

DATED

20

**DEVELOPER**

and

**OWNER**

and

**ADJOINING OWNER**

and

**Error! Reference source not found.**

and

**SEWERAGE UNDERTAKER**

AGREEMENT

under Section 104 of the  
Water Industry Act 1991  
relating to sewers at

**DEVELOPMENT ADDRESS**

Solicitor

Name

Address

Contact

Details

Reference:

T H I S AGREEMENT is made the  
Two Thousand and Nineteen

day of

**B E T W E E N**

1. "The Developer"
2. "The Owner"            The Developer
3. "The Adjoining        None  
Owner(s)"
4. "The Surety"            [Surety Name Ltd] (**Company No**            ) whose  
registered office is at [Surety address]
5. "The Undertaker"        [Water & Sewerage Undertaker Ltd] (Company No  
.....) whose registered office is at [undertaker address]

**WHEREAS**

- A. The '*Code for Adoption Agreements for water and sewerage companies operating wholly or mainly in England*' issued by Ofwat as amended from time to time ("the Code"), makes provision in relation to the terms and conditions of an agreement between the Parties for the adoption of sewers and associated infrastructure in accordance with section 104 Water Industry Act 1991 ("WIA" or the "Act").
- B. This Adoption Agreement, together with its Schedules and the Procedures contained within the 'Sewerage Sector Guidance' issued pursuant to the Code ("the Sector Guidance") is in the form prescribed by Ofwat in the Code and is the only agreement between the parties in respect of the Works.

## DEFINITIONS

In this Agreement the following words or phrases shall have the following meanings:-

- |     |                                  |   |
|-----|----------------------------------|---|
| 1.1 | Accessories                      | As defined in Section 219 of the Act  |
| 1.2 | Act                              | The Water Industry Act 1991 including any statutory modification or re-enactment thereof  |
| 1.3 | Cash Deposit Schedule            | The amount specified under the Second Schedule  |
| 1.4 | CDM                              | Construction (Design and Management) Regulations 2015 as amended or replaced  |
| 1.5 | Day or Date                      | Any day except where calculating periods following receipt of any notice or submission under this Agreement or the SG, in which case the first day of such a period means the first working day (ie not Saturdays Sundays Bank or other Public Holidays) of such period |
| 1.6 | Deposited Sum                    | The sum agreed by the parties in lieu of a Surety arrangement and specified in the Sixth Schedule   |
| 1.7 | Design and Construction Guidance | the name given by the Code to the construction standards previously incorporated into Sewers for Adoption but now incorporated into the Sector Guidance and known as the Design and Construction Guidance or DCG  |

- 1.8 Diverted Sewers Sewer and Lateral Drains (if any) which the Developer proposes to construct to replace existing public sewers and public Lateral Drains (if any) (which existing public sewers and public Lateral Drains are to be abandoned as public sewers and public Lateral Drains upon the issue of the Vesting Declaration and to be transferred automatically to the ownership of the Developer at no cost to the Undertaker subject to the Developer (or the Owner or the Adjoining Owner(s) as the case may be if there is a Party so defined) indemnifying the Undertaker from all liabilities arising directly or indirectly from such abandoned public sewers and public Lateral Drains and at the Developer's choice removing them entirely from the Green Land at no cost to the Undertaker)
- 1.9 Drawings Subject to any alteration in accordance with S.2 of the First Schedule or as otherwise permitted under this Agreement this expression shall mean those Drawings calculations and other design or working Drawings relating to the carrying out of the Works or any part or parts thereof held by the Undertaker under reference [Undertaker's File Reference] which are not annexed hereto
- 1.10 Estate Roads Roads or proposed roads which are or are intended to be maintained at public expense

1.11	Final Certificate	<p>A certificate issued under paragraph S.8.4 of the First Schedule by the Undertaker to the Developer confirming that:-</p> <p>1.11.1 the Works have been constructed in accordance with this Agreement; and</p> <p>1.11.2 all defects notified to the Developer following final inspections by the Undertaker have been remedied to the Undertaker's satisfaction For the avoidance of doubt the issue of a Final Certificate does not vest the Works in the Undertaker and they remain the responsibility of the Developer until a Vesting Declaration (defined below) is issued</p>
1.12	Financial Limit	Shall mean [the amount of the surety bond in words and figures]
1.13	Green Land	The land situate at [address of the development site] and which is shown edged green on the attached Layout Plan
1.14	Inspection Fees	[amount of supervision fees in words and figures]
1.15	Lateral Drains or Public Lateral Drains	As defined in Sections 219 and 106(1A)(b) (i) of the Act
1.16	Layout Plan	The plan or plans attached to this Agreement which shows the Site and the

layout of the Works and numbered [layout plan reference]

- 1.17 Maintenance Period The period from the date of issue of the Provisional Certificate until the Works are vested in the Undertaker
- 1.18 Period of Construction [period of time estimated as needed to complete the Construction] from the date hereof, as varied from time to time by agreement between the Parties
- 1.19 Protected Strip The strip of land shown coloured yellow (if any) on the Layout Plan and (unless the contrary shall be stipulated or be clear from the Drawings or the Layout Plan) the Protected Strip shall lie one half to each side of the centreline of those parts of the Works which are not being constructed within Estate Roads and/or public highways and any existing sewers and any Diverted Sewers or Public Lateral Drains (other than any sewers or Lateral Drains which may be abandoned pursuant to this Agreement) as are shown on the Drawings or the Layout Plan and includes any part of the Protected Strip
- 1.20 Provisional Certificate The certificate issued under S.8.1 or S.8.3 of the First Schedule
- 1.21 Sewer or Sewers As defined in Section 219 of the Act

1.22	Site	Shall comprise the Green Land and other land (if any) on under in or through which the Works are proposed to be executed
1.23	Specification	The Civil Engineering Specification and other requirements specified by the Design and Construction Guidance "DCG"), as amended by any Local Practices implemented by the Undertaker and subject to any further technical requirements specified by the Undertaker and which are permitted by the SG
1.24	Vesting Declaration	A written declaration signed on behalf of the Undertaker vesting the Works in itself as public Sewers or Public Lateral Drains
1.25	Undertaker's Rights	All rights exercised by the Developer and/or granted to the Developer by the Owner and/or the Adjoining Owner(s) in relation to the construction use maintenance alteration repair and replacement of the Works together with discharges therefrom to any watercourse For the avoidance of doubt any covenants that the Developer is subject to shall have no effect on the Undertaker
1.26	Watercourse	A watercourse as defined in Section 219 of the Act but also including a canal pond or lake
1.27	Works	Subject to any alteration in accordance with S.2 of the First Schedule this expression shall mean all those Works being Sewers

Lateral Drains pumping stations and Accessories and shall include valve chambers overflow chambers outfall structures components and associated works and (where appropriate) balancing facilities as shown on the Drawings and includes any part or parts of the Works

1.28 Engineer (Engineer's Name) of the Undertaker's Developer Services

## **INTERPRETATION**

- 1.1 This Agreement is made under Section 104 of the Act
- 1.2 References to gender shall include either gender or a corporate identity and the singular shall include the plural
- 1.3 The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies to the interpretation of an Act of Parliament
- 1.4 If there is more than one person named as one of the parties then any covenants agreements liabilities or statements made by that party shall be deemed to be made by those persons jointly and severally
- 1.5 If there are no details shown against any one of the party definitions then this Agreement shall be interpreted as if there was no such party
- 1.6 In the event of there being separate parties defined as "the Developer" and "the Owner" then:

- 1.6.1 the obligations in Clause 2.1 of the Agreement and S.20 of the First Schedule relating to matters of title or conveyancing shall be obligations of the Owner and not of the Developer; and
- 1.6.2 in the event of default by the Developer in respect of any matter under this Agreement the obligations of the Developer shall also become obligations of the Owner and at the Undertaker's discretion may be enforced against either the Developer or the Owner until this Agreement is replaced by a further agreement entered into by the Owner and/or a different Developer PROVIDED THAT these obligations shall only apply to that part of the Green Land that they own
- 1.7.1 The provisions of this Agreement are personal to the parties hereto save on the reconstruction or amalgamation of the Developer or
- 1.7.2 on the appointment of another person as Sewerage Undertaker for the area including the Site under the Act
- 1.8 This Agreement shall be governed in all respects by English Law

## **AGREEMENT**

1. The provisions in the First and Third Schedule shall apply in respect of the Works and all other matters therein contained as though the same had been set out in full in this Agreement
- 2.1 In respect of any part of the Works to be constructed in the Green Land the Owner (if any) hereby consents to the exercise by the Developer of its rights under this Agreement and acknowledges that the Undertaker shall be entitled to carry out the Undertaker's Rights following issue of the Vesting Declaration in addition to

statutory rights that are exercised by the Undertaker pursuant to the Act

- 2.2 If any of the Works are to be constructed within the Site but outside the Green Land then the Adjoining Owner(s) shall join into this Agreement solely for the purposes of acknowledging and consenting to the arrangements herein expressed between the Developer and the Undertaker For the avoidance of doubt the Adjoining Owner(s) shall have no liability under the provisions of this Agreement in relation to the construction and future maintenance or repair of the Works
- 2.3 The Developer has sufficient rights in that part of the Site that is outside the Green Land to enable the Works to be carried out therein and to permit the use repair maintenance and discharge therefrom to any Watercourse prior to the date of the Vesting Declaration and to enable a valid and effectual declaration to be made in respect of the Works
- 2.4 The Adjoining Owner(s) hereby consents and agrees to the arrangements contained within this Agreement as far as they relate to land in the ownership of the Adjoining Owner(s) and acknowledges that the Undertaker shall be entitled to carry out the Undertaker's Rights following issue of the Vesting Declaration in addition to statutory rights that are exercised by the Undertaker pursuant to the Act
- 2.5 The Developer hereby confirms that the title of the Owner and the Adjoining Owner(s) (if such parties have joined in this Agreement) have been examined and establishes that the parts of the Site where the Works are to be constructed are in their ownership at the date of this Agreement
- 2.6 The Owner and the Adjoining Owner(s) acknowledge that the

Works during and after their construction and until the issue of the Vesting Declaration belong to the Developer

3. The Developer shall immediately upon completion of the Works (but without delaying whilst outfall connections to public Sewers or other Works are completed) forward to the Undertaker accurate 'as constructed' Drawings of the Works (including any agreed variations to the original Drawings)
4. No statutory or common law rights and powers of the Undertaker or the Developer shall be affected by this Agreement
5. Nothing in this Agreement is intended to confer on any third party (whether referred to herein by name class description or otherwise) any benefit or right to enforce a provision contained in this Agreement
6. Any party may (if requested) supply to every person who may request it, including but not limited to any lender or purchaser of land to be drained by means of the Works, a copy or summary of this Agreement
7. If as part of the Works the Developer is proposing to construct Diverted Sewers then the additional provisions of the Second Schedule shall apply
8. The Developer or the Owner or the Adjoining Owner(s) if there are parties so defined either own the freehold or the unexpired residue of not less than 200 years of a leasehold term or in the case of the Developer has sufficient interest in the Green Land or land adjoining the Green Land within the Site to enable certain development in relation to the same including the construction of the Works to serve the said development

- 9.1 The Developer has sufficient rights in the Green Land to enable the Works to be carried out and to permit the use repair maintenance and discharge therefrom and into any Watercourse prior to the date of the Vesting Declaration and to enable a valid and effectual declaration to be made in respect of the Works
- 9.2 The Developer and the Owner (if any) hereby acknowledges that the Undertaker shall be entitled to carry out the Undertaker's Rights following issue of the Vesting Declaration
10. In the event of a conflict between this Agreement and the DCG the provisions of this Agreement shall prevail and have effect

**EXECUTED** by the parties hereto on the day and year first before written

**FIRST SCHEDULE**  
**(being provisions applicable to the Works)**

**Construction of Works**

- S.1 If the Developer proceeds with the Works it shall at its own expense properly construct and complete them in accordance with the Drawings and the Specification (and which Drawings and Specification shall be deemed to be part of this Agreement) or as varied by virtue of the powers contained in S.2 of this Schedule and the statutory provisions for the time being relating to new Sewers and to the reasonable satisfaction of the Undertaker in the positions and to the extent shown within the Drawings and indicated by coloured lines and symbols as to foul and surface water sewers in accordance with Appendix VII of the DCG

## **Variations**

- S.2 The Developer shall not vary the Works nor make any additional connections not shown on the Drawings without first obtaining the Undertaker's written consent

## **Consent to Discharge**

- S.3.1 In the case of a discharge from any part of the Works to controlled waters as defined by the Water Resources Act 1991 ('WRA' which expression includes any statutory modification or re-enactment thereof) the Developer shall:

- S.3.1.1 before the commencement of any Works make application for and obtain any necessary consent to such discharge from the Pollution Control Authority and if appropriate the Land Drainage Authority and comply with the conditions relating to their consent PROVIDED however that the Developer shall not agree to conditions without the prior approval of the Undertaker (which approval shall not be unreasonably withheld or delayed) and shall if required by the Undertaker appeal against the same or any of them within the period provided within the WRA for the lodging of an appeal and

- S.3.1.2 transfer the consent to discharge referred to in S.3.1.1 to the Undertaker immediately prior to the issue of the Vesting Declaration or as soon as practicable thereafter

- S.3.2 If any part of the Works is intended to discharge into any Watercourse which is owned by or comprises part of the undertaking of a Navigation Authority (as defined in the WRA) (otherwise than a natural Watercourse and whether the same is navigable or not) the Developer shall before the commencement of any of the Works which would drain to such Watercourse

obtain the consent of the Navigation Authority to such discharge but shall not agree to any conditions relative to such consent without the prior approval of the Undertaker

S.3.3 In the case of a discharge to an estuary or coastal waters the Developer shall before the commencement of any of the Works obtain requisite consents or approvals

S.3.4 If the Works are to discharge to land (including any Watercourse) owned by any of the Undertakings listed in Schedule 13 Part 1 of the Act the conditions referred to in S.3.2 above shall (so far as the context admits) apply to the Works

#### **Notification of Intended Commencement**

S.4 The Developer shall give the Undertaker at least seven days' written notice of the date on which it intends to commence the Works and shall with such notice submit to the Undertaker for inspection such plans Drawings and other design or working Drawings not previously submitted to the Undertaker and which relate to the carrying out of the Works as the Undertaker may require and shall not commence construction until the Developer has completed this Agreement (unless otherwise agreed with the Undertaker) and supplied to the Undertaker a copy of the relevant form relating to the registration of the Site for CDM purposes

#### **Period of Construction**

S.5 The Developer shall construct and complete the Works within the Period of Construction and all parts of the Works including all outfalls and all connections to existing public Sewers shall be completed and in working order before any foul or surface water drainage is discharged from any building or property served by the Works PROVIDED ALWAYS that if the Developer shall fail to

construct and complete the Works within the Period of Construction the Developer shall comply with any revised standards for any part of the Works which have been notified to the Developer in writing by the Undertaker

### **Building Over**

S.6 The Developer shall not build plant or place anything over or within 3 metres measured horizontally from the centreline of any Sewer or Lateral Drain which are to be included in the Vesting Declaration (or such other distance as may be reasonably specified by the Undertaker) without the written consent of the Undertaker PROVIDED THAT consent shall be deemed to be refused if consent is not given within ten days PROVIDED ALSO THAT this condition shall not apply to anything shown on the Drawings or the Layout Plan within the Protected Strip

### **Backfilling**

S.7.1 The Developer shall notify the Undertaker before covering up any part of the Works

S.7.2 Upon receiving such notice the Undertaker shall if it thinks fit arrange with the Developer to inspect the Works

S.7.3 If the Developer fails to give notice under S.7.1 or fails to comply with arrangements under S.7.2 it shall be liable for the full cost of reopening the Works even if the same are found to comply with this Agreement

S.7.4 Provided notice is given as above if the Undertaker fails to comply with arrangements under S.7.2 (unless prevented from so doing because of circumstances beyond its control) the Developer may cover in the Works

- S.7.4.1 Without prejudice to S.7.1 to S.7.4 inclusive the Developer shall at any time if requested to do so by the Undertaker in writing open up the Works for inspection
- S.7.4.2 If the Developer fails to comply with such request within any time limit specified by the Undertaker the Undertaker may open up the Works and then if any part of the Works are found not to comply with the terms of this Agreement the Developer shall repay to the Undertaker on demand all costs the Undertaker incurs in opening up and re-covering the Works but in any other case and provided due notice has been given the costs of opening up the Works shall be borne by the Undertaker
- S.7.5 For the avoidance of doubt the provisions of S.10 (relating to access to the Works) are to be read in conjunction with this paragraph

### **Provisional and Final Certificates**

- S.8.1 When the Undertaker is of the opinion that the Works have been completed (including all outstanding remedial works) it shall issue a certificate to the Developer to that effect
- S.8.2 The Works shall be deemed completed when:
- S.8.2.1 they have been constructed in accordance with this Agreement;  
and
- S.8.2.2 a majority of the premises within the Green Land and intended to be served by the Works are occupied; and
- S.8.2.3 all necessary connections or other things have been made or done whereby such occupied premises may be properly drained;  
and

- S.8.2.4 the Developer has supplied to the Undertaker:
- (a) two full sets of 'as constructed' Drawings and sections showing the completed Works and sewers by lines colours and symbols in accordance with Appendix VII of the DCG and
  - (b) two sets (or more if requested) of operating instructions/maintenance manuals and any associated electrical and telemetry details for any pumping station and details of any relevant access arrangements
- S.8.3 If requested by the Developer the Undertaker may at its discretion issue one or more certificates in respect of any substantial part or parts of the Works that have been completed to its satisfaction
- S.8.4 The Undertaker may issue a Provisional Certificate and/or a Final Certificate when it considers it appropriate or if requested to do so by the Developer
- S.8.5 The Undertaker may issue a Provisional Certificate subject to conditions which must be discharged before the Works are vested as public Sewers
- S.8.6 Where following a request under S.8.3, the Undertaker identifies in writing to the Developer remedial work required to be carried so that the Works comply with the requirements of this Agreement and by the expiry of six months from the date on which the Developer receives the remedial works' notice, the Developer has failed to carry out such remedial work, the Developer and Surety shall be liable for the reasonable costs incurred by the Undertaker in having such remedial work carried out
- S.8.7 Any notice from the Undertaker under S.8.6 shall be provided to the Surety at the time it is provided to the Developer

## **Maintenance Period**

S.9 Until vesting occurs under S.12 the Developer shall at its own expense maintain repair and otherwise keep the Works in good working order and repair to the reasonable satisfaction of the Undertaker UNLESS the Undertaker shall declare that any required maintenance and/or repair is an emergency in which case the Developer shall carry out the said maintenance and/or repair immediately

## **Access to the Works**

S.10 The Developer shall arrange for the Undertaker to have access to the Works and the Site at all reasonable times and in particular shall at its own cost provide all relevant plant equipment (including safety equipment) signing guarding lighting and personnel whilst the Undertaker is on the Site for the purpose of carrying out inspections under this Agreement

## **Undertaker's Right to Repair**

S.11 If at any time before the Works are vested in the Undertaker the Developer shall fail to construct and maintain the Works in accordance with this Agreement the Undertaker shall (as agent of the Developer) be entitled at its entire discretion to construct complete make good and maintain such part or parts of the Works as may be necessary in the opinion of the Undertaker after first giving not less than ten days notice in writing to the Developer (UNLESS the Undertaker declares that any required construction and/or maintenance is an emergency in which case the Undertaker may carry out the said construction and/or maintenance immediately) and the Surety of such intention and the Developer shall upon demand pay to the Undertaker the cost thereof including the necessary cost of the preparation and service

of such notices and of necessary administration as certified by the Undertaker including professional fees and other expenses reasonably and properly incurred

### **Vesting Declaration**

- S.12.1 The Undertaker shall (subject to the Developer complying with the terms of this Agreement and to the terms of the proviso immediately below) vest the Works in the Undertaker and supply immediately to the Developer a Vesting Declaration in relation to vesting BUT the Undertaker shall not be required to vest the Works until the Developer has proved to the Undertaker that it owns or has sufficient rights in the Site to enable the making of valid declaration and the Undertaker is satisfied that:
- S.12.1.1 the Works have been constructed and completed in accordance with the Drawings and the Specification to its reasonable satisfaction and have been maintained by the Developer during the Maintenance Period and any defects arising or work required in connection with the Works during that period and prior to the date of the Vesting Declaration have been made good by the Developer to the reasonable satisfaction of the Undertaker AND THAT
- S.12.1.2 (a) no building or structure save as permitted in S.6 of this Schedule has been erected within the Protected Strip or on or over land within 3 metres of any part of the Works not falling within the Protected Strip (or such other distance as may be reasonably specified by the Undertaker in respect thereof) measured horizontally from the centreline of any such Works without the written consent of the Undertaker and (b) access to any part of the Works with or without vehicles plant or equipment is not obstructed AND THAT

- S.12.1.3 where any part of the Works is shown in the Drawings discharging to an existing public Sewer that part of the Works has been connected properly and directly and in the manner shown in the Drawings to a Sewer having the status of a public Sewer AND THAT
- S.12.1.4 where any part of the Works is shown in the Drawings discharging to a Watercourse that part does discharge properly and directly to the Watercourse in the manner shown in the Drawings and in accordance with any necessary consents or approvals AND THAT
- S.12.1.5 the Developer has complied with all requirements of the Undertaker in pursuance of Clause 2 of the Agreement and S.3 S.19 and S.20 of this Schedule
- S.12.2 The Undertaker shall not be obliged to issue a Vesting Declaration while:
- S.12.2.1 any dispute exists between the Developer and any third party concerning the Works; or
- S.12.2.2 any connection remains whereby surface water or groundwater may enter a foul water Sewer or foul water may enter a surface water sewer NB subject to further consideration
- S.12.3 In order that the Works may as soon as practicable be vested in the Undertaker:
- S.12.3.1 the Developer shall no later than ten months after the issue of the Provisional Certificate supply to the Undertaker the relevant section (relating to drainage) of the CDM Health and Safety File
- S.12.3.2 the Undertaker shall within twenty-one days after any inspection of the Works made during the Maintenance Period advise the

Developer in writing of any defects arising or work required in connection with the Works needing rectification or completion before the issue of the said Vesting Declaration provided however that:

- S.12.3.2.1 if the said plans and sections or records provided by virtue of S.8.2.4 do not adequately and accurately show the Works to the reasonable satisfaction of the Undertaker it may require the Developer to provide at the Developer's own cost corrected plans and sections or records (as the case may be);
- S.12.3.2.2 the Undertaker shall be under no duty to issue the Vesting Declaration until it is satisfied that the Developer has complied with S.12.3.1
- S.12.4 Notwithstanding the provisions of this Paragraph the Undertaker shall not be obliged to vest Sewers in itself until all intervening private Sewers which link the Works to the receiving public sewerage system are themselves public Sewers
- S.12.5 For the avoidance of doubt the provisions of this Schedule in relation to maintenance or repair of the Works whether by the Developer or otherwise shall apply until vesting in the same even though vesting may be delayed by the preceding Sub-paragraph
- S.12.6 Where following a notice given under S.8.3 no remedial works are identified under S.8.6, the Undertaker shall effect vesting under this S.12 within twelve months from the date of the Provisional Certificate, subject to the fulfilment of the other requirements of this S.12

**No Duty to Developer**

S.13 Nothing in this Agreement shall imply any obligation on the part of the Undertaker to the Developer or to any other person to ensure that the Works or any part or parts of the same are properly constructed

#### **Indemnity to Undertaker by Developer**

S.14 The Developer indemnifies the Undertaker against all actions costs claims and demands which may be made against them jointly or separately in connection with the construction and completion of the Works and those matters referred to in Clauses 2 and 9 and Paragraph S.20.1.1 of the First Schedule of this Agreement provided that the said actions costs claims or demands shall have arisen not later than the vesting of the Works in the Undertaker unless those actions costs claims or demands relate to the ownership of the Site

#### **Bankruptcy etc of Developer**

S.15 If the Developer shall fail to perform any of the conditions contained in this Agreement to be performed or observed by the Developer or shall be adjudicated bankrupt or shall go into receivership or liquidation voluntarily or otherwise or shall execute a deed of assignment or arrangement for the benefit of or otherwise compound with its creditors (except for the purpose of re-construction or amalgamation) the Undertaker may without prejudice to its other Rights remedies and powers against the Developer for such non-performance or non-observance by notice in writing to the Developer and Surety terminate this Agreement and upon such notice being served this Agreement shall immediately terminate but without prejudice however to the obligations of the Surety to the Undertaker under S.16 of this Schedule and of the Developer to the Undertaker under S.19 and S.20 of this Schedule and of the rights of the Undertaker under

S.11 of this Schedule

**Obligation of Surety (where Party to the Agreement)**

- S.16.1 In consideration of the Undertaker entering into this Agreement with the Developer the Surety as a principal indemnifies the Undertaker in respect of any expenditure which the Undertaker may incur in accordance with this Agreement by reason of the failure of the Developer to observe or perform in full its obligations according to this Agreement whether or not this Agreement has been terminated or disclaimed but the obligations of the Surety shall in no circumstances exceed the Financial Limit to which the Surety and its successors and assigns under this Agreement now bind themselves to the Undertaker
- S.16.2 The amount of any such expenditure shall be that certified by the Undertaker whose decision shall be final
- S.16.3 The Surety shall be discharged or released from its obligations under this Paragraph when the Works are vested in the Undertaker and such parts of the Works in relation to which the Undertaker requires a transfer of land together with the rights referred to in S.20 of this Schedule shall have been transferred or granted to the Undertaker but the Surety shall not be discharged or released from such obligations by any determination or disclaimer of this Agreement or by any arrangement between the Developer and the Undertaker or by any alteration in the obligations of the Developer or by the execution of any amended extra or substituted Works authorised by virtue of S.2 of this Schedule or by any forbearance whether as to payment performance time or otherwise whether made with or without the assent of the Surety

## **Disputes**

S.17.1 All questions, disputes, claims or differences which may arise at any time in relation to this Agreement (other than in relation to the distance or distances specified in S.6 and S.12.1.2 of this Schedule) shall be resolved in accordance with the procedures set out in Fifth Schedule.

S.17.2 Failing resolution of the dispute, claim or proceeding under this clause S.17 and the Fifth Schedule, the matter may be referred to the exclusive jurisdiction of the English Courts.

## **Notices**

S.18 Any notice to be served on or Drawings to be supplied or submitted to the Undertaker shall be delivered or posted to the Undertaker's registered office or other address as may be notified from time to time and any notices to be served on the Developer may be delivered or posted by pre-paid letter to its last known address (or being a limited company to its registered office or to its last known registered or head office) or place of business and any notice to be served on the Surety may be delivered at or posted to its registered or head office for the time being

## **Fees**

S.19.1 The Undertaker acknowledges receipt of the following sums:

S.19.1.1 the cost of the preparation and completion of the Agreement and appropriate copies thereof; and

S.19.1.2 the Inspection Fees being the fees incurred by the Undertaker for the technical examination and processing of the initial submission by the Developer of plans Drawings and other design or working

Drawings whereby the Works are proposed to be constructed and for inspection by the Undertaker of the execution of the Works (which may include a survey by closed-circuit television (CCTV) and/or other internal survey methods)

S.19.1.3 The Deposited Sum

S.19.2 The Developer shall on demand pay to the Undertaker:

S.19.2.1 any additional fees arising from CCTV or other internal resurveys associated sewer cleansing and Site visits essential to recheck sub-standard work;

S.19.2.2 any additional Inspection Fees in respect of Lateral Drains that are proposed for adoption and which were not constructed at the same time as the Sewers in the Green Land;

S.19.2.3 any fees and disbursements pursuant to S.20 of this Schedule;

S.19.2.4 VAT upon any payments referred to in this Agreement if the same is properly payable thereon

### **Transfer of Land and Maintenance Arrangements and VAT**

S.20.1 The Developer shall before the Works are vested in the Undertaker at the request of the Undertaker execute or secure the execution (at no cost to the Undertaker whether by way of consideration costs or disbursements whether such costs or disbursements be incurred by the Undertaker or by any other party) of:

S.20.1.1 a Transfer to the Undertaker transferring to the Undertaker (if so required by the Undertaker) the title absolute free from any

covenant easement exception reservation (other than a reservation of rights necessary for the Developer to maintain the Works until the issue of the Vesting Declaration) or other incumbrance of the land forming the sites of pumping stations outfall structures or of any balancing facilities (excluding above ground balancing facilities that do not form part of the Works) that form part of the Works together in each case with all rights necessary to gain access thereto with vehicles and the transfer deed shall contain the following agreement and declaration together with the covenant and indemnity in the form shown below:

"It is hereby agreed and declared that this Transfer of the Property shall not vest in the Undertaker the Works (as defined in the related sewer adoption Agreement) until the same are subsequently vested in the Undertaker".

"The Transferor covenants with the Transferee that until such time as the Sewers are vested in the Undertaker pursuant to Section 104 of the Water Industry Act 1991 it will indemnify the Transferee from and against all actions costs claims demands proceedings and expenses whatsoever in respect of the use and occupation of the Property or the presence of the Sewers"

*Note: "the Sewers" to be defined as "any Sewers pumping station or accessories thereto on over or under the Property"*

- S.20.1.2 adequate administrative arrangements agreed in writing by the Undertaker for the maintenance and permanence of any balancing facility which is not to be vested in the Undertaker
- S.20.1.3 a Deed of Grant of easement incorporating the rights and covenants contained in the Fourth Schedule hereto in the event that the Undertaker considers it reasonably necessary and

appropriate for the future protection of the Works and any discharges therefrom to any Watercourse

- S.20.2 The Undertaker hereby agrees to pay to the Developer an amount equal to any Value Added Tax ("VAT") to which the Developer becomes properly accountable by virtue of those Works to be vested in the Undertaker (if and insofar as such vesting is a 'supply' for VAT purposes) PROVIDED HOWEVER that the Developer shall have submitted to the Undertaker a VAT-only invoice in respect of the same and a copy of the Vesting Declaration issued to it by virtue of S.12

### **Obligation in respect of the Deposited Sum**

- S.21.1 The Undertaker shall not unreasonably refuse to accept a cash deposit from the Developer in lieu of a Surety

- S21.2 Where the parties have agreed that a cash deposit shall be used instead of a Surety, the terms of that arrangement shall be recorded in the Sixth Schedule. The sum so deposited shall be referred to as the Deposited Sum

- S.21.2 Where in any case the Undertaker would have been entitled to an indemnity from a Surety (had one been a party to this Agreement), it may deduct from the Deposited Sum an amount equal to the sum in respect of which it would have been entitled to have received an indemnity under the terms of S.16.

## **SECOND SCHEDULE**

**(Provisions applying to Diverted sewers or public Lateral Drains under  
Clause 7 of the Agreement: Optional Clauses)**

**Diverted Sewers**

1. The Developer shall construct the Diverted Sewers in accordance with the provisions of the First Schedule of this Agreement
2. Prior to the commencement of the construction of the Diverted Sewers the Developer shall provide a method statement for approval by the Engineer together with payment of the Cash Deposit which is calculated to be one hundred per cent of the estimated construction costs of the Diverted Sewers
3. Upon issue of the Provisional Certificate for the Diverted Sewers in accordance with S.8 of the First Schedule the Diverted Sewers shall in pursuance of the powers conferred on the Undertaker by the Act vest in the Undertaker as public Sewers or public Lateral Drains PROVIDED THAT the diversion of flows from the existing public Sewers or public Lateral Drains into the Diverted Sewers shall not be permitted until the necessary and relevant provisions of this Agreement have been complied with and the decision of the Undertaker in this respect shall be final and conclusive The Undertaker shall return eighty per cent of the Cash Deposit to the Developer when the Diverted Sewers are vested in the Undertaker
4. Until the issue of the Final Certificate for the Diverted Sewers in accordance with S.8 of the First Schedule if the Developer fails to carry out the provisions of S.9 of the First Schedule then the Undertaker may deduct from the balance of the Cash Deposit such costs as are incurred by the Undertaker in carrying out those provisions in place of the Developer

5. S.8.2.2 and S.8.2.3 and the references to vesting in S.12 of the First Schedule shall not apply to the Diverted Sewers
  
6. The balance of the Cash Deposit shall be repaid to the Developer upon issue of the Final Certificate following the deduction of any amounts due to the Undertaker in accordance with the provisions of Paragraph 4 above PROVIDED THAT if any part of the Diverted Sewers shall have been constructed in public highway then five per cent of the Cash Deposit shall be retained for a period of two years from the date of the issue of the Final Certificate and if the Developer fails to comply with the provisions of the New Roads and Street Works Act 1991 in relation to the Diverted Sewers then the Undertaker may deduct from the remainder of the Cash Deposit such costs as are incurred by the Undertaker in carrying out those provisions in place of the Developer At the end of the said two-year period the remaining balance of the Cash Deposit shall be repaid to the Developer following the deduction of any amounts due to the Undertaker
  
7. Until the issue of the Final Certificate if by reason or in consequence of the construction or failure of the Diverted Sewers or any subsidence resulting from any of those Works any damage shall be caused to any land or property or there is any interruption in any service provided by the Undertaker the Developer shall repay the cost reasonably incurred by the Undertaker in making good such damage or restoring the service and shall:
  - 7.1 make reasonable compensation to the Undertaker for any loss sustained by it; and
  
  - 7.2 indemnify the Undertaker against all claims demands proceedings costs damages and expenses which may be made or taken against or recovered from or incurred by the Undertaker by reason or in consequence of any such damage or interruption

8. The use of the existing public Sewers or public Lateral Drains that are being replaced by the Diverted Sewers shall be abandoned in accordance with the method statement referred to in Paragraph 2 hereof and discontinued and prohibited in accordance with Section 116 of the Act upon issue of the Provisional Certificate

### **THIRD SCHEDULE**

#### **Provisions relating to permitted Local Practices**

- 1 *(The Undertaker's Name) ADDENDUM* in relation to the Pumping Station Specification
- 2 *(The Undertaker's Name) ADDENDA relating to easements, transfers*

### **FOURTH SCHEDULE**

#### **Rights and Covenants to be Incorporated in a Deed of Grant of Easement pursuant to S.20.1.3 of the First Schedule**

#### **Definitions**

- “the Undertaker” means X Ltd and its successors in title
- “the Apparatus” means the foul and/or surface water Sewers Lateral Drains and any accessories thereto as defined by Section 219 of the Water Industry Act 1991 as are within the Protected Strip defined below
- “the Protected Strip” means that strip of land shown on the plan (being the plan annexed hereto and numbered ..... ) and thereon coloured yellow

“the Dominant Tenement” means the undertaking of the Undertaker within its area as particularised in the Undertaker's "Instrument of Appointment" as a Sewerage Undertaker and taking effect under the Water Act 1989 and the properties and rights forming part thereof

## **Rights**

Subject to the Undertaker making good so far as is reasonably practicable or paying proper compensation for any damage not made good and to the Undertaker indemnifying the Grantor from and against all rates taxes impositions and outgoings of an annual or recurring nature claims demands proceedings damages losses costs charges and expenses arising out of the exercise of the Rights the Grantor hereby grants with full title guarantee the following perpetual rights ("the Rights") to the Undertaker for the benefit of the Dominant Tenement and each and every part thereof:

- (a) The right of having retaining using inspecting the condition of reconstructing replacing relaying altering enlarging maintaining cleansing repairing conducting and managing the Apparatus in through under over or upon the Protected Strip (being the servient tenement) together with the right of having and enjoying the free flow and passage of water with or without other matter of any kind whatsoever through and by means of the Apparatus as existing from time to time in through under over or upon the Protected Strip and to discharge from the Apparatus into any canal pond lake or Watercourse (as defined in section 219(1) of the Water Industry Act 1991) within or adjacent to the Protected Strip in compliance with the terms of any statutory consent granted in relation thereto and to increase or decrease such discharge and for such discharge to flow along and within the said canal pond lake or Watercourse and the right at any time to take samples of such discharge
- (b) For the purposes hereof and in particular for the purposes mentioned in

Paragraph (a) of this Schedule (and for similar purposes in relation to any connected length of pipes or works incidental thereto) the right at any time and at all times in the day or night-time with or without vehicles plant machinery servants contractors and others and all necessary materials to enter upon and pass and re-pass along the Protected Strip by a route within the same or by such (if any) other convenient route from a public highway as the Undertaker shall with the approval of the Grantor (which shall not be unreasonably withheld or delayed) from time to time require doing and occasioning no unreasonable damage thereto or to the Grantor's adjoining land

- (c) The right of erecting on or near the Protected Strip and maintaining any necessary markers indicating the Protected Strip or the position of the Apparatus provided the same are not erected in such a position as to unreasonably affect the beneficial use of the Protected Strip
- (d) The right in exercising the Rights to make all necessary excavations and to tip soil on land immediately adjoining such excavations as shall be necessary or desirable in relation to the exercise of the Rights
- (e) The right of fencing or severing off such part of the Protected Strip from the adjoining and adjacent land of the Grantor as shall be necessary and for so long as may be necessary during the exercise of the Rights
- (f) The right of support for the Apparatus from the subjacent and adjacent land and soil including minerals of the Grantor
- (g) The right to remove all or any trees and shrubs growing in the Protected Strip and any walls hedges and fences thereon

### **Covenants**

The Grantor to the intent that the burden of this covenant may run with the Protected Strip and so as to bind (so far as practicable) the same into

whosoever hands the same may come and every part thereof and to benefit and protect the Apparatus and the Dominant Tenement and each and every part thereof capable of being so benefited or protected but not so as to render the Grantor personally liable for any breach of covenant committed after the Grantor has parted with all interest in the land in respect of which such breach shall occur hereby covenants with the Undertaker to observe and perform the following covenants:

1. Not to use or permit or knowingly suffer to be used the Protected Strip or any adjoining or adjacent land of the Grantor for any purpose that may:
  - 1.1 endanger injure or damage the Apparatus or render access thereto more difficult or expensive
  - 1.2 adversely affect the quality of water or other matter therein or free flow and passage thereof or means of communication along or through the same
2. Without prejudice to the generality of the foregoing:-
  - 2.1 not to erect construct or place any building wall or other structure or erection or any work of any kind whether permanent or temporary PROVIDED ALWAYS that this covenant shall not be deemed to prevent the erection of boundary or other fences which are of an easily-removable character
  - 2.2 not to withdraw support from the Apparatus or from the Protected Strip
  - 2.3 not to undertake or cause or permit to be undertaken any piling or percussive Works within the Protected Strip
  - 2.4 not to alter the ground levels within the Protected Strip

- 2.5 not to plant or cause or permit to be planted any trees or shrubs in the Protected Strip
- 2.6 not to construct or lay or cause or permit construction or laying of any street road pipe duct or cable across the Apparatus at an angle of less than forty five degrees formed by the Apparatus and the street road pipe duct or cable PROVIDED that this prohibition shall not apply to an existing street road pipe duct or cable
- 3 To advise any tenant for the time being of the Protected Strip of the existence of the Apparatus and of this Deed and its contents insofar as the same relate to the tenant's occupancy and enjoyment of the Protected Strip
- 4 The Undertaker shall have the benefit of the right to enforce these Rights and Covenants pursuant to The Contracts (Rights of Third Parties) Act 1999
- 5 Notwithstanding the earlier exercise of the Rights or earlier enforcement of the Covenants the Apparatus shall not vest in the Undertaker until it has issued a Vesting Declaration vesting the Apparatus in itself pursuant to Section 102 of the Water Industry Act 1991

**FIFTH SCHEDULE**  
**Disputes Resolution Procedure**

		<b>Name</b>	<b>Position</b>	<b>Email/Phone</b>
<b>Developer</b>	<b>(1)</b>	<b>Representative</b>		
	<b>(2)</b>	<b>Senior Representative</b>		
<b>Owner</b>	<b>(1)</b>	<b>Representative</b>		
	<b>(2)</b>	<b>Senior Representative</b>		
<b>Undertaker</b>	<b>(1)</b>	<b>Representative</b>		
	<b>(2)</b>	<b>Senior Representative</b>		

### *1 General Principles*

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

1.3 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 Agreement, subject to S.17.1 of the First Schedule

1.4 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.

1.5 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.

1.6 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.

### *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.

### *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.

#### *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 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).

## **SIXTH SCHEDULE**

### **Cash Deposit Arrangements**

Amount:

Arrangements for interest (if any)

Final date for return of balance of Cash Deposit:

**EXECUTED** by  
**DEVELOPER**  
acting by:

Director or Authorised Signatory

**EXECUTED** by  
**OWNER**  
acting by:

Director or Authorised Signatory

**EXECUTED** by  
**ADJOINING OWNER**  
Acting by:

Director or Authorised Signatory

**EXECUTED** by  
**SURETY**  
Acting by:

Director or Authorised Signatory:

**EXECUTED** by  
**[UNDERTAKER ]**  
acting by

Director or Authorised Signatory: