the competence of   |

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|  | companies undertaking Self-Lay Works or such other scheme as replaces it from time to time. |
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- 1.2 This WAA sets out the entire agreement and understanding between the Parties in relation to the Adoption of the Self-Laid Main.
- 1.3 In the event of any conflict or ambiguity between the Part 1 General Terms and Conditions in this WAA, the Schedules to this WAA and the Water Sector Guidance, they shall prevail in the following order:
  - (a) Part 1 General Terms and Conditions of the WAA;
  - (b) Schedules to the WAA including the Design and Construction Specification duly incorporated by reference; and
  - (c) the Water Sector Guidance including the Levels of Service.
- 1.4 If no details are shown for any of the Parties (other than the Water Company, Developer and SLP who are mandatory) it shall be assumed there is no such Party.
- 1.5 If more than one person is named as one of the Parties to this WAA, then any covenants, agreements, liabilities or statements made by that Party shall be deemed to be made by those persons jointly and severally.
- 1.6 References to gender shall include either gender or a corporate identity and the singular shall include the plural.
- 1.7 References to an Act of Parliament include any statutory modification or re-enactment thereof for the time being in force and all regulations, orders and codes of practice made under that Act of Parliament and any modification or replacement thereof.
- 1.8 Terms defined in the Code shall bear the same meaning in this WAA.
- 1.9 The Interpretation Act 1978 shall apply for the purposes of interpretation of this WAA as it applies to the interpretation of an Act of Parliament.

## **2. COMMENCEMENT & DURATION**

- 2.1 This WAA begins on the date it is signed by the last Party to it.
- 2.2 Unless terminated earlier in accordance with clause 20 (Termination), this WAA shall continue until the last Self-Laid Main or Service Pipe connected to that Self-Laid Main set out in Schedule 1 (Technical Specification) Vests.

## **3. CONSTRUCTION OF THE SELF-LAY WORKS**

3.1 Subject to clause 3.2, the Self-Lay Works shall be constructed in accordance with either the Water Company Design or SLP Accepted Design in Schedule 1 (Technical Specification) and otherwise in accordance with this Agreement and the DCS.

3.2 The design of the Self-Laid Main may only be changed or modified during the term of this WAA in accordance with the provisions of clause 19 (Variation).

3.3 Nothing in this WAA shall imply any obligation on the Water Company to ensure that the Self-Laid Main, or any Section and any Service Pipe is properly constructed.

#### **4. WARRANTIES**

4.1 Each Party warrants to the other Parties that:

- (a) the persons entering into this WAA on its behalf are duly authorised to do so; and
- (b) it shall comply with all Applicable Law in force from time to time.

4.2 The Parties undertake and warrant that they will carry out the Self-Lay Works and the Water Company Works on the terms set out in this WAA, including its Schedules and in accordance with:

- (a) the Design and Construction Specification as may be modified by Schedule 1);
- (b) Good Industry Practice;
- (c) any applicable Statutory Consents;
- (d) Applicable Law;
- (e) the Water Sector Guidance, including the Levels of Service (LoS) but excluding Appendix C (Procedures).

4.3 The SLP further warrants that it and its subcontractor(s) are Accredited at the date of this WAA and will maintain in force Accreditation appropriate to the obligations and duties under this WAA.

4.4 The Developer warrants that it:

- (a) shall comply, at all times, with its obligations under the Construction (Design and Management) Regulations (CDM) 2015. The Developer confirms that it has appointed a Principal Designer for the purpose of CDM which, for the avoidance of doubt, shall at no time be the Water Company;



- (b) has complied with the requirements of clause 5.

## **5. LAND RIGHTS, STATUTORY CONSENTS AND ACCESS**

- 5.1 Where the Site is in the freehold ownership of a party named as Owner or there is Adjoining Land, the Developer shall carry out all necessary title investigations and confirms for the purpose of this WAA that it, the Owner, and the Adjoining Owner have sufficient, unencumbered right and title between them such that the Water Main can be lawfully laid in accordance with this WAA. For the avoidance of doubt, the Water Company shall have no obligation to exercise its statutory powers to confer such right or title in favour of the Developer.
- 5.2 The Developer, Owner, and Adjoining Owner grant to the Water Company an unrestricted right of access to their land for any of the purposes set out in this WAA provided that:
- (a) they may direct the route of such access, ensuring that it is reasonably suitable for those purposes;
  - (b) they may impose reasonable conditions for the purposes of protecting the health or safety of any person or the integrity of any Self-Laid Main;
  - (c) the Water Company will use reasonable endeavours to minimize damage in exercising those rights;
  - (d) those rights are exercised only to the extent that it is reasonable and necessary to do so for the purposes of this WAA and the exercise of the Water Company's statutory functions.
- 5.3 Where required by the Land Rights Criteria, the Developer and/or SLP shall, at its or their own cost, grant (if competent to do so) or otherwise apply for, negotiate and procure Land Rights in favour of the Water Company in respect of the Self-Lay Works.
- 5.4 Where the Developer or SLP is unable to obtain any Land Right required under clause 5.3, the Water Company may at its sole discretion, elect to use its statutory powers to obtain that Land Right under the Act. The Developer and/or SLP shall pay the Water Company's reasonable costs (including any professional fees and disbursements) incurred in obtaining the same. For the avoidance of doubt, this clause shall survive expiry or earlier termination of this WAA.
- 5.5 Where the Self-Lay Works require Statutory Consents, the SLP/and or Developer shall apply for and obtain the same and shall comply with all relevant legislative requirements.
- 5.6 The Water Company shall only be required to apply for a Statutory Consent where:

- (a) any Statutory Consent obtained by the SLP and/or Developer would not be transferrable to the Water Company; or
  - (b) the SLP and/or Developer does not have the legal authority or is otherwise unable to obtain the same.
- 5.7 Where the Water Company is required to apply for a Statutory Consent under clause 5.6, the SLP and/or Developer shall notify the Water Company and shall provide reasonable assistance to the Water Company, in seeking to obtain the said Statutory Consent. The SLP and/or Developer shall reimburse the Water Company's reasonable costs incurred (including reasonable professional fees and disbursements).
- 5.8 The grant of such Land Rights, the rights of access set out in clause 5.2 and any Statutory Consents shall be completed (including any necessary registrations with any competent authority) prior to and as a condition of the Water Company:
- (a) providing a Source of Water for Testing on the Delivery Date;
  - (b) carrying out the Final Connection;
  - (c) carrying out the Water Company Works; and
  - (d) issuing a Declaration of Vesting.
- 5.9 In the event that the Developer or SLP is unable to obtain any Land Right, Statutory Consent, or other third-party consent which is required solely to achieve a variation under clause 19, the Water Company shall assume responsibility for obtaining such right, and the Parties shall agree in writing any changes to the Delivery Date. Except where a variation is solely required by the Water Company, the Developer or SLP shall be responsible for the cost of obtaining any Land Right or Statutory Consent in this clause 5.9.

## **6. ADJOINING LAND**

- 6.1 Where any part of the Self-Lay Works shall be constructed in Adjoining Land then the Adjoining Owner shall be a party to this WAA for the sole purpose of acknowledging and consenting to the arrangements set out in this WAA between the Developer, SLP and Water Company and agreeing to the covenants set out in clause 5.2. The Adjoining Owner shall have no liability under this WAA for the construction and future maintenance or repair of the Self-Laid Main.
- 6.2 The Adjoining Owner hereby agrees and consents to the arrangements in this WAA relating to Adjoining Land and to the Adoption of the Self-Laid Main and acknowledges that the Water Company shall be entitled to carry out its statutory rights under the Act in respect of the Adjoining Land on, or after, the Adoption Date.

## **7. SELF-LAID MAIN PHASING PROGRAMME & WEEKLY WHEREABOUTS SCHEDULE**

- 7.1 In the event of any material change to the timing or sequence of the Self-Lay Works, the SLP shall promptly supply the Water Company with an updated version of the Self-Laid Main Phasing Programme.
- 7.2 The SLP shall provide the Water Company with a Weekly Whereabouts Schedule. The Schedule shall be submitted to the Water Company no less than three (3) calendar days in advance of the planned work commencing and subsequently on a weekly basis or otherwise as agreed between the Water Company and SLP.
- 7.3 The Weekly Whereabouts Schedule shall contain the information listed in the Appendix E (Minimum Information) of the Water Sector Guidance.
- 7.4 Failure to provide, adhere to, or update the Weekly Whereabouts Schedule may result in an inspection notice by the Water Company made under clauses 8.4 and 8.5 and could require the SLP to open-up the works or any section of it at the SLPs cost.

## **8. TESTING AND INSPECTION**

- 8.1 The Water Company may not require a change to, or cause delay in, the SLP programme of Self-Lay Works to allow the Water Company to carry out any inspection and/or audit.
- 8.2 **Access to Site to Inspect and/or Audit At All Times**
- 8.2.1 Subject to clause 8.1, the Developer, Owner and Adjoining Owner agree, and the SLP shall procure, that the Water Company shall have access to the Self-Lay Works and the Site, at all reasonable times, to inspect and/or audit the Self-Lay Works and the compliance of all materials used or intended for use in the Self-Lay Works with the DCS.
- 8.3 **Notice of Uncovering or Opening Up the Self-Lay Works**
- 8.3.1 Subject to clauses 8.1 and 8.4, the Water Company may, acting reasonably at all times, request that the SLP and/or Developer uncover or make openings in any part of the Self-Lay Works for the purposes of verifying compliance with this WAA, including, but not limited to, compliance with the DCS and Applicable Law.
- 8.4 The Water Company shall give the SLP and/or Developer not less than three (3) Days written notice of any inspection requiring the Self-Lay Works to be opened-up or uncovered, except where the Water Company has reasonable grounds to believe that there is a health and safety, or water quality risk and such notice is unreasonable in the circumstances. The notice shall clearly set out the grounds

on which the request has been made. If the SLP and/or Developer fail to comply with the request, the Water Company may open-up the relevant part(s) of the Self-Lay Works.

## **8.5 Costs Associated with Uncovering or Opening-Up of the Self-Lay Works**

8.5.1 The SLP and/or Developer shall be entitled to submit an invoice, and the Water Company shall pay all reasonable costs incurred by the SLP and/or Developer arising directly from such uncovering or opening-up and reinstatement (including reasonable administrative costs and substantiated, incidental expenses relating directly to the opening-up and reinstatement) except where:

- (a) inspection of the Self-Lay Works reveals a material non-compliance with the requirements of this WAA including the DCS;
- (b) the Self-Lay Works had commenced before the Start Date;
- (c) the Water Company issued a notice under clause 8.3 where it was unable to inspect the Self-Lay Works because the SLP failed to adhere to, or provide a Weekly Whereabouts Schedule, under clause 7.

8.6 The Water Company shall be entitled to invoice and the SLP and/or Developer shall pay all reasonable costs incurred by the Water Company in the circumstances set out in clause 8.5 (a-c) arising directly from such uncovering, opening-up and reinstatement (including reasonable administrative costs and substantiated, incidental expenses relating directly to the opening-up and reinstatement) or in accordance with its published Charging Arrangements.

## **8.7 Notice of Testing**

In respect of Testing the Parties shall comply with the following:

- (a) SLP shall give the Water Company not less than five (5) Days' written notice of the date on which such Testing is to be carried out;
- (b) if the Water Company confirms that it wishes to attend Site to inspect Testing, the SLP shall use reasonable endeavours to confirm an AM or PM activity window;

8.8 After Adoption of the Self-Laid Main or any Section, inspection shall be carried out in accordance with the provisions of clause 13 (Defect Correction Period).

## **9. STREET WORKS LICENCE (NRSWA) & HIGHWAY AUTHORITY NOTIFICATION**

9.1 Where the Self-Lay Works are constructed in a highway maintainable, or declared to be prospectively maintainable at the public expense, the SLP shall:

- (a) obtain a Street Works Licence under section 50 NRSWA in its own name from the street authority for the street; and
- (b) comply fully with the requirements of the Street Works Legislation regarding the supervision of the Self-Lay Works by a qualified supervisor and the presence on site of a trained operative in accordance with the provisions in force from time to time.

9.2 The SLP shall, within (10) ten Days' of the Adoption Date, notify the highway authority that the Self-Laid Main or any Section which is the subject of a licence under section 50 of NRSWA has been Adopted by the Water Company such that the highway authority may update its records accordingly.

## **10 DELIVERY DATE**

10.1 The Water Company shall provide a viable Source of Water for Testing on the Delivery Date subject to the following:

- (a) all agreed Land Rights, necessary consents and permissions have been granted in favour of the Water Company; and
- (b) all Statutory Consents have been vested in the Water Company; and
- (c) the necessary rights under Street Works Legislation have been granted to the Water Company (provided each Party has used all reasonable endeavours to obtain such rights); and
- (d) delays resulting from any restrictions imposed on the Water Company or SLP by the Highways Authority.

### **10.2 Accredited SLP Carries Out Final Connection**

Where the SLP is Accredited to carry out a Final Connection of the Self-Laid Main to the Existing Main on the Network it shall give the Water Company not less than seven (7) calendar days' written notice of the date on which it intends to make the Final Connection provided always that the SLP has given the Water Company with such notice:

- (a) written confirmation of Testing (including copy certificates) whether carried out by an approved laboratory or by a Water Company); and
- (b) the 'as-built' plans in respect of the Self-Laid Main or Section, complete with any associated equipment manuals, test and specialist associated maintenance equipment in accordance with the DCS.

10.3 The SLP shall not be permitted to make a Final Connection under clause 10.2:

- (a) if the Water Company confirms in writing that it has not received the confirmation of Testing under clause 10.2(a) or 'as-built' plans under clause 10.2(b); or
- (b) if the Water Company gives the SLP written notice, substantiating the reasons why it is not reasonably satisfied that the Self-Laid Main complies with the terms of this WAA; or
- (c) where the Water Company has given the SLP written notice that an inspection by it has revealed a Defect or damage to the Self-Laid Main which has not yet been rectified.

10.4 The SLP acknowledges that a connection in breach of clause 10.3 may result in an illegal connection, in respect of which it may be liable to prosecution.

10.5 The SLP shall give the Water Company written notice of a Final Connection as soon as practicable and in any event within one Day of the connection taking place.

**10.6 Water Company to Carry Out Final Connection**

Where the Water Company is required to carry out a Final Connection of the Self-Laid Main to the Existing Main, the SLP may submit a written request for a Final Connection to be made within fourteen (14) calendar days of receipt of the request, provided always that the SLP has given the Water Company with such notice:

- (a) written confirmation of Testing (including copy certificates) whether carried out by an approved laboratory or by a Water Company); and
- (b) the 'as-built' plans in respect of the Self-Laid Main or Section, complete with any associated equipment manuals, test and specialist associated maintenance equipment in accordance with the DCS

10.7 The Water Company shall carry out the Final Connection within fourteen (14) calendar days of receipt of a written request by the SLP, except where the Water Company has:

- (a) confirmed that it has not received the confirmation of Testing under clause 10.6(a) or 'as-built' plans under clause 10.6(b); or
- (b) given the SLP written notice, substantiating the reasons why it is not reasonably satisfied that the Self-Laid Main complies with the terms of this WAA; or
- (c) given the SLP written notice that an inspection by it has revealed a Defect or damage to the Self-Laid Main which has not yet been rectified.

- 10.8 As soon as the Water Company becomes aware that any of the requirements in clauses 10.1 (a) to (d) or any of the conditions referred to in clause 10.3 (a) to (c) may not be fulfilled, or that any of the circumstances set out in clause 10.7 (a) to (c) may apply, the Parties shall, as soon as reasonably practicable, work collaboratively, using reasonable endeavours to agree a solution and date for Final Connection.

## **11 ADOPTION AND DECLARATION OF VESTING**

- 11.1 The Water Company shall, within five (5) Days of written confirmation of Final Connection by the SLP under clause 10.5 or a Final Connection carried out by the Water Company in clause 10.7, issue by email (or other electronic means), a dated Declaration of Vesting (see sample certificate in Appendix 1) to the SLP confirming the Adoption Date.
- 11.2 Subject to the SLP and Developer complying with their respective obligations in respect of the Communication Pipes as set out in the DCS, all Communication Pipes which are connected to the Self-Laid Main or any other Water Main vested in the Water Company and any chambers or associated apparatus shall, upon the making of such connection, Vest immediately in the Water Company. Except that that the Water Company may refuse to Vest any Communication Pipes and other items which the Water Company can reasonably demonstrate have not been satisfactorily constructed in accordance with the DCS or if any Defects in connection with such pipes or other items have not been rectified to the reasonable satisfaction of the Water Company.

## **12 POST-ADOPTION**

- 12.1 Following Adoption, the SLP, Developer and Water Company shall treat the Adopted Self-Laid Main or Section in all respects, as the property of the Water Company and from that time as forming part of the Network and comply with all procedures and rules issued by the Water Company relating to work on, or near the Network.
- 12.2 With respect to the Adopted Self-Laid Main or Section, the SLP shall, if requested to do so by the Water Company:
- (a) assign to the Water Company any warranties that the SLP has obtained in respect to the Adopted Self-Laid Main or Section; and/or
  - (b) enforce any such warranties or other rights as the SLP may have in respect to the Adopted Self-Lay Main or Section at the SLP's cost.
- 12.3 In respect of connections under clause 11.2:
- (a) the Developer warrants and confirms to the Water Company that the water fittings within all Premises served by the Adopted Self-Laid Main, comply fully with the Water Fittings Regulations;

- (b) the SLP warrants and confirms that it has satisfied itself that the minimum plumbing and private Supply Pipes within all Premises served by the Adopted Self-Laid Main comply, so far as it is reasonably able to ascertain, comply with the Water Fittings Regulations.
- 12.4 Following the making of any Communication Pipe connection, the SLP shall provide to the Water Company in the format prescribed by the Water Company the meter serial number, meter size, meter location, full postal address of the Premises served by the Communication Pipe and, where it has the right to do so, the name and address of the owner and occupier of the Premises where known and the date that that person became (or will become) the owner and/or occupier, together with any other information specified by the Water Company in respect of the Communication Pipe.
- 12.5 The information referred to in clause 12.4 shall be provided within 1 Day in the case of non-household connections and within 5 calendar days in the case of household connections.
- 12.6 If the SLP has not already provided the name and address of the owner or occupier of the Premises, the Developer shall provide such information and the date that that person became (or will become) the owner and/or occupier in writing to the Water Company as soon as reasonably practicable and, in any event, within 3 Days for household Premises and 24 hours for all other Communication Pipe connections of the commencement of their ownership and/or occupation. Pending receipt of such information, the Developer shall remain liable to the Water Company for payment of the water and sewerage charges due in respect of the Premises.

### **13 DEFECTS CORRECTION PERIOD & DAMAGE**

#### **Identifying a Defect**

- 13.1 During the Defects Correction Period, the Water Company may on reasonable suspicion of the existence of a Defect, request that the SLP and/or Developer search for that Defect, providing reasonable and substantiated, written grounds for the request. Searching may include:
- (a) uncovering, dismantling, re-covering and re-erecting the Adopted Self-Laid Main;
  - (b) providing materials and samples for tests and inspections done by the Water Company;
- 13.2 If no Defect is found, the SLP or Developer, as appropriate, shall be entitled to invoice its reasonable costs incurred, pursuant to clause 13.1, including reasonable administrative costs and substantiated, incidental expenses, relating directly to the activities in clause 13.1.



- 13.3 Where a Defect is identified by any Party, or any other matter which the notifying Party reasonably believes does not comply with this WAA during the Defects Correction Period, it shall within (2) two Days of becoming aware of the Defect give written notice to all Parties specifying the nature of the Defect.

#### **SLP Correcting a Defect**

- 13.4 If correction of a Defect and reinstatement of the Adopted Self-Laid Main or Section will neither interfere with, nor deviate the supply of water in the Existing Main, the Water Company must permit the SLP and/or Developer, at its sole expense and at no cost to the Water Company, to carry out the Defect correction and reinstatement of the Adopted Self-Laid Main, subject to the following:
- (a) the Parties, acting reasonably, shall consult with each other to agree the scope of remedial work and a reasonable timeframe for completion in the circumstances; and
  - (b) the Water Company shall issue a written notice to the SLP and/or Developer setting out the agreed scope of work and the agreed timeframe for completion.
- 13.5 Where the Defect has not been completed in accordance with the timeframe agreed by the parties pursuant to clause 13.4 (a) and (b), then Water Company may, on giving the SLP or Developer reasonable written notice, correct the Defect itself in accordance with clause 13.7.
- 13.6 Where a Defect has been corrected by the SLP and/or Developer in accordance with clause 13.4, the Defects Correction Period will re-start from the date of reinstatement of the Adopted Self-Laid Main or Adopted Section.

#### **Water Company Correcting a Defect**

- 13.7 The Water Company may, at its sole discretion, correct the Defect itself where:
- (a) the required corrective work is to an Adopted Self-Laid Main and will interfere with, or deviate the supply of water (in the Network) in the Existing Main
  - (b) taking into consideration all the circumstances, the work is reasonably deemed by the Water Company to be emergency work; or
  - (c) the SLP/Developer confirms in writing that it is unable or unwilling for any reason to carry out the Defect correction in clause 13.4, save that there is no requirement for the SLP/Developer to justify its refusal; or
  - (d) the defect has not been corrected within the timeframe agreed in clause 13.5; or
  - (e) a relevant dispute has arisen under Schedule 5 between the Parties to this WAA.

- 13.8 Where the Water Company has rectified a Defect arising during the Defect Correction Period pursuant to clause 13.7, the SLP and/or Developer shall within twenty-eight (28) calendar days of receipt of a substantiated invoice from the Water Company, indemnify the Water Company and reimburse all reasonable costs incurred by the Water Company in fault repair, reinstatement or rectification of defects relating to, or associated with, the Adopted Self-Laid Main during the Defects Correction Period.

#### **Damage which is not a Defect**

- 13.8 Until such time that the Construction Design Management Regulations 2015 no longer apply to the Site, the Developer, in its role as client for the purpose of those Regulations, shall be solely liable for the cost of rectifying any damage to a Self-Laid Main or Section, which is not a Defect, howsoever occurring and regardless of whether it occurred before or after the Self-Laid Main or Section was Adopted.
- 13.9 Such damage shall be corrected by following the provisions of clauses 13.4 to 13.8, as though it were a Defect Correction.
- 13.10 If the Water Company chooses to correct damage in accordance with clause 13.7, the Developer shall, within twenty-eight (28) calendar days of receipt of a substantiated invoice by the Water Company, indemnify the Water Company against all reasonable losses and costs suffered or incurred by the Water Company in connection with the fault repair, reinstatement or rectification of any damage to a Self-Laid Main or Section or an Adopted Self-Laid Main or Section.

#### **14. LIABILITIES**

- 14.1 The Parties shall not be liable for any breach of this WAA caused directly or indirectly by Force Majeure or by a Network Emergency.
- 14.2 Subject to clauses 14.3, 14.4 and 14.5, each Party's total liability for all matters arising under or in connection with this WAA and in respect of breach of the WSG, including all legal costs, awards of interest and applicable VAT is limited to (£5m) five million pounds sterling and applies to claims arising in contract, tort (including negligence) or under statute.
- 14.3 The Parties agree that they shall not be entitled to double recovery of compensation arising out of, or in connection with, a breach or series of breaches relating to substantially the same set of circumstances. As such, any sums awarded under the Dispute Resolution Procedure in Schedule 5 or in court proceedings shall be reduced by the amount recovered by a Party under the redress procedures set out in the Redress section of the WSG.
- 14.4 Nothing in this WAA shall operate to exclude or restrict a Party's liability for:

- (a) death or personal injury;
- (b) fraud or any other matter if and to the extent that, under the law of England, liability for it cannot be excluded, restricted or limited as against the other Party in the context of this WAA;

14.5 Except as provided for in the WSG, no Party is liable to the other (except where this WAA provides for an indemnity) for any of the following losses, claims or damages, whether direct, indirect or consequential in nature, arising out of, or in connection with this WAA:

- (a) loss of actual or anticipated profits; or
- (b) loss of revenue; or
- (c) loss of use; or
- (d) loss of contract or from breaches of contracts excluding this WAA; or
- (e) loss of business opportunity; or
- (f) loss of anticipated savings; or
- (g) loss of goodwill; or
- (h) injury to reputation.

## **15 PAYMENTS**

15.1 In consideration of the performance of their respective obligations under this WAA, the Parties shall make any payments due in the amounts and at the intervals as follows:

- (a) where any payments are due to be paid by the SLP to the Water Company, they shall be made in accordance with the requirements of Schedule 2 (Water Company Works and Charges) and this clause 15. Charges for Water Company Works are fixed for the first twelve (12) months of this WAA and thereafter are subject to change and shall be payable at the rate set out in the Water Company's published Charging Arrangements prevailing thereafter;
- (b) where any payments are due to be paid by the Water Company to the SLP and/or Developer, they shall be paid in accordance with the requirements of Schedule 3 (Payments).

15.2 Unless stated otherwise, all payments due under this WAA are exclusive of VAT which shall be added at the applicable rate.

15.3 Unless agreed otherwise by the relevant Parties, all payments due under this WAA including invoices submitted pursuant to clauses 8.5, 8.6, 13.2, 13.7 and

13.10, shall be paid within (28) twenty-eight calendar days of the date of any undisputed invoice.

- 15.4 If any item or part of an item in an invoice rendered by a Party under this WAA is reasonably disputed or subject to question, payment of the remainder of the invoice shall not be withheld on those grounds, and the provisions of clause 15.5 shall apply to the disputed or questioned item from the time, and to the extent that it shall subsequently be agreed or determined to have been properly payable. Where a Party wishes to dispute or question an item or part of an item in an invoice or statement, it may only do so in good faith and on grounds which are not vexatious or frivolous.
- 15.5 If any undisputed sum payable under the WAA is not paid at the expiry of the period for payment specified in clause 15.3, then the Party who has failed to make payment shall pay interest on the amount outstanding (both before and after judgment or decree) at the rate of two and a half percent (2.5%) per annum above the Bank of England base rate, such interest to be calculated from (but excluding) the date of expiry of such period until payment thereof, calculated on a daily basis and compounded annually. The Parties agree that the interest referred to in this clause 15.5 provides a substantial remedy under the Late Payment of Commercial Debts (Interest) Act 1998.
- 15.6 The Parties shall pay all amounts due under this WAA without set-off, deduction, counterclaim or withholding.
- 15.7 Any dispute or question properly raised under clause 15.4 shall not be considered a breach of the WAA.

## **16 FORCE MAJEURE**

- 16.1 If any Party becomes unable to carry out its obligations under this WAA due to a circumstance of Force Majeure, this WAA shall remain in full force and effect except that all Parties' obligations (other than obligations as to payment) shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:
- (a) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
  - (b) no obligations of either Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure; and
  - (c) the non-performing Party shall use all reasonable efforts to remedy its inability to perform.

## **17 INTELLECTUAL PROPERTY**

- 17.1 If any Intellectual Property Rights existing in respect of anything used in or required for the Self-Laid Main or its operation, repair, maintenance or replacement are the property of the Developer and/or the SLP, the Parties respectively grant to the Water Company a royalty-free, non-exclusive and irrevocable licence to use, reproduce, modify, adapt and translate any of the works, designs or inventions incorporated in anything used or required as aforesaid for all purposes relating to the Network.
- 17.2 The Developer and/or SLP warrant that all necessary Intellectual Property Rights will be acquired and granted to the Water Company prior to Adoption.
- 17.3 The Developer and/or SLP shall indemnify the Water Company against all reasonable losses, costs and expenses suffered or incurred by the Water Company arising out of any claim by any third Party that the use by the Water Company of the licensed intellectual property infringes that third Party's rights.

## **18 WAIVER**

- 18.1 No act or omission of one Party shall, by itself, amount to a waiver of any right or remedy of that Party, unless expressly stated in writing by that Party. Nor shall any reasonable delay in exercising any right or remedy by itself constitute a waiver of that right or remedy.

## **19 VARIATIONS**

- 19.1 The Parties may only vary these Part 1 General Terms and Conditions in accordance with the requirements of paragraph 5.2.2 of the Code.
- 19.2 The Parties may vary and amend the Schedules to this WAA with the prior, written consent of all Parties in accordance with this clause 19. Every significant variation which requires the re-issue of the SLP Accepted Design or Water Company Design, or re-calculation of any Schedule 2 or 3 payment, for example shall be a "**Significant Variation**" and shall be signed and dated by an authorised representative and annexed to this WAA.
- 19.3 Where any Party proposes a Significant Variation, they shall:
- (a) promptly notify the other Parties;
  - (b) use reasonable endeavours to agree how to proceed, including (as appropriate) arranging reasonably necessary meetings and Site visits, changes to the Delivery Date and the recalculation of any payments under this WAA;
  - (c) submit a written request for a quotation for the variation activities to the SLP or Water Company;

- 19.4 The Parties shall, acting in good faith either:

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- (a) in the case of the SLP, promptly provide a reasonable price for the Significant Variation or in respect of the Water Company, provide a price by reference to its published Charging Arrangements, where available (“**Quotation**”); or
- (b) provide reasonable, written grounds for declining the request, such reply not to be unreasonably withheld or delayed.

19.5 Upon written acceptance of a Quotation, the Parties shall make and implement the agreed Significant Variation to the Self-Lay Works or Water Company Works on the basis set out in the Quotation.

## **20 TERMINATION OF AGREEMENT**

20.1 This WAA shall terminate if the Self-Lay Works are not commenced within two (2) years of the Start Date;

20.2 The Water Company may at its sole discretion terminate this WAA:

- (a) by written notice if either of the SLP or Developer is subject to an Insolvency Event;
- (b) if an SLP loses its WIRS Accreditation appropriate to the circumstances of this WAA.

20.3 Any Party may terminate this WAA by giving the other written notice if:

- (a) the other materially breaches any term of this WAA and it is not possible to remedy that breach;
- (b) the other materially breaches any term of this WAA and it is possible to remedy that breach, but the other fails to do so within twenty (20) Days of being requested in writing to do so.

20.4 The Parties may, at any time, terminate this WAA by mutual, written consent.

20.5 Any Party may terminate this WAA with immediate effect, on written notice, where another Party is in breach of the Bribery Act 2010.

## **21 SURVIVAL ON TERMINATION OR EXPIRY**

21.1 Termination of this WAA shall not affect any rights or obligations which may have accrued prior to and including the date of such termination. Any provision of this WAA which expressly or by implication is intended to come into or continue in force on or after termination or expiry of this WAA shall remain in full force and effect. This includes clauses 5 (**Land Rights**), 13 (**Defect Correction Period**) and 14 (**Liability**).

## **22 DISPUTES**

- 22.1 Subject to clause 22.2, all disputes, claims or differences which may arise at any time in relation to this WAA and which have not been resolved in accordance with the redress procedure in the WSG, shall be resolved in accordance with the escalating dispute procedure set out in Schedule 5. This includes for example:
- (a) non-compliance by any Party with the requirements and obligations in the DCS;
  - (b) non-compliance by any Party with the Water Sector Guidance;
  - (c) breach of any provision of this WAA;
- 22.2 Where this WAA is terminated in accordance with clause 20 (Termination) the matter may be referred to the exclusive jurisdiction of the English Courts and the provisions of Schedule 5 will not apply.
- 22.4 Where the Parties have failed to resolve a dispute, claim or difference under clause 22.1 and Schedule 5, the matter may subsequently be referred to the exclusive jurisdiction of the English Courts.

## **23 NOTICES**

- 23.1 Subject to clause 23.2, where a Party is required by this WAA to give written notice, notice in writing or written notification, including the notice of dispute referred to in Schedule 5, paragraph 2, it shall be sent by email to the email address of the person(s) authorised in this WAA as updated from time to time. Notice by email will be treated as received during Delivery Hours on the Day it is sent and if it is received outside of Delivery Hours, notice will be treated as received at the next start of Delivery Hours.
- 23.2 Notice to terminate this WAA or notice of the formal commencement of a legal dispute under clause 31 must be sent to the registered address of the other Party or Parties, marked for the attention of the Company Secretary and Head of Legal and shall be served:
- (a) by hand (including courier) during Delivery Hours. If delivered by hand outside Delivery Hours, notice will be treated as received at the next start of Delivery Hours; or
  - (b) sent by first class pre-paid post or guaranteed next day delivery post both with delivery confirmation or receipt (for example special delivery) to the address. Notice will be treated as received on the later of actual receipt and 9.00 am on the Day after posting if posted on a Day, and on the later of actual receipt and 9.00 am on the second Day after posting if not posted on a Day;
- 23.3 Notices under this clause 23 shall not be sent by email.

- 23.4 Where a Party wishes to change the details of the person(s) authorised for it under the WAA, it may do so by written notice to the other Parties in accordance with the process in clause 23.1.
- 23.5 The contacts nominated by each Party for the purposes of day to day operations and contract management are set out in Schedule 6. The provision of individuals' names shall be subject to the requirements of Data Protection Legislation.

## **24 THIRD PARTY RIGHTS & ASSIGNMENT**

- 24.1 Subject to section 51(A) 9 WIA, this WAA is personal to the Parties and no one other than the Parties to this WAA shall have any right to enforce any of its terms.
- 24.2 No Party may assign or transfer the benefit or burden of this WAA without the written consent of the other Parties, such consent not to be unreasonably withheld or delayed, but no consent shall be required to an assignment or transfer which is necessary for the purposes of the solvent reconstruction or amalgamation of any of the Parties, or upon the appointment under section 6 of the Act of another person as the water undertaker for the area including the Site.

## **25 SUBCONTRACTING**

- 25.1 Both the SLP and Developer may subcontract any part of the Self-Lay Works provided always that:
- (a) only appropriately Accredited subcontractors may be engaged in the performance of the Self-Lay Works for which Accreditation is necessary;
  - (b) the SLP shall remain liable at all times, for the acts and omissions of its subcontractor(s) and shall not be relieved of any of its obligations under this WAA; and
  - (c) the SLP and/or Developer shall provide the Water Company with full written details of the subcontractor, prior to the commencement of work by that subcontractor.
- 25.2 The SLP and Developer shall procure that each of their subcontractors comply with the Applicable Law in the delivery of this WAA.

## **26 RECORDS**

- 26.1 The SLP and Developer shall produce and maintain adequate records with respect to the laying of the Self-Laid Main in accordance with Applicable Law. Such procedures and records shall be provided to the Water Company, free of charge, on reasonable request.

## **27 CONFIDENTIALITY**



27.1 Each party shall:

- (a) keep confidential all Confidential Information of the other party which it receives in connection with this WAA;
- (b) not copy or reproduce any part of it without the prior written approval of the other party, except as strictly necessary for the performance of its obligations under this WAA;
- (c) apply to it no lesser security measures and degree of care than those which it takes in protecting its own Confidential Information and in any event no less than that which a reasonable person or business would take in protecting its own confidential information;
- (d) only use such Confidential Information as strictly necessary for the performance of, or exercise of its rights under, this WAA;
- (e) subject to clause 27.2, not disclose such Confidential Information to any third party (other than its professional advisers, officers, employees, agents, contractors and subcontractors on a 'need to know' basis as strictly required for the purposes of this WAA and subject to each such person being bound by an obligation of confidentiality equivalent to this clause 27); and
- (f) promptly, upon request and, in any event, upon termination of this WAA (for whatever reason), return to the other party all materials (in whatever form) incorporating, embodying or recording any such Confidential Information in its possession or control and, if requested by the other party, certify in writing that it has done so.

27.2 Either party may disclose the other's Confidential Information to the extent required by law or by any court, tribunal, regulator or other authority with competent jurisdiction to order its disclosure (but only to the extent of such requirement).

## **28 DATA PROTECTION**

28.1 For the purposes of this clause 28, "**controller**", "**personal data**", "**processing**" and "**appropriate technical and organisational measures**" shall have the meanings given to them in the Data Protection Legislation.

28.2 The Parties acknowledge that processing of personal data may be required for the administration and performance of this WAA and that Data Protection Legislation applies to such processing.

28.3. Personal Data received by a party under this WAA shall be used for the administration and performance of this WAA and not for any further purposes, unless the receiving party has legitimate grounds as a controller under Data

Protection Legislation and the processing complies with Data Protection Legislation.

- 28.4 Each party shall implement appropriate technical and organisational measures to keep the Personal Data secure and prevent unauthorised or unlawful processing and accidental loss, destruction or damage.

## **29 ENTIRE AGREEMENT**

- 29.1 This WAA constitutes the entire agreement between the Parties and supersedes any previous agreement or arrangements between the Parties in respect of the subject matter of this WAA.

## **30. COUNTERPARTS**

- 30.1 This WAA may be entered into in the form of two or more counterparts, each executed by one or more of the Parties but, taken together, executed by all and, provided that all the Parties so enter into this WAA, each of the executed counterparts, when duly exchanged and delivered, will be deemed to be an original, but, taken together, they will constitute one instrument.

## **31. GOVERNING LAW**

- 31.1 This WAA shall be governed by and construed in accordance with the laws of England.
- 31.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with this WAA.

Signed by:

Name:

Role:

For and on behalf of:

Date of signature:

Signed by:

Name:

Role:

For and on behalf of:

Date of signature:

**INSERT Further Signatures Here**

Signed by:

Name:

Role:

For and on behalf of:

Date of signature:

Signed by:

Name:

Role:

For and on behalf of:

Date of signature:

Signed by:

Name:

Role:

For and on behalf of:

Date of signature:

**PART 2 SCHEDULES**

**SCHEDULE 1**

**TECHNICAL SPECIFICATION**

**(To include specification of Delivery Date, version-controlled Design  
etc.)**

## **SCHEDULE 1**

### **TECHNICAL SPECIFICATION**

**(To include specification of Delivery Date, version-controlled Design  
etc.)**

## **SCHEDULE 2**

### **WATER COMPANY WORKS & COMPANY CHARGES**

**(the works to be carried out by the Water Company)**

## **SCHEDULE 3**

### **PAYMENTS**

## **SCHEDULE 4**

### **SELF-LAID MAIN PHASING PROGRAMME (indicative only)**



## **SCHEDULE 5**

### **DISPUTE RESOLUTION PROCEDURE**

|                      |                                  | Name | Position | Email/Phone |
|----------------------|----------------------------------|------|----------|-------------|
| <b>Water Company</b> | <b>(1) Representative</b>        |      |          |             |
|                      | <b>(2) Senior Representative</b> |      |          |             |
|                      |                                  |      |          |             |
| <b>SLP</b>           | <b>(1) Representative</b>        |      |          |             |
|                      | <b>(2) Senior Representative</b> |      |          |             |
|                      |                                  |      |          |             |
| <b>Developer</b>     | <b>(1) Representative</b>        |      |          |             |
|                      | <b>(2) Senior Representative</b> |      |          |             |

#### **1. General Principles**

1.1 Paragraph references are to references in this Schedule unless stated otherwise.

- 1.2 The procedure set out in this Schedule (the “**Dispute Resolution Procedure**”) shall apply to any dispute, claim or difference (“**Dispute**”) between the Parties arising out of, or relating to, this WAA.
- 1.3 This Dispute Resolution Procedure sets out the intention of the Parties to act in a collaborative manner and in a spirit of partnership in seeking to resolve disputes at the earliest stage possible. It is therefore accepted by the Parties that this procedure shall only apply after the application of the redress procedures set out in the Water Sector Guidance. For the avoidance of doubt, any monies recovered by a party pursuant to these procedures shall be deducted from any sums awarded under the Dispute Resolution Procedure or in court proceedings subsequent to the operation of this procedure where those monies relate to the same set of circumstances giving rise to the dispute being dealt with under the Dispute Resolution Procedure.
- 1.4 Unless otherwise agreed, all negotiations connected with the Dispute shall be in confidence and without prejudice to the rights of the Parties in any future proceedings. If at any point the Parties reach agreement on the resolution of a Dispute or any part of a Dispute, it shall be set out in writing and signed by the authorised representatives of both Parties. Such resolution shall from that point on be binding on the Parties and may be referred to as evidence of their agreement.
- 1.5 Changes to the details of the Parties authorised representatives must be notified, in writing to all Parties within 48 hours of any change taking effect.

## **2. Notice**

- 2.1 If a Dispute arises, the Party who wishes to raise it (“**the Claiming Party**”) must give notice (“**a Dispute Notice**”) to the other Party or Parties (“**the Responding Party**”) as soon as reasonably possible after becoming aware of the circumstances giving rise to the Dispute.
- 2.2 The Dispute Notice must specify in reasonable detail:
  - (a) the relevant facts giving rise to the Dispute;
  - (b) any contractual obligation or other applicable legal duty which the Claiming Party asserts has been or will be breached; and
  - (c) the remedy or action requested by the Claiming Party.

## **3. Negotiation**

- 3.1 If a Dispute arises between the Parties at any time, such Dispute shall first be referred to the Parties' Representatives named in this Schedule. The Parties' Representatives shall meet without prejudice within 5 Days' of receipt of the Dispute Notice by the Responding Party and they shall attempt in good faith to resolve such Dispute.
- 3.2 Any decision jointly made by the Representatives shall be final and binding unless the Parties otherwise agree, once it has been recorded in writing and signed by each Representative in accordance with paragraph 1.4.
- 3.3 Subject to paragraph 3.1, if the Representatives have failed to resolve any Dispute within 10 Days' of receipt of the Dispute Notice by the Responding Party, the dispute shall be referred to the Parties' Senior Representatives who shall within 5 Days' of the Dispute being referred to them, meet without prejudice and attempt in good faith to resolve such Dispute.
- 3.4 Any decision jointly made by the Senior Representatives shall be final and binding unless the Parties otherwise agree, once it has been recorded in writing and signed by each Senior Representative in accordance with paragraph 1.4.

#### **4. Mediation**

- 4.1 If the Dispute cannot be resolved by negotiation, the Dispute shall be referred to Mediation pursuant to the procedure set out below unless any Party, acting reasonably, considers that the Dispute is not suitable for mediation.
- 4.2 For the avoidance of doubt, nothing in this Schedule shall be taken to exclude or limit the rights of any Party to make such applications (including but not limited to applications as to costs) as it sees fit in any proceedings, relating to the conduct of the other Party and in particular, any decision made under paragraph 4.1 above.
- 4.3 The procedure for mediation and consequential provisions relating to mediation are as follows:
  - (a) a neutral mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Days after a request from one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party may apply to the Centre for Effective Dispute Resolution and Mediation ("**CEDR**") to appoint a Mediator and the mediation shall be conducted in accordance with the rules and procedures of the CEDR. If the CEDR is unable or unwilling to nominate a Mediator then any Party may (subject

to obtaining the consent of the other(s)) approach an alternative reputable mediation body;

- (b) the Parties shall within 10 Days of the Mediator's appointment meet with the Mediator to discuss and agree a programme for the exchange of all relevant information and the procedure to be adopted for the mediation. Either Party may ask the Mediator to give guidance on a suitable programme for information exchange and/or mediation procedure.

- 4.4 If Mediation fails to achieve a resolution of the dispute or any part of it, any Party may ask the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Dispute without the prior written consent of the other(s).

## **SCHEDULE 6**

### **CONTACT DETAILS**

Insert here a named point of contact for each party in relation to day to day operations and contract management

**Water Company:**

**SLP:**

**Developer:**

**Owner:**

**Adjoining Owner:**