

ANNEX 10: CONFIDENTIALITY AGREEMENT

DRAFT CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made this day of 200[]
BETWEEN [Primary/Secondary Water Undertaker] whose Registered Office is
[] and
[Proposed Licensee] of/ whose Registered Office is []

WHEREAS [Primary/Secondary Water Undertaker] and [Proposed Licensee] (“the Parties” and individually “a Party”) for their mutual benefit may have exchanged and wish further to exchange certain information of a confidential nature and wish to protect such information in the manner set out in this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. **DEFINITIONS**

For the purposes of this Agreement the following expressions shall have the following meanings:-

- (a) **“Authorised Representative”** shall mean any employee, director, officer or professional and financial advisor of the receiving Party;
- (b) **“Confidential Information”** shall mean any and all confidential, commercial, financial, marketing, technical, environmental information governed by the EIR or other information or data of whatever nature relating to the disclosing Party or to the disclosing Party’s business or affairs (including but not limited to this Agreement, data, records, reports, agreements, software, programmes, specifications, know-how, trade secrets, either Party’s or any associated company’s organisational structure, contractual

arrangements or agreements, technical documentation, finances, properties, costs, methods of doing business, personnel, legal affairs, plans, customers, products or processes, and other information concerning the Project, information regarding [the water undertaker's] actual or proposed network access code or any charges for any network access or, in the case of [the Licensee], information relating to its actual or proposed customers and borehole or other resource locations, whether or not identified as confidential) in any form or medium whether disclosed in writing, orally or by any other means to one Party by the disclosing Party or by a third party on behalf of the disclosing Party whether before or after the date of this Agreement together with any reproductions of such information in any form or medium or any part(s) of such information);

(c) **“Exempted Information”** shall mean any information or category of information, document, report, contract or other material containing information relevant to this Agreement that has been designated by the mutual agreement of the Parties as potentially falling within a EIR Exemption;

(d) **“EIR”** shall mean the Environmental Information Regulations 2004 which shall include any amendment, modification, consolidation, re-enactment or replacement of the same;

- (e) **“EIR Exemption”** shall mean any applicable exemption to the EIR;
- (f) **“Project”** shall mean any discussions and negotiations between or within the Parties concerning or in connection with the proposal set out in the Schedule attached hereto.

2. CONFIDENTIALITY OBLIGATIONS

2.1 Subject to clause 2.2 in consideration of the mutual exchange and disclosure of Confidential Information each Party undertakes in relation to the Confidential Information disclosed to it by the other Party either

2.1.1 for [7] years from the date of this Agreement, or

2.1.2 until such time as the Parties agree that this Agreement shall be superseded by other confidentiality obligations contained in a separate written agreement terminating this Agreement :-

- (a) to treat all and any of such Confidential Information as confidential and secret and not use any of such Confidential Information for any purpose other than the purpose of evaluating such Confidential Information in connection with the Project;
- (b) to take all reasonable steps to protect the confidentiality of such Confidential Information and to prevent disclosure of same to unauthorised persons;
- (c) not to disclose any of such Confidential Information in whole or in part to any third party without the prior written consent of the other Party save to its Authorised Representatives who need to know the same for the purpose of evaluating such Confidential Information in connection with the Project;

(d) to take all reasonable steps to ensure that each Authorised Representative to whom it discloses such Confidential Information is made aware of the provisions of this Agreement and observes the obligations contained herein.

2.2 The obligations of confidentiality and the prohibitions against use undertaken in this Agreement by the receiving Party shall not apply to any Confidential Information which:-

- (a) is or subsequently comes into the public domain otherwise than as a result of any breach of this Agreement by the receiving Party or any of its Authorised Representatives;
- (b) is already known to the receiving Party prior to disclosure which prior knowledge the receiving Party can clearly demonstrate with written material;
- (c) becomes known to the receiving Party by disclosure from a third party who has a lawful right to receive and disclose the Confidential Information;
- (d) is required to be disclosed by law or by any regulatory authority provided that the receiving Party informs the disclosing Party in advance of the circumstances of the disclosure and exactly what is to be disclosed and uses all reasonable endeavours to obtain confidentiality undertakings from the recipients in respect of the Confidential Information disclosed; or
- (e) the disclosing Party agrees in writing may be disclosed.

3. EIR

- 3.1 The Parties recognise that they are subject to legal duties, which may require the release of information under the EIR and may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this Agreement in any way.
- 3.2 The Parties recognise that each request for information must be considered individually.
- 3.3 Notwithstanding anything in this Agreement to the contrary including, but without limitation, the general obligation of confidentiality imposed on the Parties pursuant to Clause 2, in the event that either Party (“the Relevant Party”) receives a request for information under the EIR, the Relevant Party shall be entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the EIR PROVIDED ALWAYS that where the information requested is information that has been given to the Relevant Party by the other Party (“the Other Party”), the Relevant Party:
- 3.3.1 shall use reasonable endeavours to consult the Other Party as soon as reasonably practicable and the Other Party agrees to respond to such consultation within 7 days of receiving the consultation notice;
- 3.3.2 shall not disclose any information that the Parties have agreed is Exempted Information and shall rely on the EIR Exemption, at the Other Party’s request and cost, and use reasonable endeavours to ensure that the Exempted Information remains withheld, including the lodging of any appeal against a decision by the Information Commissioner in relation to the request;

3.4 In the event that the Relevant Party incurs any costs, including but not limited to external legal costs, in seeking to maintain the withholding of the information, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner in relation to disclosure, the Other Party shall indemnify the Relevant Party, save that the Relevant Party shall use reasonable endeavours to consult the Other Party before incurring any such costs and comply with all reasonable requirements of the Other Party before incurring such costs and shall permit the Other Party to take over the sole conduct of the matter if it so chooses.

4. INTELLECTUAL PROPERTY

Nothing in this Agreement shall be construed to grant either Party any right or licence any patent, know-how, trademark, copyright or other intellectual property right of the other Party.

5. RETURN OF INFORMATION

5.1 Each Party shall within one week of a request from the other Party in writing give to the other Party or (at the other Party's discretion) itself destroy all the Confidential Information of the other Party and all copies thereof in its possession, custody or control including for the avoidance of doubt Confidential Information contained within computers, word processors or other devices (including computer discs or other information storage equipment).

5.2 The return of Confidential Information shall not release either Party from its other obligations under this Agreement.

6. NO REPRESENTATION, WARRANTY OR LICENCE

6.1 No representation or warranty is made or given by either Party to the other as to the accuracy or completeness of the Confidential Information disclosed by it to the other or as the reasonableness of any assumptions on which the same is based and each of the Parties agrees that neither the disclosing Party nor its Authorised Representatives shall have any liability to it (or its Authorised Representatives) resulting from the use of such Confidential Information save as expressly agreed in writing.

6.2 This Agreement only governs the rights and obligations of the Parties with respect to the Confidential Information disclosed and does not purport to be a licence to use such Information for any purpose except for the Project. Should the Parties enter into any licence or other similar agreements in the future such agreements shall supersede this Agreement and shall contain similar provisions for the protection of the Parties' Confidential Information.

7. REFERENCE TO THE PARTIES

Save as required by law or any regulatory body, neither of the Parties shall make any announcement, public statements or press releases of any kind in relation to the Confidential Information disclosed to it by the other of the Project nor shall they mention the name of the other Party in connection with the Project or disclose the existence of the Project or the existence of this Agreement without the prior written consent of the other Party.

8. NO CONTRACT

No documents or information made available to the one Party or its Authorised Representatives by the other will constitute an offer or invitation or form the basis of any contract.

9. NOTICES

All notices under this Agreement shall be in writing, sent by facsimile or first class registered or recorded delivery post to the Party being served to its facsimile number mentioned below or at its address specified above or at such other facsimile number or address of which such Party shall have given notice as aforesaid, and marked for the attention of the person holding the position of that Party's signatory to this Agreement. The date of service shall be deemed to be the next business day following the day on which the notice was posted or immediately upon receipt of the fax confirmation if sent by facsimile.

10. CONSEQUENCES OF BREACH

10.1 In consideration of either Party disclosing the Confidential Information to the other the receiving Party further agrees to indemnify the disclosing Party against any breach of its obligations under any clause of this Agreement.

10.2 Each Party recognises that in addition to all other remedies that the disclosing Party may be entitled to as a matter of law the disclosing Party shall be entitled to seek specific performance and any other form of equitable relief to enforce this Agreement. The receiving Party acknowledges that damages may be insufficient remedy for any breach of this Agreement.

10.3 No proof of special damages shall be necessary for the enforcement of this Agreement.

11. NO WAIVER

No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any right, power or privilege hereunder or otherwise.

12. VARIATION

No variation or amendment to this Agreement shall be effective unless in writing and signed by authorised signatories for the Parties.

13. NON-ASSIGNMENT

This Agreement is personal to the Parties and shall not be assigned or otherwise transferred in whole or in part by either Party without prior written consent of the other Party.

14. ENTIRE AGREEMENT

This Agreement sets out the entire agreement between the Parties in respect of the Confidential Information disclosed by either Party to the other and supersedes all previous understandings and undertakings in such respect whether oral or in writing, and no representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to this Agreement except as set out in this Agreement.

15. COSTS

Each Party shall bear its own legal and other costs incurred in relation to the preparation and completion of this Agreement.

16. SEVERANCE

Each provision of this Agreement is severable and distinct from the others. The Parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If any such provision is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law it shall to that extent be deemed not to form part of this Agreement but it and all the other provisions of this Agreement shall continue in full force and effect and their validity, legality and enforceability shall not therefore be affected or impaired.

17. GOVERNING LAW

The construction, validity and performance of this Agreement shall be governed all times by English Law and the English Courts shall have non exclusive jurisdiction in respect thereof.

AS WITNESS the hands of the Parties hereto and their duly authorised representatives the day and year first before written

SIGNED on behalf of [Primary/Secondary Water Undertaker]

(Signature)

(Position)

(Date)

SIGNED on behalf of [Licensee]

(Signature)

(Position)

(Date)

The Schedule

[Define the Project]