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DATED

2013

IRISH WATER

COUNTY COUNCIL

SERVICE LEVEL AGREEMENT

TABLE OF CONTENTS

| | |
|---|----|
| GENERAL | 5 |
| 1 Definitions and Interpretation | 5 |
| 2 Effective Date and Term | 20 |
| 3 General Obligations of the Parties..... | 20 |
| 4 Access..... | 23 |
| 5 Force Majeure..... | 24 |
| VALUES AND GOVERNANCE..... | 25 |
| 6 Customer Service Culture & Values | 25 |
| 7 Visual Identity (Brand) | 26 |
| 8 Management Processes..... | 27 |
| 9 Transformation | 29 |
| 10 Performance Management..... | 30 |
| 11 Enterprise Risk Management..... | 35 |
| 12 Dispute Avoidance & Resolution | 35 |
| 13 Suspension and Termination | 41 |
| TECHNICAL & CUSTOMER SERVICE..... | 48 |
| 14 Planning and Development..... | 48 |
| 15 Manage Works..... | 50 |
| 16 Service Plan | 55 |
| 17 Capital Programme | 55 |
| 18 Manage the DBO Contracts and O&M Contracts | 60 |
| 19 Water Safety Plans..... | 62 |
| 20 Incident Management | 62 |
| 21 Reporting to the Environmental Protection Agency (EPA)..... | 63 |
| 22 Management of Licences to Discharge Wastewater to Sewer..... | 66 |

| | |
|----------------|--|
| Execution copy | |
| 23 | Non-Domestic Billing 67 |
| 24 | Health, Safety, Quality and Environment (HSQE)..... 69 |
| | SUPPORT SERVICE 76 |
| 25 | Support Services 76 |
| 26 | Procurement 78 |
| 27 | Information Communication Technology..... 79 |
| 28 | Facilities 81 |
| | COMMUNICATION 85 |
| 29 | Customer Contact Management 85 |
| 30 | Non-Customer Communications 87 |
| | ADMINISTRATION 88 |
| 31 | Intellectual Property 88 |
| 32 | Freedom of Information 89 |
| 33 | Data Protection..... 89 |
| 34 | Information Sharing..... 91 |
| 35 | Human Resources 93 |
| | FINANCE 94 |
| 36 | Manage Costs, Payment & Budgeting 94 |
| 37 | Insurance..... 101 |
| 38 | Indemnities 104 |
| 39 | Audit..... 109 |
| 40 | Inventory Management..... 110 |

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This **SERVICE LEVEL AGREEMENT** is made on day of 2013

BETWEEN

- (1) **IRISH WATER** details in respect of which are set out in clause 1.5.5, or any successor body, (“**Irish Water**”); **AND**
- (2) **COUNTY COUNCIL** details in respect of which are set out in clause 1.5.5, (the “**Local Authority**”).

WHEREAS

- (A) Provision was made for the establishment of Irish Water on 29 March 2013 pursuant to Part 2 of the Water Services Act 2013 and will be the company responsible by statute for owning, operating and maintaining water and waste water infrastructure and delivering water services and waste water services in Ireland when the Water Services (No.2) Bill 2013 is enacted and commenced (together the “**Water Services Functions**”). The Water Services (No.2) Bill 2013 sets out Irish Water’s statutory functions and powers with respect to the Water Services Functions. Upon the conferral on Irish Water of the Water Services Functions, the Local Authority ceased to have the functions and powers previously conferred on it by the Water Services Act 2007 with respect to the water and waste water activities which are the subject of the Water Services Functions.
- (B) The Water Services (No.2) Bill 2013 permits Irish Water to enter into a service level agreement with each local authority to provide, inter alia, for each of the Local Authorities to provide certain services to Irish Water with respect to the Water Services Functions and to provide for the relationship between Irish Water and each local authority with respect to such services.
- (C) In discharging its statutory responsibilities for the Water Services Functions, Irish Water wishes to work collaboratively with the Local Authority with a view to achieving efficiencies and Value for Money in the performance of the Water Services Functions.
- (D) The Local Authority has expertise in undertaking water services activities arising from the discharge by it of its previous water services functions and powers under the Water Services Act 2007. The Local Authority wishes to work collaboratively with Irish Water, as Irish Water’s service provider, to, inter alia, achieve the objectives set out in Recital (C) and comply with the requirements referred to in Recital (F) and has agreed to provide the Services (as defined below) to Irish Water pursuant to this Agreement.
- (E) Accordingly, this Agreement defines, and provides a framework for the further definition of, the Services to be provided to Irish Water by the Local Authority and provides for the relationship and interactions between Irish Water and the Local Authority with respect to the Services.
- (F) The parties acknowledge that Value for Money and continuous quality improvements in the performance of the Water Services Functions must be ensured by Irish Water to meet customer service expectations and in accordance, inter alia, with requirements and standards set by regulatory bodies such as the CER (as defined below) and the EPA (as defined below) from time to time. It is expected that the CER, as the economic regulator of the Water Services Functions, will set certain revenue and price controls with efficiency targets to be implemented with respect to the Water Services

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Functions by reference, inter alia, to benchmarked efficient performance indicators. The parties acknowledge that the Services (as defined below) will be delivered within that framework pursuant to this Agreement and that they will apply utmost efforts to define efficiency and other initiatives to ensure delivery of the Services within the framework defined by the Competent Authorities.

- (G) The parties acknowledge that this Agreement accords with the terms of the letter from the Labour Relations Commission dated 27 June 2013.
- (H) Now, therefore, Irish Water and the Local Authority enter into this Agreement for the provision of Services (as defined below) to Irish Water on the terms and conditions specified in this Agreement.

THE PARTIES AGREE as follows:

GENERAL

1 Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

“Accelerated Dispute Resolution Procedure” has the meaning set out in Clause 12.5.2;

“Advance Payment” shall have the meaning set out at clause 36.5.3.1;

“Affected Employees” means any Local Authority Personnel (including any person claiming to be an employee or former employee of the Local Authority) who are wholly or mainly (or as otherwise agreed between the parties) assigned to the provision of the Services and who may be within the scope of the Employee Transfer Requirements as is agreed between the Local Authority and Irish Water after consulting in good faith immediately upon the commencement of the Stand-Still Period;

“AIE” means the Access to Information on the Environment;

“AIE Regulations” means the European Communities (Access to Information on the Environment) Regulations 2007 to 2011;

“Agreement” means this agreement, the Conditions and the Schedules hereto together with any amendments thereto agreed in writing between the parties from time to time;

“Annual Service Plan” has the meaning given to it in Schedule 2 (Service Plan);

“Assets” means all plant, equipment, treatment plants, pumping stations and pipelines used by the Local Authority in providing the Services;

“Binding Guidance” means any guidelines, recommendations, policies or instructions of any Competent Authority with which Irish Water or the Local Authority (as

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appropriate) are required to comply in relation to the Water Services Functions and the Services (as the case may be);

“Breach of Duty” means the breach of any obligation or duty to take reasonable care or exercise reasonable skill which arises from the express or implied terms of a contract or under common law (but not any stricter duty);

“Budget” means the estimate of Costs broken down by various budget categories which together form the total Costs for the Year of the Term to which the estimate relates, which is agreed with Irish Water and included in the Annual Service Plan for the Year concerned;

“Business Day” means a day (other than a Saturday or a Sunday) on which banks are open for business in Ireland (excluding electronic and telephone banking);

“Capital Project” means a project to provide new fixed assets or to add value to existing fixed assets;

“CCMA” means the County and City Managers Association;

“Change Initiative” means an initiative proposed by either party in accordance with clause 10.5, as part of the commitment to Continuous Improvement;

“Change Order” has the meaning set out in clause 8.3.5;

“CER” means the Commission for Energy Regulation or any successor thereto from time to time in respect of its functions in relation to the regulation of water infrastructure and services in Ireland;

“CMC” means the Central Management Charge agreed in the Budget for all the Local Authority’s for head office and support services in connection with providing the Services;

“Code of Practice” means the Code of Practice for the Governance of State Bodies issued by the Department for Finance, as amended or replaced from time to time;

“Commencement Date” means the date of execution of this Agreement;

“Commercial Issue” means a dispute or difference between the parties relating to costs, expenses, financial implications, termination, Force Majeure, breach of statutory obligations, breach of third party rights and contracts and any disputes relating to the matters provided for in the following clauses:

- Clause 7.2.2.1 (Local Authority’s visual identity) ;
- Clause 7.2.3 (Local Authority’s obligations relating to visual identity);
- Clause 13.4.1 (Transfer of Affected Employees);
- Clause 13.6.5.4 (Costs during a Suspension);

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- Clause 25.3.5 (variations to Support Services costs);
- Clause 28.1.4 (Irish Water laboratory charge out rate);
- Clause 28.1.4.2 (Local Authority laboratory charge out rate);
- Clause 28.4.2.4 (charges for facilities);
- Clause 28.4.4.4 (archive rates);
- Clause 37.2.6 (insurance changes to costs);

“Competent Authority” means any local, national or supra-national agency, commission, authority, department, inspectorate, ministry, official or public or statutory person (whether autonomous or not) of the Government or of the European Union and where the context so admits or requires shall include the Minister, CER and the EPA;

“Conditions” means the conditions of contract being clauses 1 to 40 inclusive;

“Construction Regulations” means the Safety, Health and Welfare at Work (Construction) Regulations 2013;

“Continuous Improvement” refers to the ongoing increase in Value for Money with which the Services are delivered through the processes set out in Clauses 9 (Transformation) and 10 (Performance management). Continuous Improvement is characterised by but not limited to small-step improvements and is pursued together with and subsequent to Transformation.

“Costs” means costs, including staffing costs and all other resource costs, actually incurred by the Local Authority in providing the Services together with the CMC but in each case excluding value added tax;

“DBO Contracts” means all design build operate contracts transferred to Irish Water that were previously held or managed by the Local Authority;

“DECLG” means the Department of the Environment, Community and Local Government or such other department with responsibility for water services;

“Dispute Avoidance and Resolution Process” means the process set out at Clause 12;

“DPA” refers to the Data Protection Acts 1988 and 2003 and any regulations made thereunder from time to time;

“Drinking Water Regulations” means Council Directive 98/83/EC, the European Communities (Drinking Water) Regulations of 2007 and the European Communities (Drinking Water) Regulations of 2000 including any modification, extension or replacement thereof from time to time;

“DWIRP” means the Drinking Water Incident Response Plan;

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“Effective Date” means the later date of:

- (a) 1 January 2014; or
- (b) the date on which the following have occurred:
 - (i) the Water Services (No.2) Bill 2013 has been enacted;
 - (ii) Part 2 (Transfer of Functions, Property and Staff) and Section 31 (Performance of functions by the local authority on behalf of Irish Water) of the Water Services (No.2) Bill 2013 as enacted have been commenced; and
 - (iii) The Minister has by order appointed a day to be the “transfer day” as defined in the Water Services (No.2) Bill 2013 when enacted;

“Employees Information” has the meaning given to it in the Termination Protocol;

“Employee Transfer Requirements” means the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 and section 19 (Transfer of Staff) of the Water Services (No.2) Act 2013;

“Employment Liabilities” means costs (including the cost of wages, salaries and other remuneration or benefits), taxation, Pay Related Social Insurance (PRSI) payments, health contributions, levies, redundancy payments, losses, claims, damages, demands, actions, fines, penalties, awards, liabilities and expenses (including legal costs and expenses on an indemnity basis);

“EPA” means the Environmental Protection Agency or any successor thereto from time to time in respect of its functions in relation to the regulation of environmental matters in connection with water infrastructure and services in Ireland;

“Euro” or **“EUR”** means the currency unit of the participating Member States of the European Union as defined in Recital (2) of Council Regulation 974/98/EC on the introduction of the euro;

“Existing Standard” means the normal practices and procedures of the Local Authority during the previous 12 months or such other period as may be agreed by the parties;

“FOI Acts” means the Freedom of Information Acts 1997 and 2003 and any regulations made thereunder from time to time;

“Force Majeure” means any supervening event beyond a party’s reasonable control including but not by way of limitation war, flood, earthquake, strike or lockout (provided that in the case of strike or lockout, the party whose employees are engaged in the strike or lockout has made reasonable efforts to resolve the strike or lockout in accordance with normal industrial practices);

“Handover Period” has the meaning set out at clause 13.3.9;

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“Health & Safety Management System” means the system developed by Irish Water pursuant to clause 24.1.3.4;

“Historic Performance” means the measured performance over a previous time period, such method of measurement and period of time to be agreed between the parties from time to time;

“HSQE” means Health, Safety, Quality and Environment;

“ICT” means information and communications technologies;

“IED” means Industrial Emissions Directive;

“Incentive Payments” means an incentive payment to the Local Authority which is agreed between Irish Water and the Local Authority in the Annual Service Plan in relation to the delivery of elements of the Annual Service Plan and related Performance Targets;

“Incident Management Protocol” means the protocol developed in accordance with clause 20.2;

“Information and Records Protocol” means the Protocol to be agreed between the parties pursuant to clause 34.7;

“Initiating Party” has the meaning set out at clause 13.3.1;

“INSPIRE Directive” means Council Directive 2007/2/EC transposed by European Communities (Establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)) Regulations, 2010;

“Intellectual Property” means all intellectual property of whatever nature anywhere in the world and the rights subsisting therein, including, improvements, designs, processes, research, works of authorship, computer software, rights of extraction from databases, database rights, performances, trade or business names, domain names, patents, utility models and short term patents (and applications for same), trade marks and trade mark applications, rights (registered or unregistered and applications for same) in any design, copyright (including rights in computer software and semi-conductor topographies), business goodwill and reputation and rights protecting same and all intellectual property rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world;

“Intervention Management Team” or **“IMT”** means the team appointed by Irish Water pursuant to this Agreement in the case of intervention, as per clause 13.6.5.2;

“IPPC” means integrated pollution prevention control;

“Irish Water Corrective Action Plan” shall have the meaning set out at clause 13.6.1.1;

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“Irish Water Customer Contact Centre” means the Irish Water customer contact centre provided by Abtran or such other provider as notified by Irish Water to the Local Authority from time to time;

“Irish Water Premises” means all treatment plants, pumping stations, pipelines and premises and other analogous property, ownership of which is vested in Irish Water;

“Irish Water Personnel” means all officers, employees, agents and contractors employed, engaged, supplied or utilised by Irish Water or by any contractor or agent of Irish Water for the purpose of providing or assisting directly or indirectly the performance of Irish Water’s obligations pursuant to this Agreement;

“Irish Water Required Insurances” has the meaning set out at clause 37.3.1(Insurance);

“Law” means any law applicable from time to time in Ireland which includes common law, statutes, statutory instruments, delegated or subordinate legislation, bylaws, rules, codes, regulations, decisions, proclamations, notices, directives, constitutions, instruments, rules of court, any interpretation of law or finding contained in any judgments given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired and which have not at any relevant time been reversed or modified, any Binding Guidance and any authorisation, direction, decision, designation, condition, instruction, requirement, standard or rule of any Competent Authority from time to time including any modification, extension or replacement thereof from time to time and reference to “Laws” shall be construed accordingly;

“LGMA” means the Local Government Managers Agency;

“Local Authorities” means the 34 city and county municipal authorities in Ireland or any successor thereto from time to time;

“Local Authority Costing Manual” means local authority costing manual as may be amended from time to time by the DECLG;

“Local Authority Personnel” means all officers, employees, agents and contractors employed, engaged, supplied or utilised by the Local Authority or by any contractor or agent of the Local Authority for the purpose of providing or assisting directly or indirectly the provision of Services to Irish Water pursuant to this Agreement;

“Local Authority Premises” means all sites, plants, pumping stations, pipelines, buildings and premises and other analogous property (other than Irish Water Premises) used by the Local Authority in providing the Services;

“Local Authority Required Insurances” has the meaning given to it in clause 37.2.1(Insurance);

“Long Term Service Plan” has the meaning given to it in Schedule 2 (Service Plan);

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“Loss” includes any demand, claim, proceeding, suit, judgement, loss, liability, cost, expense, fee, penalty or fine;

“Managed Costs Protocol” means the protocol agreed between the parties from time to time in respect of managed Costs;

“Management Processes” means the management framework and processes set out at Schedule 3 and includes the National Management Process, Tier 1 Management Process, the Tier 2 Management Process, and the Tier 3 Management Process as currently provided for in Schedule 3 and/or as may be agreed between the parties;

“Manager of the Local Authority” means the person from time to time occupying the position or office of the city or county manager (as the case may be) of the Local Authority (by whatever name such position or office is called from time to time);

“Managing Director of Irish Water” means the person from time to time occupying the position or office of the managing director of Irish Water (by whatever name such position or office is called from time to time);

“Minor Variance” means a difference between the actual measure of the level of Service and the Performance Target which will not lead to a material change in Costs or non-compliance with regulatory requirements;

“Minister” means the Minister for the Environment, Community and Local Government or such other minister to whom the responsibility for water services is delegated;

“National Management Process” means the management process set out in paragraphs 2 and 5.2 of Schedule 3;

“Notice of Dispute” has the meaning set out at clause 13.3.2;

“O&M Contracts” means all large scale operate and maintenance contracts transferred to Irish Water that were previously held or managed by the Local Authority;

“Optimal Asset Serviceability” means the ability of an asset to deliver a defined service to customers and safeguard the environment and operating service level, being the outputs achieved (capacity and quality) in effective operation with best Value for Money;

“P2P System” means the cost and procurement management system maintained by Irish Water or such replacement system;

“Performance Targets” means the targets agreed between the parties in the Annual Service Plan in accordance clause 10.4;

“Procurement Protocol” means the protocol agreed between the parties from time to time in respect of procurement processes;

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“Protocols” means the protocols dealing with matters listed at Schedule 4 (Schedule of Protocols) and such other matters as the parties may agree from time to time;

“Receiving Party” has the meaning set out at clause 13.3.1;

“Related Persons”, in respect of a person, means every manager, agent, auditor, secretary, other officer and employee of that person;

“Retained Premises” shall have the meaning set out in clause 4.4.1;

“Retrospective Approval” means approval by Irish Water of Variance Costs in accordance with Clause 36.2.5 after those Variance Costs have been actually incurred by the Local Authority;

“Schedule” means schedules 1 to 5 forming part of the Agreement;

“Serious Variance” means an exceptional difference, or a repeat Significant Variance, between the actual measure of the level of Service and the Performance Target which is likely lead to a material change in Costs or non-compliance with regulatory requirements;

“Service Plans” means the applicable Long Term Service Plan and the applicable Annual Service Plan;

“Services” means the services, including Support Services and Temporary Services to be provided by the Local Authority in accordance with the terms of this Agreement;

“Significant Failure” has the meaning set out in clause 13.1.1;

“Significant Variance” means a notable difference, or a repeat Minor Variance between the actual measure of the level of Service and the Performance Target which may lead to a material change in Costs or non-compliance with regulatory requirements.

“Stand-Still Period” means:

- (a) the period commencing on the date of a Termination Notice and ending on the date on which this Agreement expires pursuant to the terms of such notice or such later date on which the Local Authority ceases to provide the Services; or
- (b) in the case of the normal expiry date of this Agreement, the period commencing on the date which falls six months before the date on which this Agreement would ordinarily expire and ending on the normal expiry date or such later date on which the Local Authority ceases to provide the Services; or
- (c) in the case of a transfer of staff under Section 19 (Transfer of Staff) of the Water Services (No. 2) Act 2013, the period commencing on the date when the Local Authority firsts consults with Irish Water under Section 19(1) and ending on the date of designation by the Local Authority.

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“Support Services” shall have the meaning set out in clause 25.3.1;

“Technical Issue” means any dispute or difference between the parties (including where this Agreement provides for the parties to reach agreement on any matter and the parties have not been able to do so), other than a Commercial Issue;

“Technical Expert” means a person agreed by the parties as having a sufficient degree of skill, knowledge and experience in connection with the Technical Issue in respect of which his or her assistance is required and, in default of agreement by the parties, to be appointed by the President of the Chartered Institute of Arbitrators;

“Temporary Services” means the services set out in Schedule 5;

“Term” has the meaning set out in clause 2.1 (Effective Date and Term);

“Termination Date” has the meaning set out at clause 13.3.4;

“Termination Notice” has the meaning set out at clause 13.3.1;

“Termination Protocol” means the protocol agreed between the parties from time to time in respect of the termination of this Agreement;

“Threshold Variance Bandings” means the three variances in performance namely, Minor Variance, Significant Variance and Serious Variance.

“Tier 1 Management Process” means the management process to be agreed in accordance with clause 8.2 and paragraph 2.4 of Schedule 3;

“Tier 2 Management Process” means the management process to be agreed in accordance with clause 8.2 and paragraphs 2.5 and 3 of Schedule 3;

“Tier 3 Management Process” means the management process to be agreed in accordance with clause 8.2 and paragraphs 2.6 and 4 of Schedule 3;

“Transformation” means the comprehensive programme of organisational restructuring and business process improvements that Irish Water and the Local Authority agree to implement between the Effective Date and the end of 2017, as set out in clause 9 (Transformation);

“Transition Period” means the period of time commencing on the Effective Date and ending on 31 December 2017;

“Value for Money” means the optimum combination of whole-of-life costs and quality (or fitness for purpose) of the good or service to meet the user’s requirements;

“Variance Costs” means additional Costs over and above Costs that are provided for within the Budget;

“Variance Cost Approval Form” means such form as to be agreed between Irish Water and the Local Authority;

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“**WAM**” means works and asset management;

“**Waste Water Discharge Authorisation**” means the authorisation provided by the EPA pursuant to Waste Water Discharge (Authorisation) Regulations 2007 to 2010 and the Dangerous Substances Directive 2006/11/EC;

“**Water Safety Plans**” shall have the meaning set out at clause 19;

“**Water Services Functions**” has the meaning given to it in Recital (A);

“**Water Services Transition Office**” means the office set up by the CCMA to support the establishment of Irish Water;

“**Year**” means a calendar year from 1st January to 31st December;

“**Year 1**” means the period from the Effective Date until midnight on 31 December 2014;

“**Year 2**” means the period from 00:01 hours on 1 January 2015 until midnight on 31 December 2015;

“**Year 3**” means the period from 00:01 hours on 1 January 2016 until midnight on 31 December 2016; and

“**Year 8**” means the period from 00:01 hours on 1 January 2021 until midnight on 31 December 2021;

1.2 In this Agreement:

1.2.1 references to clauses, paragraphs and Schedules are to clauses, paragraphs and Schedules to this Agreement;

1.2.2 references to a “**company**” shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.3 references to a “**person**” shall be construed so as to include any individual, firm, company, government, state or agency of a state, local authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);

1.2.4 a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;

1.2.5 any reference to a “**day**” or a “**Business Day**” shall mean a period of twenty-four (24) hours running from midnight to midnight;

1.2.6 references to times are to times in Ireland;

1.2.7 references to a “**month**” shall mean a calendar month;

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- 1.2.8 a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented at any time;
- 1.2.9 the rule known as the ejusdem generis rule shall not apply to the interpretation of this Agreement and accordingly general words, including those introduced by “**other**” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by general words and any phrase introduced by the term “**including**” (or like terms) shall be construed as if to read “**including, but without limitation**” and any phrase introduced by the terms “**in particular**” shall be construed as if to read “**in particular, but without limitation**” and “**for example**” shall be construed as if to read “**for example, but without limitation**”;
- 1.2.10 references to the singular include the plural and vice versa;
- 1.2.11 references to the masculine include the feminine and vice versa;
- 1.2.12 all references to a person giving an “**indemnity to**” or agreeing to “**indemnify**” or “**indemnifying**” another person (the “**indemnified person**”) against any matter or circumstance include indemnifying and keeping the indemnified person indemnified against all actions, claims, proceedings and demands from time to time made against that person, and all losses, liabilities and damages and all charges, payments, costs (including legal costs on a full indemnity basis), expenses or fines (whatsoever or howsoever arising) made or incurred by that person as a consequence of or which would not have arisen but for that matter or circumstance;
- 1.2.13 the Interpretation Act 2005 applies to this Agreement in the same way as it applies to an enactment;
- 1.2.14 all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement;
- 1.2.15 references in this Agreement to section in the Water Services (No.2) Act 2013 are based on section numbers as available in the Water Services (No.2) Bill 2013 as passed by Seanad Éireann, those references shall be construed accordingly to reflect any renumbering of those sections in the Water Services (No.2) Act 2013 as enacted; and
- 1.2.16 the parties acknowledge that Irish Water shall have no liability to the Local Authority in respect of any impact or effect that any agreement reached or decision made (acting reasonably) on a Technical Issue may have on the Local Authority whatsoever or howsoever arising outside the scope of the Services under this Agreement.

1.3 Prior obligations

Nothing in this Agreement shall prevent or restrict either party from performing or omitting any act or thing which it is required to perform or omit pursuant to a

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statutory right or obligation (including pursuant to any requirement of any Competent Authority) or an order or written direction (whether general or specific) of the Minister.

1.4 Existing rights

Without prejudice to the statutory rights, obligations and powers of either party and any orders or written directions of the Minister, nothing in this Agreement, with the exception of the rights and/ or obligations specified in this Agreement, shall add to, alter or reduce, or be construed as adding to, altering or reducing, the existing rights of the parties prior to entering into this Agreement.

1.5 Notices and communications

1.5.1 Save as set out clause 1.5.2, any notice or other communication under this Agreement shall only be effective if it is in writing and shall be sufficiently given:

1.5.1.1 if delivered by hand or sent by post to the postal address and for the attention of the person specified in this clause in respect of the party to which the notice or communication is being given or to such other postal address and for the attention of such other person as such party shall communicate to the party giving the notice or communication;

1.5.1.2 if sent by facsimile to the correct facsimile number and for the attention of the person specified in this clause in respect of the party to which it is being sent or to such other facsimile number and for the attention of such other person as such party shall communicate to the party giving the notice or communication; or

1.5.1.3 If sent by electronic mail, to the correct email address and for the attention of the person specified in this clause in respect of the party to which it is being sent or to such other email address and for the attention of such other person as such party shall communicate to the party giving the notice or communication.

1.5.2 Communication by electronic mail or other electronic methods of writing shall be effective under this Agreement in respect of day-to-day operational communications only. Communication by electronic mail or other electronic methods of writing shall not be effective under this Agreement in respect of any notices issued pursuant to this Agreement.

1.5.3 No notice or other communication given or made under this Agreement may be withdrawn or revoked (save with the consent of both parties).

1.5.4 Every notice or communication given in accordance with this clause shall be deemed to have been received as follows:

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| Means of Dispatch | Deemed Received |
| Delivery by hand: | the day of delivery; |
| Post: | 2 Business Days after posting; |
| Facsimile: | when sender receives a completed transmission sheet or otherwise receives a mechanical confirmation of transmission; and |
| Electronic Mail: | upon sending, provided that no notification of failure to deliver or otherwise is received by the sender, |

provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside working hours (being 9 a.m. to 5 p.m. on a Business Day) such notice or other communication shall be deemed to be given or made at the start of working hours on the next Business Day.

1.5.5 The relevant addressee, postal address, facsimile number and email address of each party for the purposes of this Agreement are:

| | |
|-----------------------------------|--|
| Name of Party [County Council] | Postal Address/Fax No./Email addressee |
| Fax no: | |
| Email: | |

| | |
|---|--|
| For the attention of: [County/City Manager] | |
| Irish Water | Colvill House, Talbot Street, Dublin 1 |
| Fax no: 01 6021200 | |
| Email: TBA | |
| For the attention of: Managing Director | |

1.5.6 A party shall notify the other of any change to its name, relevant addressee, postal address, facsimile number or email address. Such notification shall only be effective on:

1.5.6.1 the date specified in the notification as the date on which the change is to take place; or

1.5.6.2 if no date is specified or the date specified is less than 5 Business Days after the date on which notice is given, the date falling 5 Business Days after notice of any such change has been given.

1.5.6.3 The provisions of this clause shall not apply in relation to the legal service of documents.

1.6 Remedies and Waivers

1.6.1 No delay or omission by any party to this Agreement in exercising any right, power or remedy provided by Law or under this Agreement shall:

1.6.1.1 affect that right, power or remedy; or

1.6.1.2 operate as a waiver of it.

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

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

1.7 Severability

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction that shall not affect or impair:

1.7.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

1.7.2 the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Agreement.

1.8 No Partnership and No Agency

1.8.1 Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute, or be deemed to constitute, a partnership, association, joint venture or other co-operative entity between any of the parties.

1.8.2 Save as expressly set out in Clause 15.3 (Management of New Connections) and Clause 23 (Non-Domestic Billing) in respect of the issuing and collection by the Local Authority of Non-Domestic bills, nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute, or be deemed to constitute, any party as the agent of any other party for any purpose. Neither party has, pursuant to this Agreement, any authority or power to bind or to contract in the name of the other party to this Agreement.

1.9 Further Assurance

Either party shall, from time to time on request, do or procure the doing of all acts and/or the execution of all documents in a form satisfactory to the other party which the other party may reasonably consider necessary for giving full effect to this Agreement and securing to the other party the full benefit of the rights, powers and remedies conferred upon it in or by this Agreement.

1.10 Entire Agreement

- 1.10.1 For the purposes of this clause, “**pre-contractual statement**” means a draft agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to this Agreement made or given by a party to this Agreement or any other person at any time prior to the date of this Agreement.
- 1.10.2 This Agreement constitutes the whole and only agreement between the parties relating to the provision of the Services.
- 1.10.3 Except to the extent repeated in this Agreement, this Agreement supersedes and extinguishes any pre-contractual statement.
- 1.10.4 Each party acknowledges that in entering into this Agreement it is not relying upon any pre-contractual statement which is not set out in this Agreement.
- 1.10.5 No party shall have any right of action against any other party to this Agreement arising out of or in connection with any pre-contractual statement (except in the case of fraud) except to the extent repeated in this Agreement.

1.11 Counterparts

- 1.11.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.
- 1.11.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

1.12 Governing Law and Jurisdiction

- 1.12.1 This Agreement shall be governed by and construed in accordance with the Laws of Ireland.
- 1.12.2 Subject to clause 12, the parties to this Agreement irrevocably agree that the courts of Ireland are to have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement.

1.13 Precedence of Documents

Except where this Agreement states otherwise, the documents referred to in this Agreement are to be taken as mutually explanatory of each other if possible. In the event of any conflict or inconsistency between the Agreement and the Annual Service Plan, the terms of this Agreement shall prevail. In the event of any conflict or inconsistency between the Annual Service Plan and any of the Protocols, the terms of the Annual Service Plan shall prevail. In the event of any conflict or inconsistency between this Agreement and any of the Protocols, the terms of this Agreement shall prevail.

2 Effective Date and Term

- 2.1 Subject to clause 2.2, this Agreement will be effective from the Effective Date and will continue for a term of 12 years unless terminated sooner in accordance with clause 13 (Suspension and Termination) (the “**Term**”).
- 2.2 The obligations in Clause(s) 1.3 to 1.13 (inclusive), 12 (Dispute Avoidance & Resolution) and 34.4 (confidential information) shall be effective from the Commencement Date.
- 2.3 Reviews of this Agreement shall be carried out by the parties in Year 2 and in Year 7 in terms of its commercial and operational performance and parameters to take effect at the start of Year 3 and Year 8 respectfully. Any amendments to this Agreement shall be made in accordance with Clause 8.3.

3 General Obligations of the Parties

- 3.1 The parties agree that in carrying out their respective obligations under this Agreement, they shall each:
- 3.1.1 support continuous industry change towards improved asset performance, cost savings and regulatory compliance;
 - 3.1.2 collaborate to provide the Water Services Functions, utilising the benefits of an asset management approach, which draws on all available performance and condition data to support the best combination of capital and operational resources to deliver efficient and effective service for all customers;
 - 3.1.3 facilitate shared service delivery and better outcomes by working together;
 - 3.1.4 share knowledge of water Assets and their performance to support planning;
 - 3.1.5 engage the best combination of operational and capital expenditure to ensure Optimal Asset Serviceability; and
 - 3.1.6 carry out their respective obligations under this Agreement in a manner that:
 - (a) is compliant with the Law; and
 - (b) consistent with the Water Services Functions to the extent that this is possible by reference to available resources and funding arrangements;
 - 3.1.7 recognise the importance of building and maintaining a positive and compliant relationship with Competent Authorities and carrying out their respective obligations to the Competent Authorities in a timely fashion, using the available resources and funding arrangements;
- 3.2 The reference in clauses 3.1.6 and 3.1.7 to “*available resources and funding arrangements*” shall not apply in respect of Irish Water’s payment obligations pursuant to this Agreement.
- 3.3 The parties acknowledge that Value for Money and Continuous Improvements in the performance of the Water Services Functions must be ensured by Irish Water in accordance, inter alia, with requirements and standards set by regulatory bodies such

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as the CER (as defined below) and the EPA (as defined below) from time to time. It is expected that the CER, as the economic regulator of the Water Services Functions, may require certain revenue and price controls with efficiency targets to be implemented with respect to the Water Services Functions by reference, inter alia, to benchmarked efficient performance indicators. The parties acknowledge that the Services (as defined below) will be delivered within that framework pursuant to this Agreement and that they will work together to define efficiency and other initiatives to ensure delivery of the Services within the framework defined by the Competent Authorities.

3.4 The Services shall comprise services under the following headings:

- water treatment (including source protection);
- water network and related operations (including water conservation);
- delivery of water to customer connections and collection of wastewater from customer sewers;
- waste water network operations including combined sewers which discharge into the collection network;
- waste water treatment and related operations (including sludge management);
- sampling & testing ;
- regular reporting on activities;
- support for the water services capital programme; and
- management, engineering and administration support in relation to the above.

The parties acknowledge that at the time of entering into this Agreement Irish Water has not had sufficient opportunity to assess the full scope of services being provided by the Local Authority prior to the Effective Date and as such the scope of Services are set out in this Agreement in broad terms. The parties shall within 6 months of the Effective Date agree a detailed scope of the Services under the headings set out in this Clause 3.4.

3.5 For the further avoidance of doubt, the following items are not part of the Services:

- group water supply schemes;
- surface water drainage and flood management;
- river basin management;
- domestic meter reading;
- domestic billing;
- Local Authority forward planning and economic development;
- major emergency management; and
- training centres.

Notwithstanding that the above items do not form part of the Services as at the Effective Date, the parties shall act in good faith to develop memoranda of understanding in respect of the following:

- surface water drainage and flood management;

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- river basin management; and
- major emergency management.

3.6 Shared Principles

In carrying out their respective obligations under this Agreement the parties commit to working together in a collaborative manner to achieve the shared objectives and each party shall:

- 3.6.1 work to avoid disputes by adopting a no blame culture;
- 3.6.2 work to develop and continually improve the Services;
- 3.6.3 act consistently according to shared customer service values;
- 3.6.4 strengthen a culture that promotes innovation and excellence;
- 3.6.5 develop a 'communication culture' and be transparent in all of their dealings with each other;
- 3.6.6 support communication between all participants that is open, and honest so as to enable informed decision making;
- 3.6.7 ensure that each participant understands any documentation prepared in respect of the Services and any information, analysis or methodology contained in that documentation;
- 3.6.8 adopt ethical and responsible behaviour at all times;
- 3.6.9 facilitate learning and sharing so that capability is developed; and
- 3.6.10 ensure decisions are made, and processes and systems are adopted to ensure a process of Continuous Improvement.

3.7 Irish Water Responsibilities:

Irish Water shall:

- 3.7.1 be responsible for strategic leadership of Water Services Functions (taking into account legal and regulatory requirements, strategic communications and customer preferences) that provides best Value for Money; and develop its strategy for delivering the Water Services Functions in consultation with the Local Authority;
- 3.7.2 be responsible for planning, financing, developing and delivering the Assets and services (other than the Services) required to implement its strategy in accordance with its investment plans, this Agreement and the applicable Long Term Service Plan and the applicable Annual Service Plan;
- 3.7.3 support the Local Authority to meet its obligations under this Agreement;
- 3.7.4 be responsible for the management of any DBO Contracts with support from Local Authority where required;
- 3.7.5 be responsible for making submissions to CER and for complying with the price control requirements; and

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- 3.7.6 carry out its obligations under this Agreement, including but not limited to those under Clause 36 to pay the Local Authority for providing the Services in accordance with the provisions of this Agreement.

3.8 Local Authority Responsibilities

The Local Authority shall:

- 3.8.1 deliver the Services in accordance with and subject to the terms of this Agreement and the applicable Annual Service Plan, with the support of Irish Water;
- 3.8.2 work together with Irish Water in a collaborative manner to deliver an organisational model appropriate for a water utility over the Transition Period;

3.9 Temporary Services

- 3.9.1 Notwithstanding any provision to the contrary in this Agreement, the Local Authority shall perform the Temporary Services from the Effective Date until such date notified by Irish Water that the Temporary Services (in whole or part) are to cease or to be transferred to Irish Water. The detailed responsibilities relating to the Temporary Services shall be listed in the appropriate Protocols.
- 3.9.2 The Local Authority shall facilitate the transfer of any Temporary Service to Irish Water including providing all information, records and data whether created before, on or after the Effective Date in connection with the Temporary Service.

4 Access

- 4.1 The parties acknowledge that the Services will be carried out on Irish Water Premises and on the Local Authority Premises. The parties shall act in good faith to put in place arrangements to facilitate access to their respective premises.

4.2 Irish Water Premises

Irish Water authorises the Local Authority and its servants and agents to enter and use the Irish Water Premises on a non-exclusive basis as necessary to perform the Local Authority's obligations under this Agreement and it shall provide such assistance and co-operation in respect of such access as the Local Authority may reasonably require.

4.3 Local Authority Premises

The Local Authority authorises Irish Water, its servants and agents to enter Local Authority Premises in connection with this Agreement and the performance by Irish Water of its Water Services Functions and the Local Authority shall provide such assistance and co-operation in respect of such access as Irish Water, its agents and servants may reasonably require.

4.4 Mutual Licence

- 4.4.1 The parties grant each other a mutual licence for a period of 12 months from the Effective Date, or such longer period as the parties may agree in writing, to perform their obligations under this Agreement as if all treatment plants, pumping stations, pipelines, premises, plant and equipment, Scada and telemetry systems and other property necessary for Irish Water to perform its Water Services Functions transfer to Irish Water on the Effective Date ("**Retained Premises**") and both parties shall act in good faith so as to enable both parties to fulfil their statutory and contractual obligations in relation to such Retained Premises.
- 4.4.2 Irish Water shall, until such time as the Retained Premises are transferred by a transfer order to Irish Water, indemnify the Local Authority from and against any and all Losses that arises out of or result from the retention of the Retained Premises by the Local Authority except to the extent that the Losses result from the fraud or negligence of the Local Authority. The Local Authority shall inform Irish Water before undertaking any material work to, or incurring any material financial liability in respect of, the Retained Premises during the period of the indemnity provided however that this requirement shall not apply in the event that the Local Authority needs to take immediate action where a serious and imminent danger is identified.
- 4.4.3 The Local Authority agrees to notify Irish Water within fifteen (15) business days of any written claims or demands against the Local Authority and its Related Persons for which Irish Water is responsible under Clause 4.4.2. No amounts shall be payable by Irish Water pursuant to Clause 4.4.2 in respect of claims settled or compromised without Irish Water's prior written consent (not to be unreasonably withheld or delayed).

5 Force Majeure

- 5.1 If either party is prevented from fulfilling its obligations under this Agreement by reason of Force Majeure the party unable to fulfil its obligations shall immediately give notice of this to the other party and shall use reasonable endeavours to perform its obligations pursuant to this Agreement to the fullest extent practicable with a view to minimising any disruption in the continuity of water and water services provided to the public.
- 5.2 Subject to clause 5.1 above neither party shall be deemed to be in breach of its obligations under this Agreement in the event of being unable to perform its obligations due to Force Majeure.
- 5.3 If and when the period of such incapacity exceeds 6 months then either party may serve notice to terminate this Agreement.
- 5.4 Irish Water shall not be relieved from its payment obligation in Clause 36 in respect of an obligation of the Local Authority suspended by reason of Force Majeure unless and then only to the extent that relevant cost is not incurred by the Local Authority. The Local Authority shall use its reasonable endeavours to mitigate or reduce the costs

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being incurred by the Local Authority. Where the period of incapacity is likely to be in excess of 5 Business Days the parties shall meet as soon as practicable and not later than a further 3 Business Days to agree the Local Authority shall inform (and keep informed) Irish Water of its plan to mitigate or reduce the costs being incurred by the Local Authority.

VALUES AND GOVERNANCE

6 Customer Service Culture & Values

6.1 Shared Objectives

The parties agree to develop a culture that will deliver a high quality service to the customer by building upon the values of the Local Authority and Irish Water.

6.2 Local Authority Responsibilities

The Local Authority employees (including management) engaged in or associated with providing the Services will, as reasonably required by Irish Water throughout the Term:

- 6.2.1 participate with Irish Water in customer service workshops to identify ways to improve customer service; and
- 6.2.2 participate in staff surveys to assist in developing a customer service culture within Irish Water and the Local Authority.

6.3 Irish Water Responsibilities

Irish Water shall:

- 6.3.1 fund the development and running of customer service workshops for Local Authority employees (including management) engaged in or associated with providing the Services;
- 6.3.2 ensure that the objectives for the workshops include:
 - 6.3.2.1 building on the strengths of the Local Authority customer service culture; and
 - 6.3.2.2 understanding the role of Irish Water within the context of the existing culture and / or organisation of the Local Authority and the creation of the Irish Water industry culture and values; and
- 6.3.3 participate in staff surveys to assist in developing a customer service culture within Irish Water and the Local Authority.

7 Visual Identity (Brand)

7.1 Shared Objectives

- 7.1.1 Irish Water and the Local Authority are committed to the pragmatic and appropriate roll-out and use of co-branded visual identities in all activities and facilities covered under this Agreement in accordance with brand guidelines which shall be agreed between the parties acting in good faith.
- 7.1.2 The co-branded visual identity is to be in the style of the Local Authority “in partnership with Irish Water” with each visual identity having equal weighting.

7.2 Phased Roll-out of the Irish Water Visual Identity

7.2.1 Shared objectives

The parties share objectives with regard to the roll-out of the Irish Water visual identity as follows:

7.2.1.1 roll out of co-branding over a period of time and on a phased basis;

7.2.1.2 co-branding vehicles, facilities, personal safety equipment, access and identification cards and communications materials used for the provision of the Services where appropriate; and

7.2.1.3 use the Irish Water visual identity where communications materials are exclusively on behalf of Irish Water.

7.2.2 Irish Water Responsibilities

Irish Water shall:

7.2.2.1 develop co-branded designs using the Local Authority’s visual identity and engage in a review process with, and obtain the approval of, the Local Authority;

7.2.2.2 respect and complement the existing visual identity of the Local Authority;

7.2.2.3 roll out and monitor the Irish Water co-branded visual identity elements in partnership with the Local Authority; and

7.2.2.4 subject to clause 31 (Intellectual Property) where appropriate, provide written consent for use of Irish Water’s visual identity that is outside of agreed usage.

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7.2.3 Local Authority Responsibilities

The Local Authority shall:

- 7.2.3.1 provide the artwork of the visual identity of the Local Authority and facilitate the design of materials that will be co-branded;
- 7.2.3.2 engage in a review and approval process of any co-branding designs where the Local Authority's visual identity is utilised. For the avoidance of doubt the Local Authority's approval is required where the Local Authority's visual identity is utilised, such approval not to be unreasonably withheld or delayed;
- 7.2.3.3 maintain the appearance of the co-branded visual identity;
- 7.2.3.4 facilitate the roll-out of the co-branded visual identity; and
- 7.2.3.5 subject to clause 31 (Intellectual Property) provide written consent, where appropriate, for use of the Local Authority's visual identity that is outside of agreed usage.

8 Management Processes

8.1 Shared Objectives

The parties share objectives with regard to the Management Process as follows:

- 8.1.1 to maximise performance against the Annual Service Plan and this Agreement and authorise amendments to the Annual Service Plan where agreed; and
- 8.1.2 make timely, effective and accountable decisions at the lowest appropriate level of the Management Processes.

8.2 Shared Responsibilities

The parties shall:

- 8.2.1 comply with the Management Processes as set out in Schedule 3.

8.3 Changes to the Service Level Agreement and Protocols

- 8.3.1 Either party may make a proposal or request to vary this Agreement including but not limited to changes to the Schedules and/or the Services and no such proposal or request shall vitiate this Agreement.
- 8.3.2 The proposed or requested changes shall, save as otherwise provided in this Agreement, be made at the following management levels:
 - 8.3.2.1 changes to the Conditions shall be agreed in writing by the National Management Process;

- 8.3.2.2 changes to any Schedule shall be agreed in writing by the National Management Process, save that the LGMA's functions shall be delegated to the water services sub-committee of the CCMA;
- 8.3.2.3 material changes to the structure and format of the Long Term Service Plan and Annual Service Plan shall be agreed in writing by the National Management Process, save that the LGMA's functions shall be delegated to Water Services Transition Office for so long as it is in existence and thereafter shall be delegated to the water services sub-committee of the CCMA;
- 8.3.2.4 all other changes shall be agreed in writing at Tier 3, Tier 2 or Tier 1 of the Management Process.
- 8.3.3 All amendments to this Agreement agreed between the parties, not otherwise agreed as part of the processes in Clause 8.3.2.1 to 8.3.2.4, must be in writing and approved by the parties.
- 8.3.4 Following a request from Irish Water or a proposal from the Local Authority for a change to the Annual Service Plan, the Local Authority will work collaboratively with Irish Water and shall provide Irish Water with details of any implications, including the estimated impact on headcount of Local Authority employees and any other costs that are reasonably expected to result from the change if implemented.
- 8.3.5 If a change is agreed in writing in accordance with Clause 8.3.2 then Irish Water shall issue a change order to the Local Authority (a "**Change Order**") recording the change and any agreed adjustments and the Local Authority shall carry out the Change Order. To the extent that costs or other impacts cannot reasonably be provided because of the continuing effect of a change then the Local Authority shall provide its best estimate of such costs and/or any other impacts and shall thereafter provide Irish Water with regular updates on such costs and/or other impacts.
- 8.3.6 Any dispute as to costs that is not resolved through the Management Process shall be determined as a Commercial Issue in accordance with Clause 12 (Dispute Avoidance and Resolution).
- 8.3.7 Irish Water may (acting reasonably) require specific activities to be included in the Annual Service Plan in which case it may issue a Change Order in accordance with Clause 8.3.5. In the event that it issues a Change Order where the costs have not been agreed between the parties or determined in accordance with Clause 12, without prejudice to either party's entitlement to dispute the cost of the Change Order, the Local Authority shall (acting reasonably) determine and notify Irish Water of the additional resources it deems necessary to carry out the Change Order. The Local Authority shall carry out the Change Order and shall provide regular updates on the cost implications and Irish Water shall pay the Local Authority the additional costs actually incurred as a result of the Change Order until the cost is agreed or determined in accordance with Clause 12 (Dispute Avoidance and Resolution).

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- 8.3.8 Changes to any Protocols shall be agreed by the National Management Process, save that the LGMA's functions shall be delegated to Water Services Transition Office for so long as it is in existence and thereafter shall be delegated to the water services sub-committee of the CCMA.

9 Transformation

9.1 Shared Objectives

The parties agree as follows to:

- 9.1.1 work collaboratively towards a shared vision, Irish Water and Local Authority will complete the Transformation by the end of 2017;
- 9.1.2 year-on-year, set out and agree the steps of the Transformation in the Long Term Service Plan and Annual Service Plan. The parties will have due regard to the need to engage with staff and their unions in relation to change impacts; and
- 9.1.3 operate to the Protocols as amended from time to time over the Term. A failure to operate to a Protocol shall, in each case of non-compliance, be considered to be a Minor Variance.

9.2 Shared Responsibilities

Irish Water and the Local Authority will, complying with their respective obligations under this Agreement, work to deliver the transformation initiatives in the Long Term Service Plan and Annual Service Plan, which include but are not limited to:

- 9.2.1 identifying opportunities for investment in assets to improve performance, improvement and innovation of Information and Communications Technology (ICT) to support more efficient use of resources and improved operation of assets;
- 9.2.2 collaborative working to realise a Continuous Improvement culture that drives incremental benefits;
- 9.2.3 identify and implement opportunities for restructuring and reorganization that may be required to achieve objectives;
- 9.2.4 optimise efficiency on a regional basis by sharing services and cross-boundary work;
- 9.2.5 procurement related changes;
- 9.2.6 customer services initiatives;
- 9.2.7 standard operating procedures;
- 9.2.8 using peer and international benchmarking to identify areas of potential improvement; and
- 9.2.9 initiatives to maximise regulatory compliance.

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9.3 **Continuous Improvement**

9.3.1 **Shared Objective**

9.3.1.1 Irish Water and the Local Authority will work together to develop a culture of Continuous Improvement over the Term.

9.3.2 **Shared Responsibilities**

The parties agree to:

9.3.2.1 work collaboratively to identify opportunities to improve Value For Money in the delivery of Services to meet customer requirements;

9.3.2.2 review performance regularly to identify opportunities to improve performance, which will then be jointly assessed, prioritized and a decision made on whether to progress them or not; and

9.3.2.3 agree initiatives through the Annual Service Plan, to be delivered during the year.

10 **Performance Management**

10.1 The parties shall agree what data is to be collected by each party and used for performance management.

10.2 **Shared Objectives**

10.2.1 The parties agree to put in place and implement an Annual Service Plan which shall encourage Continuous Improvement to achieve the Performance Targets. The Annual Service Plan shall:

10.2.1.1 identify the Historic Performance;

10.2.1.2 set Performance Targets where appropriate and identify initiatives to be taken to achieve the Performance Targets; and

10.2.1.3 establish appropriate Performance Targets, which may apply to either party as appropriate reflecting co-dependency.

10.3 **Establish Historic Performance**

10.3.1 **Irish Water Responsibilities**

Irish Water shall:

10.3.1.1 share national and international benchmarks, best practices and analysis of operational data with the Local Authority to inform proposals for performance management and service levels;

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10.3.1.2 provide systems and templates to assist in defining Historic Performance; and

10.3.1.3 review and approve proposals for Historic Performance.

10.4 Set Performance Targets

10.4.1 Shared Responsibilities

The parties shall:

10.4.1.1 analyse opportunities to optimise the Performance Targets that are set in the Annual Service Plan; and

10.4.1.2 analyse opportunities to optimise performance of Assets to meet the required Performance Targets.

10.4.2 Irish Water Responsibilities

Irish Water shall:

10.4.2.1 lead the process by which Performance Targets are developed and agreed for the upcoming year's Annual Service Plan;

10.4.2.2 take account of CER and EPA requirements to propose Performance Targets, based on the serviceability level of the Assets;

10.4.2.3 use its operations specialists to devise performance improvement schemes, involving both operational and capital measures;

10.4.2.4 engage with the Local Authority to agree Performance Targets taking account of Historic Performance and the availability of resources; and

10.4.2.5 provide challenge to ensure the industry is driven by cost and quality improvement.

10.4.3 Local Authority Responsibilities

The Local Authority shall:

10.4.3.1 participate in target setting activities led by Irish Water to set and agree specific Performance Targets as part of the Annual Service Plan;

10.4.3.2 use Historic Performance, and expected future conditions to propose the Performance Targets;

10.4.3.3 propose operational performance levels in line with these principles to feed in to the Annual Service Plan and Long Term Service Plan;

10.4.3.4 ensure Performance Targets are driven by cost and quality improvement targets, including shared cross boundary services

where appropriate;

10.4.3.5 engage with Irish Water to agree Performance Targets taking account of Historic Performance and availability of resources; and

10.4.3.6 use reasonable endeavours to achieve Performance Targets agreed with Irish Water and where there are no Performance Targets to achieve Historic Performance where measured.

10.5 Identify Change Initiatives

10.5.1 Shared Responsibilities

The parties shall:

10.5.1.1 propose, validate and agree Change Initiatives;

10.5.1.2 agree the implementation plan for the Change Initiatives taking into account financial and other resource constraints on the Local Authority and Irish Water;

10.5.1.3 agree Performance Targets and resource requirements for Change Initiatives;

10.5.1.4 run Continuous Improvement processes that engage Local Authority and Irish Water personnel to identify opportunities, prioritize, plan and pilot selected opportunities; and

10.5.1.5 comply with the Change Control procedure at Clause 8.3 in respect of any amendment or proposed amendment to the Services under this Clause 10.5.

10.5.2 Irish Water Responsibilities

Irish Water shall:

10.5.2.1 provide agreed support to the Local Authority to facilitate Continuous Improvement and Change Initiatives required to deliver the Performance Targets; and

10.5.2.2 ensure Change Initiatives are identified by the parties and implemented.

10.5.3 Local Authority Responsibilities

The Local Authority shall, for initiatives requiring capital investment, work with Irish Water to develop a business case as required.

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10.6 Monitor and report performance measurement

10.6.1 Shared Responsibilities

The parties shall:

10.6.1.1 provide measured information to assess performance against Performance Targets;

10.6.1.2 submit performance reports in line with the Management Processes; and

10.6.1.3 review progress and manage variation to the Annual Service Plan in monthly and quarterly meetings.

10.7 Identify variance

10.7.1 Shared Responsibilities

The parties shall work together to:

10.7.1.1 identify variances from Performance Target and classify them depending on the impact and frequency of the variance;

10.7.1.2 acknowledge favourable variance for better performance and the reasons for it for benefit elsewhere;

10.7.1.3 classify unfavourable variances as appropriate as:

10.7.1.3.1 Minor Variance;

10.7.1.3.2 Significant Variance; or

10.7.1.3.3 Serious Variance; and

10.7.1.4 identify the underlying causes of the variance.

10.8 Take corrective action

10.8.1 Irish Water Responsibilities

Where Performance Targets are not being met Irish Water shall:

10.8.1.1 participate/facilitate in corrective actions as determined in accordance with this Agreement to the extent required by the situation;

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- 10.8.1.2 provide leadership and support in the delivery of corrective actions where performance is significantly below the Performance Targets;
- 10.8.1.3 where Irish Water is the party responsible for delivering a Change Initiative and Irish Water fails in its obligations in respect of that Change Initiative, then to the extent that such a failure results in a variance as set out below, Irish Water shall take the appropriate actions to engage with the Local Authority as follows:
 - 10.8.1.3.1 Minor Variance – Take actions proactively within agreed parameters (as per the Annual Service Plan) and inform Local Authority as part of the monthly report;
 - 10.8.1.3.2 Significant Variance – Notify the Local Authority and put forward proposals and agree an implementation plan including resource requirements with the Local Authority;
 - 10.8.1.3.3 Serious Variance – inform the Local Authority and if necessary mobilise a task force with problem solving skills and/or specialist and/or general operative resources.

10.8.2 Local Authority Responsibilities

The Local Authority shall:

- 10.8.2.1 for those situations that require it, make decisions on the actions that are required to comply with the Local Authority's obligations under this Agreement, including but not limited to Performance Targets, and allocate resources accordingly;
- 10.8.2.2 where the Local Authority is responsible for delivering Performance Targets or Change Initiatives, the Local Authority shall take the appropriate actions to engage with Irish Water as follows:
 - 10.8.2.2.1 Minor Variance – Take actions proactively within agreed parameters and costs and inform Irish Water as part of the monthly report;
 - 10.8.2.2.2 Significant Variance – Notify Irish Water and put forward proposals and agree an implementation plan including resource requirements with Irish Water;
 - 10.8.2.2.3 Serious Variance – Develop an action plan and agree the plan with Irish Water, which may include seeking assistance in planning and delivering a significant intervention, for example mobilise a task force with problem solving skills and/or specialist and/or general operative resources. The Local Authority will report to Irish Water on the implementation of the action plan.

11 Enterprise Risk Management

11.1 Shared Objective

The parties both agree to ensure they both adopt enterprise risk management practices that aim to eliminate or reduce risk to an acceptable level and to operate and maintain a strong and robust system of risk management. Enterprise risk management shall form an integral part of business processes for the Water Services functions and should play a pivotal role in decision making.

11.2 Shared Responsibilities

The parties shall agree and maintain:

11.2.1 risk management policies and procedures to mitigate and manage risks utilising management and governance structures; and

11.2.2 a schedule of risks, impacts and associated mitigation measures, which shall be developed and reviewed as part of the Annual Service Plan.

11.3 Irish Water responsibilities

Irish Water shall agree appropriate reporting mechanisms and reporting formats with the Local Authority for risk reporting.

11.4 Local Authority responsibilities

The Local Authority shall provide Irish Water with regular risk management reports, in a format to be agreed between the parties, on all material risks relating to the Services, including risks of a strategic, operational, financial, reputational and health and safety nature, including mitigants to address these risks.

12 Dispute Avoidance & Resolution

12.1 Shared Objectives

The parties agree:

12.1.1 Where possible, to avoid disputes and achieve timely resolution of issues at the lowest level in the organisation as appropriate. Where a Commercial Issue arises, the objective is to resolve this without recourse to formal legal process.

12.1.2 Ultimately, the resolution of Technical Issues will be the responsibility of Irish Water, whose decision shall be final and binding and not subject to review by conciliation or arbitration.

12.1.3 Neither party shall be obliged to follow the procedures set out in this Clause 12 where that party intends to apply to court for injunctive relief against the other party provided that there is no delay in the prosecution of that application.

12.2 Resolution Process

12.2.1 There is a responsibility on both parties to resolve Commercial Issues and Technical Issues through the Management Process set out at Clause 8.2.1as follows:

12.2.1.1Tier 3 Management Process management meetings:

The purpose of this management level with respect to issue resolution is to resolve Commercial Issues and Technical Issues where possible, otherwise discuss and propose solutions to all issues raised from the Tier 3 Management Process and escalate these issues to the Tier 2 Management Process where necessary.

12.2.1.2Tier 2 Management Process management meetings:

The purpose of this management level with respect to issue resolution is to discuss and propose solutions to all Commercial Issues and Technical Issues escalated from the Tier 3 Management Process level. If this is not possible, the parties agree issues shall be escalated to the Tier 1 Management Process level.

12.2.1.3Tier 1 Management Process:

If a Commercial Issue or a Technical Issue cannot be resolved at the Tier 2 Management Process level, it shall be referred to a meeting of the Managing Director of Irish Water or nominee and the Manager of the Local Authority or nominee.

12.2.2 Ultimately Technical Issues shall be determined by Irish Water. Therefore if there is a Technical Issue, the ultimate decision will be with the Managing Director of Irish Water or its nominee, whose decision shall be final and binding, save only in the case of a failure to reach agreement in connection with the matters in the following clauses, in which case the final decision shall be made as to the Technical Issue, and in accordance with procedures as shall be agreed between the parties or, in default of agreement, as directed, by the party identified beside the Clause reference or matter below:

12.2.2.1Clause 13.3.6: the Minister;

12.2.2.2access to and ownership of property, including Clause 4.4: the Minister;

12.2.2.3Clause 17.4.2.4: Technical Expert;

12.2.2.4Clause 24.1.3.12: Technical Expert.

- 12.2.3 Any dispute or issue that is raised under any of the provisions of this Agreement that are listed in the definition of the “Commercial Issue” shall be resolved as a Commercial Issue in accordance with the provisions of clauses 12.2.1, 12.2.4, 12.2.5, 12.3, 12.4 and 12.5 as applicable.
- 12.2.4 For each step in the Management Process, both parties will prepare a paper on the issue in dispute outlining the areas of agreement and disagreement and proposals / options for resolution. This shall also serve as confirmation that the Management Processes have been complied with prior to each stage of escalation.
- 12.2.5 Subject to clauses 12.1.3, 12.2.1, 12.2.2 and 12.5, unless the parties agree otherwise in writing (i) any Commercial Issue shall be resolved in accordance with Clauses 12.3 (Conciliation) and 12.4 (Arbitration) and (ii) where a Commercial Issue is related to a Technical Issue, the parties shall not proceed with the resolution process of the Commercial Issue until the Technical Issue has been agreed or decided in accordance with this Agreement.

12.3 Conciliation

- 12.3.1 Subject to clauses 12.1.3, 12.2.1, 12.2.2, 12.2.4 and 12.5, if a Commercial Issue arises under this Agreement, either party may, by notice to the other, refer the dispute for conciliation under this sub-clause 12.3. The notice shall state that it is given under sub-clause 12.3 of this Agreement.
- 12.3.2 Within 10 working days of the referral of a dispute to conciliation, the parties shall jointly appoint a conciliator who is competent to adjudicate upon the dispute and independent of the parties. If the parties fail to appoint a conciliator within 10 working days of the referral, or if a person appointed refuses to act or becomes unable to act, the conciliator shall be appointed by president of the Chartered Institute of Arbitrators, Irish Branch, on the application of either party. If there is a fee for making the appointment, the parties shall share it equally. If one party pays the entire fee, it shall be entitled to reimbursement of the other party's share from the other party on demand.
- 12.3.3 Each party shall, within the period set by the conciliator, send to the conciliator and the other party concise details of the dispute stating its contentions as to the facts and the parties' rights and obligations concerning the dispute. The conciliator may, for this purpose, suggest further actions or investigations that may be of assistance.
- 12.3.4 The parties shall promptly make available to the conciliator all information, documents and access to any appropriate facilities that the conciliator requires to resolve the dispute.

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- 12.3.5 The conciliator shall consult with the parties in an attempt to resolve the dispute by agreement. The conciliator may do any of the following, or any combination of them:
- 12.3.5.1 meet the parties separately from each other or together and consider documents from one party not sent or shown to the other;
 - 12.3.5.2 conduct investigations in the absence of the parties;
 - 12.3.5.3 make use of specialist knowledge;
 - 12.3.5.4 obtain technical or legal advice; and
 - 12.3.5.5 establish the procedures to be followed in the conciliation.
- 12.3.6 The conciliator shall not be an arbitrator and the Arbitration Act 2010 and the law relating to arbitration shall not apply to the conciliation. For the avoidance of doubt the conciliator may only deal with Commercial Issues. Irish Water remains the competent authority in respect of Technical Issues.
- 12.3.7 The conciliator's terms of appointment shall be those agreed by the Irish Water and the Local Authority with the conciliator and, in default of agreement, as directed by the President for the time being of the Chartered Institute of Arbitrators.
- 12.3.8 If the dispute is not resolved by agreement within 42 days after the conciliator was appointed, or a longer period proposed by the conciliator and agreed by the parties, the conciliator shall give both parties a written recommendation. The Conciliator shall provide reasons for his recommendation.
- 12.3.9 If any party fails to make the payment due from it to the conciliator, the other party shall pay the sum to the Conciliator, and such other party shall be entitled to recover the amount from the defaulting party as a debt due. Each party shall meet its own costs and expenses. For the avoidance of doubt the Local Authority shall not be entitled to recover any part of its own costs and expenses or that of its advisors in relation to conciliation under this Agreement from Irish Water.
- 12.3.10 If either party is dissatisfied with the conciliator's recommendation, it may, within 15 days after receiving the conciliator's recommendation, so notify the other party. The notice shall state that it is given under sub-clause 12.3 of this Agreement, and shall state the matters in dispute and the reasons for dissatisfaction. If the conciliator has failed to give a recommendation within 42 days after appointment, save as such period is extended by agreement between the parties, either party may give a notice of dissatisfaction. If notice of dissatisfaction has been given in accordance with this clause, either party may refer the dispute to arbitration under sub-clause 12.4.

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12.3.11 If neither party gives notice of dissatisfaction within 15 days after receiving the conciliator's recommendation, the recommendation shall be conclusive and binding on the parties, and the parties agree to comply with it. If, in such circumstances, a party fails to comply with the conciliator's recommendation, the other party may without limiting its other rights refer the failure itself to arbitration under sub-clause 12.4, and need not invoke this sub-clause 12.3 for this reference.

12.3.12 If the conciliator has recommended the payment of money and a notice of dissatisfaction is given, the following shall apply:

12.3.12.1 The party concerned shall make the payment recommended by the conciliator, provided that the other party first gives a notice, complying with the arbitration rules referred to in sub-clause 12.4 referring the same dispute to arbitration.

12.3.12.2 If, when the dispute is finally resolved, it is found that the party receiving payment on the conciliator's recommendation was not entitled to some or the entire amount paid, then that party shall repay the amount it was paid and found not to be entitled to, together with interest.

12.3.12.3 When the dispute is finally resolved, interest will be deducted from final payment under the award or judgment.

12.3.12.4 Interest under this sub-clause is calculated at the reference rate referred to in the European Communities (Late Payment in Commercial Transactions) Regulations 2012 per year and runs from the date of the original payment to the date of the repayment or final payment.

12.3.13 The conciliation shall be confidential, and the parties shall respect its confidentiality, except to the extent necessary to enforce a recommendation that has become conclusive and binding. All documents provided by a party in connection with conciliation shall be returned when the conciliation is concluded.

12.4 Arbitration

Any dispute that, under sub-clause 12.3, may be referred to conciliation shall, if not resolved in accordance with the procedure in sub-clause 12.3, be finally settled by arbitration in accordance with the arbitration rules of Engineers Ireland. For the purposes of those rules, the person or body to appoint the arbitrator, if not agreed by the parties, is the President of the Chartered Institute of Arbitrators, Irish Branch and all references to the "President" in those rules shall be construed accordingly. In the event that the arbitrator makes a monetary award, including an award for costs, in favour of Irish Water, the Local Authority shall not be entitled to recover such sum from Irish Water. Furthermore, the Local Authority shall not be entitled to its costs

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and expenses arising out of or in connection with arbitration save as expressly awarded by the arbitrator.

12.5 Accelerated Dispute Resolution Procedure

12.5.1 The Accelerated Dispute Resolution Procedure in Clause 12.5.2 shall apply to the following Commercial Issues:

12.5.1.1 a dispute or difference between the parties as to whether an instruction by Irish Water requires the Local Authority to act in breach of a statutory requirement;

12.5.1.2 a dispute or difference between the parties as to whether there has been a Significant Failure giving rise to an entitlement to terminate;

12.5.2 The Accelerated Dispute Resolution Procedure means the procedures set out under clauses 12.2 (Dispute Resolution) 12.3 (Conciliation) and 12.4 (Arbitration) amended as follows:

12.5.2.1 the Commercial Issue shall immediately be addressed in the Tier 1 Management Process without the need to be addressed in either the Tier 2 or Tier 3 Management Processes;

12.5.2.2 if the Commercial Issue is not resolved within 7 Days of the date of its referral to the Tier 1 Management Process, the Commercial Issue shall be referred to conciliation in accordance with Clause 12.3 provided that the conciliator shall be a solicitor of not less than 10 years standing or a Senior Counsel, the conciliator's time to give the recommendation shall be 21 days after the conciliator's appointment and the time for giving notice of dissatisfaction shall be 3 days after receiving the conciliator's recommendation;

12.5.2.3 the arbitrator shall be a solicitor of not less than 10 years standing or a Senior Counsel and the arbitration rules in clause 12.4 shall be the 100 Day Arbitration Procedure published by Engineers Ireland as may be updated from time to time.

12.6 Jurisdiction

Subject to the above provisions of this clause, the parties submit to the jurisdiction of the Irish courts to settle any dispute that may arise out of or in connection with this Agreement or the Services.

12.7 Continuing Obligations

Despite the existence of a dispute, the parties shall continue to perform their obligations under this Agreement.

13 Suspension and Termination

13.1 Termination for Significant Failure

13.1.1 Where there has been a Significant Failure, a party (but in the case of clause 13.1.1.4, only Irish Water) may, without prejudice to any other rights and remedies, on not less than 9 months notice (or such other period agreed between the parties) to the other party terminate the Local Authority's obligation to provide the Services and initiate the Handover Period in accordance with clause 13.3. "**Significant Failure**" means:

13.1.1.1 an event of Force Majeure where the period during which either party is prevented from fulfilling its obligations exceeds 6 months in accordance with clause 5.3 of this Agreement; or

13.1.1.2 a fundamental breach by the other party to this Agreement; or

13.1.1.3 multiple material breaches or a sustained material breach of this Agreement by the other party (which shall include, but are not limited to: (i) breach on the part of Irish Water of its payment obligations on two or more occasions in any six month period during the Term; and/or (ii) subject to Clause 3.1.6, multiple breaches or a sustained breach on the part of Local Authority resulting in a Serious Variance(s)); provided that the defaulting party shall first have been given 60 days' notice of the other party's intention to terminate in the event that the Significant Failure has not been remedied and the Significant Failure has not been so remedied within the said 60 days (or such longer period as may be agreed between the parties); or

13.1.1.4 Irish Water has suspended the Services on multiple occasions or for a sustained period, as a result of a Serious Variance or Serious Variances in accordance with clause 13.6 (Suspension) of this Agreement.

13.2 Shared Objectives

13.2.1 The parties agree to work to deliver an orderly handover of the Local Authority's responsibilities under this Agreement to Irish Water or another party and, during such a handover, strive to maintain performance against the Performance Targets in the Annual Service Plan.

13.2.2 Where the Local Authority's obligation to provide the Services is terminated, the parties shall comply with section 19 (Transfer of Staff) of the Water Services (No.2) Act 2013. For the avoidance of doubt, the Local Authority will be responsible for notifying and engaging with staff in respect of any termination and or suspension of the obligations to provide the Services.

13.3 Procedure for Termination

13.3.1 The party initiating the termination (the “**Initiating Party**”) will provide the other party (the “**Receiving Party**”) with notice in writing of its intention to terminate (“**Termination Notice**”), detailing the grounds for termination.

13.3.2 The Termination Notice shall be deemed to have been accepted on the date of the Termination Notice unless within 7 days of the date of the Termination Notice the Receiving Party provides the Initiating Party with notice disputing that there has been a Significant Failure giving rise to an entitlement to terminate (“**Notice of Dispute**”).

13.3.3 Any dispute as to whether there has been a Significant Failure giving rise to an entitlement to terminate shall be resolved as a Commercial Issue in accordance with the Accelerated Dispute Resolution Procedure in Clause 12.5.

13.3.4 The Termination Notice shall not be effective and neither party shall have any liability to the other party in respect of the Termination Notice until the earlier of the following:

13.3.4.1 the date the Receiving Party accepts or is deemed to have accepted the Termination Notice;

13.3.4.2 in the event that the conciliator recommends that there has been a Significant Failure giving rise to an entitlement to terminate and no notice of dissatisfaction is provided, the date 4 days after receiving the conciliator’s recommendation; or

13.3.4.3 the date the arbitrator makes an award that there has been a Significant Failure giving rise to an entitlement to terminate;

(in each case, the “**Termination Date**”).

13.3.5 Without prejudice to any dispute referred in accordance with clause 12 other than a dispute as to whether there has been a Significant Failure giving rise to an entitlement to terminate, the parties agree to use all reasonable endeavours to ensure an orderly transition of the Local Authority’s obligations under this Agreement including the agreement and implementation of a handover plan.

13.3.6 Each party will, within 1 week of the Termination Date, appoint an accountable executive to develop, agree and implement a handover plan to commence as soon as practicable, but in any event no later than 4 weeks of the Termination Date, that includes the following:

13.3.6.1a description of the Services to be transferred to the relevant party or its nominee;

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- 13.3.6.2 details of the licences, consents, Intellectual Property and information required to provide the Services;
 - 13.3.6.3 subject to clause 13.3.9, the end date of the Handover Period;
 - 13.3.6.4 a list of key persons and project managers; and
 - 13.3.6.5 any other matters required for an orderly handover of the Local Authority's obligations under this Agreement.
- 13.3.7 The Local Authority may make an application to Irish Water within three weeks of the Termination Date for the additional costs it considers necessary to facilitate the orderly termination in accordance with this Agreement of the Local Authority's obligation to provide the Services. Irish Water shall not later than one week after receipt of an application under this sub-clause review any such application and inform the Local Authority of its decision as to whether it will pay the costs.
- 13.3.8 In the event that the parties cannot reach agreement on the handover plan or the costs of the handover plan, having followed the procedure in Clauses 12.2.1.1 to Clause 12.2.1.3, the parties shall refer the matter to the Minister in accordance with clause 12.2.2.1 and shall be bound by the Minister's decision.
- 13.3.9 Without prejudice to the Initiating Party's entitlement to terminate, the parties will continue to fulfil their obligations under this Agreement (which include, but are not limited to, the Local Authority's obligation to perform the Services and Irish Water's payment obligations under Clause 36) and under the handover plan for, subject to the following provisions of this clause 13.3.9, a period not exceeding 9 months from the Termination Date or such other period as may be agreed between the parties (the "**Handover Period**") and both parties will use all reasonable endeavours to achieve the shortest possible handover period.

13.4 Transfer of Affected Employees

- 13.4.1 The Parties agree that they shall comply with their respective obligations under the Employee Transfer Requirements, including any information and consultation obligations under Regulation 8 of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (as amended), and if requested the Local Authority shall also facilitate Irish Water in meeting with Affected Employees to discuss the transfer.
- 13.4.2 In order to facilitate an orderly transfer of Affected Employees from the Local Authority to Irish Water the Local Authority shall use reasonable endeavours to provide Employee Information (as defined in the Termination Protocol) to Irish Water as soon as practicable but no later than 3 months from the date of commencement of the Stand-Still Period.

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13.4.3 Where Employee Information has been provided, the Local Authority shall:

13.4.3.1 within 14 (fourteen) days of an amendment to such information, or the discovery of new information, inform Irish Water of any change to the information provided and/or provide any new Employee Information not previously provided;

13.4.3.2 use its reasonable endeavours to clarify within 14 (fourteen) days any matter upon which clarification is requested by Irish Water; and

13.4.3.3 use its reasonable endeavours to co-operate with any other reasonable request made by Irish Water concerning the Employee Information or concerning the Local Authority's employees.

13.4.4 During the Stand-Still Period or at any time either party has given notice to terminate this Agreement (in whole or part), the Local Authority shall not without the prior consent of Irish Water:

13.4.4.1 materially amend or offer, promise or agree for the future materially to amend, the terms and conditions of employment of the Affected Employees including, without limitation, the rates of remuneration (including pensions and bonuses), working hours, holidays or sick pay, of any employee employed by the Local Authority whose work (or any part of it) is work undertaken for the purposes of this Agreement; or

13.4.4.2 change the employees whose work (or any part of it) is undertaken for the purposes of this Agreement.

13.5 Consequences of termination

13.5.1 On termination of this Agreement or any part thereof:

13.5.1.1 any outstanding payments due to the Local Authority shall (subject to clause 36 (Payment)) remain due and payable by Irish Water to the Local Authority in accordance with the terms of this Agreement or, if Irish Water has made any payments in advance, the Local Authority shall repay the portion of those payments which relates to any period after termination of this Agreement and to the Services being terminated;

13.5.1.2 any outstanding amount due from the Local Authority shall remain due and payable by the Local Authority to Irish Water in accordance with the terms of this Agreement;

13.5.1.3 Irish Water shall, with respect to the Services provided prior to termination but for which no payment is yet invoiced, pay to the Local Authority only the proportion of the payment which is due in respect of such Services which complies with this Agreement (as calculated in accordance with Schedule 36 (Payment));

13.5.1.4 all licences and consents by Irish Water to the Local Authority pursuant to clauses 31 (Intellectual Property) and clause 7 (Visual Identity Brand) of this Agreement shall cease save that where part only of this Agreement or the Services are terminated, only such licences and consents which relate to the part of this Agreement or the Services which are terminated shall cease.

13.5.2 Neither party shall be liable to the other party for any loss of profit, contracts, goodwill, business opportunity or anticipated saving arising out of or in connection with the termination of this Agreement for any reason or any consequential loss or damage that may arise out of termination of this Agreement.

13.5.3 The provisions of this Agreement which by their nature would continue beyond the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement and shall continue to bind each party insofar as and for as long as may be necessary to give effect to their respective rights and obligations including this clause 13.5 (Consequences of Termination), clause 4.3 (Local Authority Premises) clause 31 (Intellectual Property), clause 32 (Freedom of Information), clause 33 (Data Protection) and clause 34 (Information Sharing), clause 37 (Insurances) and clause 38 (Indemnities and Limits of Liability).

13.6 Suspension

13.6.1 In the event of a Serious Variance where the Local Authority does not implement the corrective action plan in accordance with Clause 10.8.2.2.3 or such corrective action plan is not effective, the following steps will be taken:

13.6.1.1 Irish Water will prepare a plan (the “**Irish Water Corrective Action Plan**”) with cost estimates and timelines and agree it with the Local Authority. The Local Authority will implement the Irish Water Corrective Action Plan;

13.6.1.2 Where the Irish Water Corrective Action Plan is not agreed, is not implemented or is not effective Irish Water may by notice suspend the Local Authority’s performance of all or any Services. The notice takes effect immediately unless a later date is stated in it. The suspension is for any fixed period stated in the notice, or if no such fixed period is specified in the notice, until further notice. The Local Authority shall suspend Services accordingly, except for emergency

Services necessary or Services requested by Irish Water in connection with the suspension and upon the suspension taking effect Irish Water may do any of the following: (i) take direct control and direct the Local Authority on steps to be taken; (ii) perform the Services itself; or (iii) procure the performance by others of the Services to the extent absolutely necessary to resolve the failure.

13.6.2 Irish Water shall have the right by notice to suspend the Local Authority's performance of all or any Services and upon so suspending to take immediate intervention (including performing the Services itself or procuring the performance of the Services by another) in the following situations:

13.6.2.1 where a Force Majeure event occurs;

13.6.2.2 where there is a threat of imminent prosecution or sanction from a Competent Authority;

13.6.2.3 where there is an imminent large scale or serious public health issue; and/or

13.6.2.4 where there is an action by the Local Authority which, in the reasonable opinion of Irish Water, is likely to give rise to material liability for Irish Water.

13.6.3 Where Irish Water has suspended and taken direct control of part of the Local Authority obligations under clause 13.6.1.2 or clause 13.6.2 to allow an Irish Water managed intervention, the Local Authority is relieved of its obligations in relation to the specific activity or service that has been suspended for the duration of such suspension. For the avoidance of doubt all other obligations shall continue. Irish Water shall continue to pay the Local Authority Costs in respect of the Local Authority Personnel during the period of suspension. Where the period of suspension is likely to be in excess of 5 Business Days the parties shall meet as soon as practicable and not later than a further 3 Business Days to agree and implement a plan to mitigate or reduce the cost being incurred by the Local Authority for resources not being used by Irish Water during the period of suspension.

13.6.4 Upon suspension pursuant to this Agreement of all or any part of the Services:

13.6.4.1 any outstanding payments due to the Local Authority shall (subject to Clause 36 (Payment)) remain due and payable by Irish Water to the Local Authority in accordance with the terms of this Agreement or, if Irish Water has made any payments in advance, the Local Authority shall repay the portion of those payments which relates to any period after suspension of this Agreement and to the Services being terminated;

13.6.4.2 any outstanding amount due from the Local Authority shall remain due and payable by the Local Authority to Irish Water in accordance with the terms of this Agreement; and

13.6.4.3 Irish Water shall, with respect to the Services provided prior to suspension but for which no payment is yet invoiced, pay to the Local Authority only the proportion of the payment which is due in respect of such Services which complies with this Agreement (as calculated in accordance with Schedule 36 (Payment)).

13.6.5 Irish Water responsibilities

In the event of a suspension, Irish Water shall:

13.6.5.1 agree an intervention plan with the Local Authority setting out the following:

13.6.5.1.1 the purpose of the intervention;

13.6.5.1.2 criteria for terminating the intervention;

13.6.5.1.3 Local Authority obligations which have been suspended; and

13.6.5.1.4 roles and responsibilities of both Irish Water and Local Authority during the intervention.

13.6.5.2 appoint a qualified Intervention Management Team (IMT) to take control during the period of suspension;

13.6.5.3 agree with the Local Authority, the Management Process for the period of the suspension, whereby the Irish Water IMT is fully facilitated in effectively delivering its role;

13.6.5.4 agree the Costs to be paid under the Agreement (including the Local Authority staff Costs) during the expected period of suspension;

13.6.5.5 agree with the Local Authority the criteria that will be used to establish that the period of suspension can be ended; and

13.6.5.6 agree the process that will be used to enable responsibilities temporarily assumed by Irish Water to be returned and normal management arrangements to be restored.

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13.6.6 Local Authority Responsibilities

In the event of suspension, the Local Authority shall:

- 13.6.6.1 agree the payments (if any) to be made under this Agreement during the expected period of suspension;
- 13.6.6.2 nominate personnel from within the Local Authority to facilitate the Intervention Management Team to enable it to operate the Assets effectively;
- 13.6.6.3 agree with Irish Water the Management Processes for the period of the suspension; and
- 13.6.6.4 participate in the agreed processes that will be used to enable responsibilities temporarily assumed by Irish Water to be returned and normal management arrangements to be restored.

TECHNICAL & CUSTOMER SERVICE

14 Planning and Development

14.1 Planning Applications

14.1.1 Shared Objectives

The parties agree to support the efficient operation of the planning process by:

- 14.1.1.1 providing accurate information on Water Service Functions to inform planning applicants; and
- 14.1.1.2 informing the planning application process by providing comments on applications impacting Water Service Functions within the statutory timeframe.

14.1.2 Irish Water Responsibilities

Irish Water shall:

- 14.1.2.1 undertake the role of statutory consultee with respect to Water Service Functions;
- 14.1.2.2 provide liaison and co-ordination of preplanning requests, planning applications and connection enquiries from the planning authority;

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- 14.1.2.3 where Irish Water have been requested to attend a preplanning meeting by the planning authority, Irish Water may request Local Authority Personnel to attend the meeting and act on its behalf in accordance with this Agreement, Protocols and Irish Water policies;
- 14.1.2.4 where Irish Water is notified of a planning application, Irish Water may request Local Authority Personnel to prepare a report or response on their behalf. Irish Water is responsible for all submissions to the planning authority; and
- 14.1.2.5 acknowledge the demarcation between the Local Authority's planning function and the Services.

14.1.3 Local Authority Responsibilities

- 14.1.3.1 The Local Authority Personnel may be required from time to time to support Irish Water in the preparation of planning applications for new/changes to the Irish Water Premises and/or any other water services infrastructure.
- 14.1.3.2 The Local Authority shall ensure that Local Authority Personnel attend any pre-planning meeting where requested by Irish Water and, if requested in writing, act on Irish Water's behalf in accordance with this Agreement, Protocols and Irish Water policies; and
- 14.1.3.3 The Local Authority shall ensure that Local Authority Personnel prepare a report or response on a planning application where reasonably requested by Irish Water.
- 14.1.3.4 The Local Authority will maintain appropriate demarcation between the Local Authority planning function and the Services.

14.2 Taking in Charge Procedures

14.2.1 Shared Objectives

- 14.2.1.1 The parties shall work together to verify the integrity of Assets constructed on behalf of Irish Water.

14.2.2 Irish Water Responsibilities

- 14.2.2.1 Irish Water has sole responsibility for taking in charge infrastructure falling within its Water Service Functions.

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14.2.2.2 Where Irish Water is taking in charge water services Assets Irish Water may request Local Authority Personnel to prepare a condition report on Assets to be taken in charge. The final decision and responsibility to take in charge rests with Irish Water.

14.2.3 **Local Authority Responsibilities**

The Local Authority Personnel will prepare a condition report on Assets to be taken in charge where requested by Irish Water. This condition report shall include an assessment of the condition of the Asset but will not include recommendations as to whether Irish Water should take the Asset in charge.

15 **Manage Works**

15.1 **Operation and Maintenance**

15.1.1 **Shared Responsibilities**

The parties agree to work together to:

15.1.1.1 develop, maintain and adhere to up-to-date standard operating procedures complying with a standard no less than Existing Standards;

15.1.1.2 maximise Value For Money through the judicious use of materials, energy, chemicals, goods and services whilst achieving the Performance Targets; and

15.1.1.3 develop a proactive inspection and maintenance program for Assets.

15.1.2 **Local Authority Responsibilities**

The Local Authority shall:

15.1.2.1 undertake maintenance inspections in line with Irish Water requirements notified to them from time to time;

15.1.2.2 manage records and certificates of inspection;

15.1.2.3 undertake remedial action as the Local Authority deems appropriate or as otherwise directed by Irish Water;

15.1.2.4 undertake investigation and analysis of Assets and any defects therein when requested by Irish Water;

15.1.2.5 manage all day-to-day operations of plant and network as per the Annual Service Plan, including:

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- 15.1.2.5.1 providing qualified and experienced management, technical and administrative staff as required to meet demand for work types as agreed in the Annual Service Plan;
- 15.1.2.5.2 providing skilled, experienced operational staff as required to meet demand for work types as agreed in the Annual Service Plan; and
- 15.1.2.6 with regard to water; source, treat and distribute water to meet customer requirements to the standards and Performance Targets agreed in the Annual Service Plan (or where there are no standards specified, no less than the Existing Standard and where there are no Performance Targets, no less than Historic Performance where measured) and this will include:
- source protection;
 - water treatment;
 - water sampling and testing;
 - maintain records;
 - water distribution;
 - water storage;
 - water conservation including leak detection and repair;
 - compliance sampling, testing and reporting; and
 - liaise with HSE and EPA and any other Competent Authority as required;
- 15.1.2.7 maintain the water infrastructure in line with standards and Performance Targets agreed in the Annual Service Plan or otherwise agreed with Irish Water (or where there are no standards specified, no less than the Existing Standard and where there are no Performance Targets, no less than Historic Performance where measured). This will include:
- abstraction;
 - treatment;
 - storage;
 - trunk and distribution mains;
 - pumping stations;
 - ICT network management systems; and
 - support facilities;

15.1.2.8 with regard to waste water, collect and treat waste water and discharge treated effluent to meet the standards and Performance Targets agreed in the Annual Service Plan (or where there are no standards specified, no less than the Existing Standard and where there are no Performance Targets, no less than Historic Performance where measured) and this will include:

- collection of waste water, including combined sewers which discharge into the collection network;
- waste water treatment;
- waste water sampling and testing;
- maintain records;
- discharge of treated effluent;
- sludge treatment and re-use/ disposal;
- network infiltration and exfiltration management;
- compliance sampling, testing and reporting; and
- liaise with HSE and EPA as required;

15.1.2.9 maintain the waste water infrastructure in line with standards and Performance Targets agreed in the Annual Service Plan, or otherwise agreed with Irish Water (or where there are no standards specified, no less than the Existing Standard and where there are no Performance Targets, no less than Historic Performance where measured). This will include:

- collection network, including combined sewers which discharge into the collection network;
- pumping stations;
- treatment facilities;
- discharge and outfall network;
- sludge facilities;
- ICT network management systems; and
- support facilities.

15.1.3 Irish Water Responsibilities

Irish Water shall:

15.1.3.1 manage network configuration to deliver the best balance between cost and network performance and minimise plant outage, cost exposure and risk to service failure and the

standards agreed in the Annual Service Plan, or otherwise agreed with Irish Water or where there are no standards specified, no less than the Existing Standard and where there are no Performance Targets, no less than Historic Performance where measured;

- 15.1.3.2 develop and have an understanding of asset performance by identifying and quantifying operational and planned maintenance parameters;
- 15.1.3.3 provide Irish Water ICT and related training to Local Authority as agreed under the Annual Service Plan;
- 15.1.3.4 work with Local Authority to develop a proactive maintenance program for water and waste water infrastructure;
- 15.1.3.5 develop the methodology to manage spares and consumables to maximise Asset availability;
- 15.1.3.6 approve work schedules where significant customer or public impact is anticipated or where costs (variations) require Irish Water approval; and
- 15.1.3.7 respond promptly to variation requests from the Local Authority.

15.2 Management of Customer Reactive Work

15.2.1 Objectives

The parties agree the objective of efficiently managing customer generated work and ensuring that there is no deterioration in customer service levels.

15.2.2 Local Authority Responsibilities

Where a service request is passed from Irish Water to the Local Authority the Local Authority will take the necessary actions and close out the service request following completion.

15.2.3 Irish Water Responsibilities

- 15.2.3.1 Where a request is generated through the Irish Water Customer Contact Centre Irish Water shall be responsible for ensuring that those service requests will be passed to the Local Authority for action and closure of the service request.

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- 15.2.3.2 Irish Water is responsible for all direct interfaces with the customer through the Irish Water Customer Contact Centre.

15.3 Management of New Connections – Water and Waste Water

15.3.1 Sub-objectives

The parties agree the objective of efficiently managing customer related connection applications and delivery of connections.

15.3.2 Local Authority Responsibilities

- 15.3.2.1 The Local Authority will undertake and submit to Irish Water a technical assessment when requested by Irish Water.
- 15.3.2.2 The Local Authority will provide or facilitate a connection when requested by Irish Water and confirm completion.
- 15.3.2.3 Where required, the Local Authority will undertake bacteriological and chemical testing.
- 15.3.2.4 The Local Authority will continue to invoice and collect connection charges in accordance with the Local Authority's connection policy applying as at the date of this Agreement as disclosed agent of Irish Water for an interim period until otherwise advised by Irish Water. Amounts received in respect of connection charges will be netted off in accordance with Clause 36.3.5.3.

15.3.3 Irish Water Responsibilities

- 15.3.3.1 Irish Water is responsible for all direct interfaces with the customer including initial contact, issuing and processing of connection applications and payments through the Irish Water Customer Contact Centre.
- 15.3.3.2 Where a customer connection application is received from a customer Irish Water may request the Local Authority to undertake a technical assessment.
- 15.3.3.3 Where the connection offer is accepted by the customer Irish Water shall be responsible for requesting the Local Authority to undertake or facilitate the connection.

16 Service Plan

16.1 The Long Term Service Plan and the Annual Service Plan (collectively the Service Plans) are two important documents. The Service Plans set out the rolling five year plan and the annual plan for the delivery of the Services.

16.2 The “**Long Term Service Plan**” means the plan developed by Irish Water in consultation with the Local Authority. It will set out the shared goals, relevant to the Local Authority, agreed by Irish Water and the Local Authority, and the longer term actions, resources and indicative budgets to achieve these goals and plans. These longer term actions will ensure that the goals are achieved sustainable and on a Value for Money basis. The Long Term Service Plan will be reviewed and revised annually - a rolling five year plan. The Long Term Service Plan is an important subset of Irish Water’s strategic plan.

16.3 The “**Annual Service Plan**” means the plan that sets out how the longer-term goals and actions agreed in the rolling Long Term Service Plan will be advanced during the forthcoming year. The Annual Service Plan shall be agreed between the parties.

16.4 Shared Responsibilities

16.4.1 The Annual Service Plan commits both parties to deliver specific objectives and standards of performance against a budget covering headcount, goods and services and investment in the forthcoming year.

16.4.2 Where both parties agree there is a compelling case to change part of the Annual Service Plan during the year in which it is effective, this can be agreed through the Management Process.

16.5 Performance Targets in the Annual Service Plan shall, where reasonably possible, be specific, measurable, achievable, relevant, and time-bound (SMART).

16.6 The Service Plans shall be prepared and implemented in accordance with Schedule 2.

17 Capital Programme

17.1 Local Authority employees

Existing staff of the Local Authority engaged on water services capital activities will remain employees of the Local Authority and be covered by this Agreement, as per the position reached in the Labour Relations Commission agreement (27th June 2013); “reporting in relation to the (capital) programme will be to Irish Water who are managing and resourcing the programme”.

17.2 Shared Objectives

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The parties shall work together to:

17.2.1 continue the smooth day to day management and delivery of Capital Projects; and

17.2.2 promote close and practicable working relationships, at day to day operational and management levels, between Irish Water and Local Authority Personnel in the delivery of Capital Projects.

17.3 Capital Programme Activities

17.3.1 Irish Water Responsibilities

Irish Water are responsible for the following:

17.3.1.1 strategy, objectives and targets of the asset management business plans;

17.3.1.2 asset standards, information, strategic planning, risk management, research and development, sustainability and technical analysis, leading to approved investment plans;

17.3.1.3 the overall delivery of the capital investment programme in line with its overall goals and objectives, which will include:

17.3.1.3.1 business case review and alignment;

17.3.1.3.2 Capital Projects approval process;

17.3.1.3.3 procurement and procurement coordination;

17.3.1.3.4 coordination of reporting;

17.3.1.3.5 contract payments and ancillary costs;

17.3.1.3.6 approval of change;

17.3.1.3.7 budget and programme management;

17.3.1.3.8 approval of project resources as required (including site supervision); and

17.3.1.3.9 process for project communications.

17.3.1.4 remuneration of the Local Authority in accordance with clause 36; and

17.3.1.5 assignment of work at its discretion on specific projects to the Local Authority capital project office.

17.3.2 **Local Authority Responsibilities.**

The Local Authority shall:

- 17.3.2.1 follow Irish Water's investment approval process and project delivery processes as notified to the Local Authority by Irish Water from time to time;
- 17.3.2.2 where requested by Irish Water, carry out procurement activities on behalf of Irish Water;
- 17.3.2.3 deliver capital projects under the direction of the regional office of Irish Water. For the avoidance of doubt the management of Local Authority Personnel remains solely the remit of the Local Authority and will be undertaken in accordance with Local Authority policies and procedures as per clause 35;
- 17.3.2.4 where requested, nominate staff for the role of project managers and project team members;
- 17.3.2.5 provide details of required project resources for approval by Irish Water;
- 17.3.2.6 provide support and assistance as required in the preparation of outline and detailed planning applications in relation to the development of any asset or premises (including land) as part of the Water Services Functions;
- 17.3.2.7 track minor and major projects using any capabilities of the Irish Water ICT systems to the extent that they are operational and which the Local Authority Personnel have been trained to use;
- 17.3.2.8 release Local Authority Personnel for training in accordance with the Annual Service Plan including training on Irish Water ICT;
- 17.3.2.9 report on a monthly basis to Irish Water on progress in implementing approved and funded capital programmes, such reports to be signed off by a nominated senior manager in the Local Authority and
- 17.3.2.10 provide site supervision as required and agreed with Irish Water.

17.4 Capital Programme – Operational Support

17.4.1 Irish Water Responsibilities

Irish Water shall:

- 17.4.1.1 engage with and support Local Authority operational staff in their interaction with the delivery of the capital programme; and
- 17.4.1.2 in developing business cases for capital investment, Irish Water will consider the requirements and specific input of the Local Authority operational teams.

17.4.2 Local Authority Responsibilities

The Local Authority shall:

- 17.4.2.1 provide all necessary operational support for the capital delivery process during the business planning process and the design, construction, commissioning and handover;
- 17.4.2.2 provide input into project identification, scoping and justification processes including the development of business cases and provision of all relevant data and information on asset condition and performance to support the development of Irish Water capital investment plans;
- 17.4.2.3 make available operation staff to engage with the capital planning and delivery processes of Irish Water Assets to ensure suitability for operations; and
- 17.4.2.4 Irish Water and Local Authority to agree commissioning and operations handover of Irish Water Assets prior to Local Authority Personnel commencing operations.

17.5 Minor Capital Works

17.5.1 Irish Water Responsibilities

Irish Water shall:

- 17.5.1.1 manage the minor capital investment programmes, develop the asset strategy, set objectives and targets, grouping works and comply with its own governance and investment approval processes;

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17.5.1.2 have overall responsibility for programme management and reporting, budgeting, procurement, programming, technical output and third party dispute resolution; and

17.5.1.3 be responsible for quality assurance for the delivery of the capital programme e.g. cost, quality, change control.

17.5.2 Local Authority Responsibilities

The Local Authority shall:

17.5.2.1 provide all relevant data and information (where available) on asset condition and performance to support Irish Water in the development of capital investment plans and arising from implementation of capital asset maintenance programmes;

17.5.2.2 interface with Irish Water staff on design, construction and operational issues and participate in project identification, justification and the generation of business cases;

17.5.2.3 undertake day to day project management of third party contractors, consultants and Local Authority service providers, where requested by Irish Water;

17.5.2.4 undertake on-site design review, technical supervision and commissioning of capital works where requested by Irish Water;

17.5.2.5 undertake management of risks, change requests, claims, budgets, and reporting as requested by Irish Water;

17.5.2.6 ensure compliance with HSQE requirements;

17.5.2.7 support Irish Water in the management of local stakeholders, obtaining statutory approvals, acquisition of rights over land, licences and permits; and

17.5.2.8 carry out close-out and associated reporting activities. Ensure that data on project and works outputs and benefits realisation are captured and reported, including all record drawings integrated to Asset systems.

17.6 Commercial and Legal Support.

17.6.1 Irish Water Responsibilities

Irish Water may procure legal services as required.

17.6.2 Local Authority Responsibilities

The Local Authority shall:

- 17.6.2.1 where requested by Irish Water, facilitate discussions and negotiate with landowners affected by capital projects, in line with Irish Water processes;
- 17.6.2.2 procure legal services relating to conveyance and procurement where agreed, to support the delivery of the capital programme;
- 17.6.2.3 where requested by Irish Water provide or obtain valuation advice for land purchase, way leaves or rights of way, in support of or in addition to Irish Water valuation panels on behalf of Irish Water;
- 17.6.2.4 where requested by Irish Water provide/obtain Land Registry documents; and
- 17.6.2.5 where salary Costs and related Costs for these activities are not recouped through the CMC they will be included in the headcount and non-pay costs under this Agreement.

17.7 Administrative Support

17.7.1 Irish Water Responsibilities

Irish Water shall provide ICT systems and training to enable operation of Irish Water capital management procedures.

17.7.2 Local Authority Responsibilities

The Local Authority shall:

- 17.7.2.1 record and monitor hours spent on Capital Projects; and
- 17.7.2.2 provide administrative support and clerical duties to the Capital Projects office as required.

18 Manage the DBO Contracts and O&M Contracts

18.1 Shared Objectives

The Local Authority and Irish Water will collaborate to ensure the on-going management of the DBO Contracts and O&M Contracts transferred from the Local Authority to Irish Water.

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18.2 Irish Water Responsibilities

Irish Water shall:

- 18.2.1 assume the role and duties of the client in the management of all DBO Contracts and O&M Contracts referred to in Clause 18.1;
- 18.2.2 delegate employer representative powers to Local Authority project manager where appropriate as agreed;
- 18.2.3 pay all properly authorised expenditure associated with DBO Contracts and O&M Contracts;
- 18.2.4 agree an annual budget with operators under the DBO Contracts and O&M Contracts;
- 18.2.5 instigate and manage review of DBO and/or O&M projects at applicable review dates;
- 18.2.6 initiate incentivised cost-saving measures with DBO and/or O&M contractors;
- 18.2.7 chair liaison monitoring committee meetings; and
- 18.2.8 liaise with DBO contractor, O&M contractor and Local Authority Personnel on exceptional reporting.

18.3 Local Authority Responsibilities

The Local Authority shall:

- 18.3.1 review monthly DBO and/or O&M performance reports and invoices and make payment recommendations to Irish Water as agreed;
- 18.3.2 where appointed by Irish Water, assume the role of Irish Water's representative under the DBO Contract and/or O&M Contract;
- 18.3.3 attend liaison monitoring committee meetings as requested by Irish Water;
- 18.3.4 collaborate with Irish Water to investigate issues of non-compliance and complaints;
- 18.3.5 where requested by Irish Water, undertake sampling of influent/effluent to verify contractors analyses;
- 18.3.6 generate service requests through the workflow management system, Maximo, or such other work flow management system as may be implemented from time to time;
- 18.3.7 report exceptional events to Irish Water; and
- 18.3.8 support Irish Water in the resolution of issues arising on DBO Contracts and/or O&M Contracts.

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19 Water Safety Plans

19.1 Sub-objective

The parties shall work together to roll out safety plans for all water supply zones (“**Water Safety Plans**”).

19.2 Irish Water Responsibilities

Irish Water shall:

- 19.2.1 be responsible for Water Safety Plans;
- 19.2.2 in collaboration with the Local Authority, set policy, develop templates, prepare Water Safety Plans and provide training;
- 19.2.3 develop with the Local Authority a programme for the national roll-out of Water Safety Plans; and
- 19.2.4 work with the Local Authority to implement the Water Safety Plans.

19.3 Local Authority Responsibilities

The Local Authority shall:

- 19.3.1 identify the resources required to implement the Water Safety Plans and input into the Annual Service Plan;
- 19.3.2 support Irish Water in the preparation of Water Safety Plans; and
- 19.3.3 work with Irish Water in implementing Water Safety Plans.

20 Incident Management

20.1 Shared Responsibilities

The parties shall:

- 20.1.1 plan, prepare, implement, review and test incident response plans;
- 20.1.2 commit, as a minimum, to meet all statutory and regulatory obligations in relation to incident management;
- 20.1.3 collaborate and work together to ensure incidents are managed to achieve the optimum outcome for all stakeholders; and
- 20.1.4 co-operate to review incidents to ensure continual improvement and learning in incident management.

20.2 Irish Water Responsibilities

Irish Water shall:

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- 20.2.1 identify and assess incidents or potential incidents that come through Irish Water Customer Contact Centre;
- 20.2.2 ensure that incident response plans are developed and implemented;
- 20.2.3 implement Irish Water responsibilities under incident response plans;
- 20.2.4 liaise with and support the Local Authority in the management of incidents;
- 20.2.5 have overall responsibility for external stakeholder's communications in accordance with the Incident Management Protocol;
- 20.2.6 escalate incidents to emergencies as appropriate;
- 20.2.7 facilitate the implementation of corrective and/or preventative actions as appropriate;
- 20.2.8 have overall responsibility for post incident review process;
- 20.2.9 amend the Incident Management Protocol as necessary post incident review; and
- 20.2.10 manage the review and development of an Incident Management Protocol.

20.3 Local Authority Responsibilities

The Local Authority shall:

- 20.3.1 identify, assess and classify incidents or potential incidents;
- 20.3.2 implement Local Authority responsibilities under incident response plans;
- 20.3.3 inform Irish Water and liaise with Irish Water in relation to the management of incidents;
- 20.3.4 support external stakeholder communications;
- 20.3.5 escalate incidents to emergencies as appropriate in accordance with the incident response plan;
- 20.3.6 support the implementation of corrective and/or preventative actions as appropriate; and
- 20.3.7 provide input into the post incident review and development of Incident Management Protocol.

21 Reporting to the Environmental Protection Agency (EPA)

21.1 Shared Objective

The Parties agree they shall systematically produce information and deliver samples, and results, report and participate in audits, in compliance with the requirements of the EPA in accordance with this Agreement.

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21.2 Wastewater Discharge Authorisations & Wastewater Reporting (including statutory and non-compliance sampling, analyses, reporting and audits)

21.2.1 Irish Water Responsibilities

Irish Water shall:

- 21.2.1.1 prepare and submit applications for Waste Water Discharge Authorisations to the EPA and coordinate reviews of existing authorisations;
- 21.2.1.2 review and approve a programme of monitoring, sampling, analysis and reporting in line with EPA requirements;
- 21.2.1.3 develop a programme of improvements in consultation with the Local Authority to meet authorisation requirements;
- 21.2.1.4 submit all required returns to the EPA;
- 21.2.1.5 coordinate and participate in EPA audits; and
- 21.2.1.6 put in place any necessary ICT processes and procedures for the Local Authority to ensure efficient processing of information, submission of returns and reporting of non-compliant incidents.

21.2.2 Local Authority Responsibilities

The Local Authority shall:

- 21.2.2.1 support Irish Water in the management of applications for Waste Water Discharge Authorisations to the EPA and any necessary reviews of authorisations;
- 21.2.2.2 prepare and submit a programme of monitoring, sampling, analysis and reporting in line with EPA requirements to Irish Water;
- 21.2.2.3 undertake the agreed programme of monitoring, sampling, analysis and reporting;
- 21.2.2.4 implement the programme of improvements to meet authorisation requirements; and
- 21.2.2.5 participate in EPA audits and provide assistance to Irish Water in respect of Irish Water's obligation to submit required returns to the EPA (including annual environmental reports).

21.3 Drinking Water Reporting (including statutory and non-compliance sampling, analyses, reporting and audits)

21.3.1 Irish Water Responsibilities

Irish Water shall:

- 21.3.1.1 work with the HSE to protect public health and ensure compliance with relevant Drinking Water Regulations;
- 21.3.1.2 coordinate and participate in EPA audits;
- 21.3.1.3 put in place any necessary ICT processes and procedures for the Local Authority to ensure efficient processing of information, submission of returns and reporting of non-compliant incidents;
- 21.3.1.4 submit all required returns to the EPA; and
- 21.3.1.5 publish sampling results in accordance with EPA requirements.

21.3.2 Local Authority Responsibilities

The Local Authority shall:

- 21.3.2.1 prepare programmes of monitoring, sampling, analysis and reporting in line with EPA requirements;
- 21.3.2.2 undertake the agreed programme of monitoring, sampling, analysis and reporting; and
- 21.3.2.3 participate in EPA audits.

21.4 Statutory consultee for the EPA regarding consent of discharge to sewer for IPPC, IED and/or waste licence applications

21.4.1 Irish Water Responsibilities

- 21.4.1.1 Liaise with the EPA regarding the consenting of discharge to sewer for IPPC, IED and waste licence applications;
- 21.4.1.2 Assist the Local Authority in the assessment of IPPC Licence, IED Licence and waste licence applications/reviews; and
- 21.4.1.3 Approve the Local Authority's draft recommendations and submit to EPA.

21.4.2 Local Authority Responsibility

- 21.4.2.1 Submit recommendations to Irish Water regarding consent of discharge to sewer for IPPC, IED and Waste License applications.

21.5 Wastewater Sludge Reporting

21.5.1 Irish Water Responsibilities

Irish Water shall:

- 21.5.1.1 approve Local Authority sludge data submissions and submit to EPA; and
- 21.5.1.2 Submit to the Local Authority data to populate the sludge register.

21.5.2 Local Authority Responsibilities

The Local Authority shall be responsible for maintaining:

- 21.5.2.1 a register of sewage sludge facilities under the Waste Management (Registration of Sewage Sludge Facility) Regulations 2010; and
- 21.5.2.2 the sludge register required under the Waste Management (Use of Sewage Sludge in Agriculture) Regulations 1998 and 2001.

22 Management of Licences to Discharge Wastewater to Sewer

22.1 Irish Water Responsibilities

Irish Water shall:

- 22.1.1 process applications for, and amendments to, licences for discharge to sewers;
- 22.1.2 issue licences for discharge to sewers;
- 22.1.3 manage the monitoring or review of licences for discharge to sewers as required;
- 22.1.4 manage any appeals in response to refusal to grant a licence or licence conditions;
- 22.1.5 take enforcement actions as necessary; and
- 22.1.6 invoice and collect charges.

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22.2 Local Authority Responsibilities

The Local Authority shall in respect of licences for discharge to sewers support Irish Water in the review, preparation of licences and reporting on licence applications and amendments to licences.

23 Non-Domestic Billing

23.1 Shared Objective

23.1.1 Irish Water and the Local Authority shall work together to facilitate the meter reading billing, debt collection and handling of customer meter and bill queries of the non-domestic market for water and waste water services until the billing function for all non-domestic customers is fully transitioned to Irish Water.

23.2 Irish Water Responsibilities

Irish Water shall:

23.2.1 be responsible for the overall management of billing and debt collection of non-domestic customers in Ireland;

23.2.2 develop and implement a migration plan for non-domestic debtors to Irish Water;

23.2.3 request data and reporting from the Local Authority related to the billing of non-domestic customers for water and water services;

23.2.4 be responsible for the management, recording and reporting of financial information relating to non-domestic billing and debt collection in line with regulatory requirements;

23.2.5 facilitate the transfer of non-domestic debtor balance from the Local Authority to Irish Water; and

23.2.6 provide the facility (including resources and technology) to allow secure transfer of data from the Local Authority.

23.3 Local Authority Responsibilities

The Local Authority shall:

23.3.1 a close out meter read (actual or estimated) for the year end 2013 and issue a year end bill on behalf of the Local Authority for charges up to the 31st December by 17th January 2014 to all customers;

23.3.2 provide a close out position for 2013 debtor balances for the transition of billing services to Irish Water in 2014, by the AFS reporting deadline in March 2014; the close out position to reach a collectable debtor balance position will be in accordance with the agreed criteria;

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- 23.3.3 generate bills for 2014 charges in line with existing billing cycles and issue bills to non-domestic customers as a disclosed agent of Irish Water on Irish Water invoices (with the Local Authority's contact details);
- 23.3.4 manage payments and debt collection process until transfer to Irish Water in accordance with existing debt policies;
- 23.3.5 amounts received from customers of Irish Water will be netted off in accordance with Clause 36.5.3;
- 23.3.6 maintain customer contact, account and credit control information until transfer to Irish Water;
- 23.3.7 investigate and address any customer complaints or disputes until transfer to Irish Water;
- 23.3.8 manage third party meter reading, billing and collection service providers on behalf of Irish Water until transfer to Irish Water;
- 23.3.9 provide support to Irish Water after debtors are transferred to facilitate debt collection and ongoing management of customers in line with the migration plan;
- 23.3.10 provide Irish Water with contract information, change requests or variances raised by meter reading, billing and collection service providers;
- 23.3.11 support Irish Water in its consideration of any changes requested which will affect service levels, performance, cost or customer experience;
- 23.3.12 facilitate the secure transfer of data between the Local Authority to Irish Water including providing single point of contact for information technology and related issues;
- 23.3.13 manage debt collection performance while the Local Authority is acting as agent for Irish Water; where the Local Authority carries out disconnection of customers for non-payment, disconnection can continue to be carried out with effect from the Effective Date with agreement in advance on Irish Water's instructions;
- 23.3.14 provide Irish Water with information to support financial reporting in line with the agreed frequency, format and templates;
- 23.3.15 facilitate the review of debtors by Irish Water and the transfer of debtors from the Local Authority to Irish Water as part of the migration plan;
- 23.3.16 facilitate compliance of Irish Water with all audit requirements and auditor requests with regard to Local Authority activities and those activities that are contracted with third parties in line with agreed procedures; and
- 23.3.17 take actual meter readings in line with agreed schedules to facilitate the timely billing of non-domestic customers until alternative arrangements are implemented.

23.4 Joint Responsibilities

The parties shall:

- 23.4.1 agree reasonable target levels of non-domestic cash collection for the Local Authority using demonstrated historic collection performance;
- 23.4.2 during early 2014 form a working group to determine reconciliation mechanisms agreeable to both parties to apply at the point of migration from the Local Authority to Irish Water;
- 23.4.3 work together to maximise collection during the Transition Period;
- 23.4.4 develop transfer processes for the migration of debtors and related information to Irish Water;
- 23.4.5 work together to deal with customer queries and disputes in a timely manner post transfer;
- 23.4.6 work together during the interim period to agree an approach and activities required to support full migration to enduring at a defined point in time;
- 23.4.7 develop a set of reports that enable Irish Water to meet reporting and audit requirements to agreed timelines; and
- 23.4.8 issue communication leaflets on behalf of Irish Water of terms & conditions within 8 weeks of legislation being passed, Irish Water to provide a leaflet, and the Local Authority to fulfil to customers via existing mechanisms.

24 Health, Safety, Quality and Environment (HSQE)

24.1 Health & Safety

24.1.1 Shared Objectives

The parties share objectives in respect of HSQE as follows:

- 24.1.1.1 promote and ensure a safe working environment for all of their respective staff, contractors and members of the public,
- 24.1.1.2 committed to meet all statutory and regulatory obligations in relation to health and safety;
- 24.1.1.3 committed to delivering health and safety in a coordinated manner; and
- 24.1.1.4 setting targets to encourage continual improvement.

24.1.2 Shared Responsibilities

The parties agree that they will:

- 24.1.2.1 foster a culture that encourages safe and responsible

behaviour by clearly defining roles and responsibilities;

- 24.1.2.2 work together on the development of best practice management systems, to support health and safety requirements;
- 24.1.2.3 establish and maintain health and safety governance structure involving Irish Water and the Local Government Management Agency Health and Safety Employer Group. Output and recommendations from this group shall be provided to the national management level of the parties for consideration with respect to changes in Local Authority and Irish Water health and safety practices;
- 24.1.2.4 ensure that the parties safety systems are consistent with each other having due regard to each organisation's broader safety systems and where changes are being made these should be coordinated across the parties organisations; and
- 24.1.2.5 ensure that places of work, the means of access or egress to the place of work, any article or substance provided for use in the places of works have been risk assessed and are part of a safe system of work; and
- 24.1.2.6 the parties agree that Irish Water shall be nominated as "Client" under the Construction Regulations for any projects save in circumstances where the main contract for a project has not transferred to Irish Water or where the Local Authority appoint a contractor directly for a project after the Effective Date, in which case the parties agree that the Local Authority shall be nominated as "Client" under the Construction Regulations.

24.1.3 Irish Water Responsibilities

Irish Water shall:

- 24.1.3.1 lead the promotion of health and safety in relation to Water Services Functions;
- 24.1.3.2 manage and conduct its business to ensure, insofar as it is reasonably practicable, that individuals at a place of work owned by Irish Water, (including Local Authority Personnel) are not exposed to risk to their health and safety;
- 24.1.3.3 ensure Irish Water personnel comply with agreed safety procedures in place when at Local Authority places of work

and shared facilities and are adequately trained for the tasks that they will perform;

- 24.1.3.4 plan, implement and maintain a Health & Safety Management System;
- 24.1.3.5 where Irish Water is the “client” in accordance with 24.1.2.5 it shall carry out the duties of the Client pursuant to the Construction Regulations;
- 24.1.3.6 make provision for Irish Water employee health surveillance and assessment of medical fitness for tasks associated with serious risk;
- 24.1.3.7 record and report all notifiable accidents in accordance with Part X of the Safety Health and Welfare at Work (General Application) Regulations 1993 (and any amendment or replacement thereto) relating to Irish Water employees and dangerous occurrences relating to the assets owned by Irish Water to the HSA;
- 24.1.3.8 arrange for inspections of Irish Water owned assets and carry out Irish Water health and safety inspections and audits, facilitate the implementation of the appropriate corrective actions in a timely fashion;
- 24.1.3.9 arrange for the statutory inspection of Irish Water assets where required;
- 24.1.3.10 manage the development of a HSQE management plan for each agglomeration and water supply zone, to include a Health & Safety management plan, and support the implementation of such plans;
- 24.1.3.11 liaise with the Local Authority and provide relevant information in relation to safety issues identified by Irish Water; and
- 24.1.3.12 assess and agree actions based on content of monthly health & safety reports and health and safety audits and inspections.

24.1.4 Local Authority Responsibilities

The Local Authority shall:

- 24.1.4.1 ensure insofar as reasonably practicable the health, safety and welfare of Local Authority employees while at a Local Authority place of work.

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- 24.1.4.2 implement and maintain a health & safety management system including:
- Maintain safety statements for all Local Authority places of work.
 - Ensure safe systems of work are in place.
 - Provide site safety induction.
 - Provide all necessary personal protective equipment required to carry out the Services.
 - Implement procedures to deal with potential emergencies and serious and imminent dangers.
 - Carry out internal inspections and audits and co-operate with Irish Water inspections and audits of Local Authority activities and places of work (owned by Irish Water) and implement corrective actions in a timely fashion.
- 24.1.4.3 ensure that all Local Authority employees are adequately instructed, trained and supervised for the tasks that they are required to perform;
- 24.1.4.4 make provision for Local Authority employee health surveillance and assessment of medical fitness for tasks associated with serious risk;
- 24.1.4.5 where the Local Authority is the “client” in accordance with 24.1.2.6 it shall carry out the duties of the client pursuant to the Construction Regulations;
- 24.1.4.6 implement the provisions of the Construction Regulations in relation to Contractor and Designer (as defined in the Construction Regulations) and other duties as agreed;
- 24.1.4.7 carry out the roles of project supervisor design process and/or project supervisor for construction stage as per the Construction Regulations where the Local Authority accepts the appointment;
- 24.1.4.8 the Local Authority shall not accept the appointment of project supervisor design process and/or project supervisor for construction stage, if requested, where it considers that it is not competent to do so;
- 24.1.4.9 record and report all notifiable accidents and dangerous occurrences relating to Local Authority employees to the Health and Safety Authority and record and report dangerous occurrences relating to the Services and any of the Local

Authority Premises, Irish Water Premises or Assets, to enable Irish Water to report to the Health and Safety Authority;

- 24.1.4.10 facilitate Irish Water health and safety inspections and audits of Irish Water owned assets, including statutory inspections, and implement appropriate corrective actions;
- 24.1.4.11 provide health and safety reports to Irish Water on a monthly basis;
- 24.1.4.12 provide input to the development of a HSQE Management Plan for each agglomeration and water supply zone, to include a health and safety management plan, and facilitate the implementation of such plans; and
- 24.1.4.13 take immediate action where a serious and imminent danger is identified.

24.2 Quality Management

24.2.1 Shared Objectives

The parties share the objective of working to develop and maintain standards in the Annual Service Plan or otherwise agreed with Irish Water or where there are no standards specified, no less than the Existing Standard and improve those standards to meet statutory stakeholder and customer service expectations, in the delivery of water services.

24.2.2 Shared Responsibilities

The parties agree to:

- 24.2.2.1 foster a culture that encourages a high quality service to meet customer's needs in the short and long term;
- 24.2.2.2 work together on the development of best practice management systems which will encompass all relevant quality requirements;
- 24.2.2.3 set themselves objectives and targets to encourage continual quality improvement;

24.2.3 Irish Water Responsibilities

Irish Water shall:

- 24.2.3.1 manage and conduct its business to ensure, insofar as it is reasonably practicable, that the Water Services Functions are delivered to the appropriate quality standard in the Annual Service Plan or otherwise agreed with Irish Water or where there are no standards specified, no less than the Existing Standard;
- 24.2.3.2 record and report all non-conformances relating to the delivery of Water Services Functions as required by Law;
- 24.2.3.3 manage the development of a HSQE management plan for each agglomeration and water supply zone, to include a quality management plan, and support the implementation of such plans; and
- 24.2.3.4 liaise with the Local Authority and provide relevant information in relation to quality issues identified by Irish Water.

24.2.4 Local Authority Responsibilities

The Local Authority shall:

- 24.2.4.1 ensure insofar as reasonably practicable that the Services are delivered to the appropriate quality standard in the Annual Service Plan or otherwise agreed with Irish Water or where there are no standards specified a standard no less than the Existing Standard;
- 24.2.4.2 ensure that all Local Authority Personnel are adequately instructed, trained and supervised for the tasks that they are required to perform;
- 24.2.4.3 ensure quality assurance is built into work practices through the on-going development of standard operating procedures;
- 24.2.4.4 record and report all non-conformances relating to the Services including third party non-conformances when requested by Irish Water;
- 24.2.4.5 facilitate Irish Water inspections and audits and implement appropriate corrective actions; and

- 24.2.4.6 provide input to the development of a HSQE management plan for each agglomeration and water supply zone, to include a quality management plan, and facilitate the implementation of such plans.

24.3 Environmental Management

24.3.1 Shared Objectives

- 24.3.1.1 That Irish Water and Local Authority agree the objective of working to minimise environmental impact in the delivery of the Services.

24.3.2 Shared Responsibilities

The parties shall:

- 24.3.2.1 foster a culture that encourages meeting EPA and other legal environmental requirements in the short and long term;
- 24.3.2.2 work together on the development of best practice management systems which will encompass all relevant environmental requirements; and
- 24.3.2.3 set themselves objectives and targets to encourage continual improvement in the achievement of environmental targets.

24.3.3 Irish Water Responsibilities

Irish Water Shall:

- 24.3.3.1 manage and conduct its business to ensure, insofar as it is reasonably practicable, that services are delivered to the appropriate environmental standards;
- 24.3.3.2 record and report all environmental non-conformances relating to the delivery of Water Services Functions as required by Law;
- 24.3.3.3 manage the development of a HSQE management plan for each agglomeration and water supply zone, to include an environmental management plan, and support the implementation of such plans; and
- 24.3.3.4 liaise with the Local Authority and provide relevant information in relation to environmental issues identified by Irish Water.

24.3.4 Local Authority Responsibilities

The Local Authority shall:

- 24.3.4.1 ensure insofar as is reasonably practicable that services are delivered to the appropriate environmental standards;
- 24.3.4.2 record and report all environmental non-conformances relating to the Services including third party non-conformances when requested by Irish Water;
- 24.3.4.3 facilitate Irish Water inspections and audits and implement appropriate corrective actions;
- 24.3.4.4 provide input to the development of a HSQE management plan for each agglomeration and water supply zone, to include an environmental management plan, and facilitate the implementation of such plans; and
- 24.3.4.5 where agreed with Irish Water, appoint persons to act as “Authorised Persons” as defined in the Water Services Act, 2007 and undertake the duties of an Authorised Person as defined in the Water Services Act 2007.

SUPPORT SERVICE

25 Support Services

25.1 Shared Objective(s)

The parties will provide all necessary support services for Water Services Functions activities as required under this Agreement in a cost-effective manner.

25.2 Irish Water Responsibilities

Irish Water shall:

- 25.2.1 work with the Local Authority to develop comprehensive information in relation to support services to support the regulatory process;
- 25.2.2 work with the Local Authority to meet regulatory objectives with respect to support services;
- 25.2.3 if Irish Water takes over a support service function, it shall agree adequate notice and any cost or headcount implications for the Local Authority shall be dealt with under the Annual Service Plan and in line with clause 36.2.3; and

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- 25.2.4 pay all reasonably incurred support services costs in accordance with clause 36.

25.3 Local Authority Responsibilities

25.3.1 The Local Authority will provide support services (the “**Support Services**”) in the following areas:

- | | | |
|---------------------|--|---------------------------------------|
| ▪ HR | ▪ ICT | ▪ Roads |
| ▪ Finance | ▪ Executive/Senior Management | ▪ Facilities (Premises, Fleet, Tools) |
| ▪ Pensions | ▪ Print/Post | ▪ Insurance |
| ▪ Property | ▪ Non-productive time (e.g. statutory leave) | ▪ Internal Audit |
| ▪ Health and Safety | ▪ Legal Services | ▪ Corporate Services |

25.3.2 The Local Authority will continue to achieve efficiencies in the list of services above through the development of shared services across the Local Authority sector where appropriate.

25.3.3 In line with Local Authority’s accounting policies, support services costs will be directly attributed to the functional areas where practicable. Appropriate drivers will be used for the allocation of any remaining overheads in line with the Local Authority Costing Manual.

25.3.4 The Local Authority will recover water services related pension costs through the CMC. Pension costs will be net of contributions from staff involved in the provision of the Services and will include the cost of staff retiring during the Term.

25.3.5 The Local Authority will manage use of Support Services during the year in line with budget. Where there are material variances these will be dealt with in line with the governance process.

25.3.6 Where Irish Water proposes a variation, which will result in an increase in support service costs during a year, the Local Authority and Irish Water will agree the corresponding variance in Budget and shall issue a Change Order in accordance with Clause 8.3.5

25.3.7 Material staff impacts will be dealt with in line with Clause 36.2.3.

25.3.8 Legal Services

25.3.8.1 The Local Authority shall: (i) where possible and where agreed by the parties, continue to provide legal services in relation to water services to complete matters that are current as at the Effective Date and such additional legal matters relating to water services as the parties may agree from time to time;

and/or (ii) to facilitate the hand over to Irish Water of all legal files (including correspondence, documents and title documents) relating to water services held by the Local Authority.

25.3.8.2 Where requested by Irish Water the Local Authority shall provide to Irish Water such information as is reasonably requested in relation to the legal services provided under clause 25.3.8.1.

25.3.8.3 Where applicable under clause 25.3.8.1, and only in so far as the parties agree, the parties shall work together to facilitate, if possible, the establishment of a scheme to enable any in-house law agents and in house law officers of the Local Authority to provide legal services in relation to water services subject to any constraints imposed by the Law Society of Ireland.

26 Procurement

26.1 Shared Objectives

The parties agree shared objectives in respect of procurement as follows:

26.1.1 to coordinate the seamless migration of the water services procurement function from Local Authority systems to Irish Water systems;

26.1.2 to maximize the advantages of centralised procurement for the benefit of the water industry in Ireland; and

26.1.3 to achieve Value for Money whilst maintaining quality of service.

26.2 Shared Responsibilities

The Parties will, by agreement, set up and enable frameworks for single contract arrangements or agreed approved vendor lists for new suppliers.

26.3 Irish Water Responsibilities

Irish Water shall be responsible for:

26.3.1 overall management of the P2P System, including, in agreement with the Local Authority, the sourcing of new suppliers. On an on-going basis, Irish Water will provide guidance on approval procedures and system operation, including helpdesk support;

26.3.2 provision and management of the P2P System; and

26.3.3 training and support of Local Authority Personnel in the use of all procurement software particularly during the migration from Local Authority procurement systems to the Irish Water procurement system.

26.4 Local Authority Responsibilities

The Local Authority shall:

- 26.4.1 where procurement has migrated to Irish Water frameworks and approved vendor lists, apply the agreed Irish Water purchasing process, including ordering through the P2P system and it shall code the procurement spend as per the agreed Managed Costs Protocol;
- 26.4.2 apply their existing purchasing process and order through their current system for product categories not migrated to Irish Water frameworks and approved vendor lists;
- 26.4.3 in the event that on the Effective Date, the Irish Water P2P system is not in place in the Local Authority, continue to apply its existing purchasing process and order through its current system in line with the agreed Procurement Protocol;
- 26.4.4 nominate representation for the Irish Water category management teams. These teams will direct tendering strategies for each category; and
- 26.4.5 nominate representation for the Irish Water category management project board.

27 Information Communication Technology

27.1 Shared Objectives

The parties agree shared objectives in respect of ICT are as follows:

- 27.1.1 develop effective, cost-efficient and coordinated ICT systems to enable the delivery of excellent water and wastewater services while ensuring existing standards of ICT services and support are maintained;
- 27.1.2 facilitate compliance with the INSPIRE Directive;
- 27.1.3 to achieve the efficient transfer, as and when reasonably required by Irish Water or Law, of all relevant water services systems, data, software licenses and related support contracts from Local Authority to Irish Water having due regard to data protection legislation; and
- 27.1.4 work together to identify potential software licence issues relating to the transfer of systems and data to Irish Water during the first 6 months after the Effective Date;
- 27.1.5 continuously review the provision of ICT systems and support services for the Irish Water and Local Authority to ensure cost effective and efficient service delivery;
- 27.1.6 during the period of six months from the Effective Date work to achieve the transfer of software licences and related support contracts from the Local Authority to Irish Water and to identify any impediments to such transfer.

27.2 Irish Water Responsibilities

Irish Water shall:

- 27.2.1 where Local Authority Personnel are accommodated for an extended period in Irish Water offices, provide all necessary ICT services and support (laptop, tablet or other personal computer, mobile phone, remote access token, access to Irish Water systems and applications) as required.;
- 27.2.2 provide and support industry specific ICT (e.g. hand-held devices);
- 27.2.3 provide access, where appropriate, to a hosted virtual desktop infrastructure for accessing water services applications for Local Authority Personnel working under this Agreement;
- 27.2.4 reimburse Local Authority for all reasonably incurred ICT costs in accordance with clause 36; and
- 27.2.5 work in partnership with the Local Authority when developing Irish Water ICT systems which impact the delivery of the Services.

27.3 Local Authority Responsibilities

The Local Authority shall:

- 27.3.1 where Irish Water Personnel are accommodated in Local Authority offices for an extended period, provide all necessary ICT services and support (PCs and printers, remote access token, access to Irish Water virtual desktop infrastructure for water services systems and applications) as required;
- 27.3.2 provide access, where appropriate, to a hosted virtual desktop infrastructure for accessing water services applications for Local Authority staff working under this Agreement;
- 27.3.3 provide detailed information on and access to all ICT systems and water services systems (including scada systems, telemetry systems, GIS, network modelling systems, application/system code, software licenses, costs, water services data and related support contracts) in respect of the Services or any functions transferred to Irish Water pursuant to the Water Services (No.2) Act 2013;
- 27.3.4 provide general ICT support to all Local Authority Personnel providing Services to enable them to perform their work effectively;
- 27.3.5 ensure that Local Authority Personnel accessing the virtual desktop will undertake information security training and adhere to Irish Water information security policies and standards; and
- 27.3.6 actively support Irish Water and its contractors in the design, development and testing of Irish Water systems which impact on the Local Authority's delivery of its obligations under this Agreement.

28 Facilities

28.1 Laboratories

28.1.1 Shared Objectives

- 28.1.1.1 Both parties will work together to ensure the efficient use of existing Local Authority laboratories. The parties acknowledge that some laboratories may transfer to Irish Water where agreed with the Local Authority whereas some laboratories may remain with the Local Authority.

28.1.2 Shared Responsibilities

- 28.1.2.1 The Local Authority will provide laboratory services to Irish Water until otherwise agreed. Irish Water and the Local Authority will develop a shared service proposal in relation to laboratory services.

28.1.3 Irish Water Responsibilities

- 28.1.3.1 Where the laboratory is owned by Irish Water and is not used exclusively to provide services for water then a cost reflective charge out rate shall be agreed between Irish Water and the Local Authority, to reflect the fact that the Local Authority will be using Irish Water assets to carry out laboratory services.
- 28.1.3.2 Irish Water will be responsible for determining what accreditation is necessary for all laboratory services with regard to its Water Service Functions.
- 28.1.3.3 Where the laboratory is owned by Irish Water it will make the laboratory available and ensure adequate access, to the Local Authority to enable it to carry out the Support Services for Irish Water and for the Local Authority where applicable.

28.1.4 Local Authority Responsibilities

- 28.1.4.1 The parties agree that personnel providing laboratory services, whether the laboratory transfers or not, will remain as employees of the Local Authority and their services shall be provided under this Agreement.
- 28.1.4.2 Where the laboratory is owned by the Local Authority a cost reflective charge out rate shall be agreed between Irish Water and the Local Authority to reflect the fact that Irish Water will be using Local Authority assets to carry out laboratory services.

28.1.4.3 Where the Local Authority currently have arrangements with other parties for the provision of laboratory services, the Local Authority will continue to contract directly for these services and charge the relevant costs to Irish Water under this Agreement, unless and until such time as Irish Water contracts directly with such third parties for laboratory services.

28.1.4.4 Where the laboratory is owned by Irish Water and is not used exclusively to provide services for water then in this case Local Authority Personnel working in the laboratory shall allocate the appropriate percentage of their time to the Services under the Annual Service Plan.

28.2 Training Centres

28.2.1 Shared Objectives

28.2.1.1 The training centres provide a core service with regard to a range of accredited water services training courses which are central in the delivery of an effective water services industry. Both parties will work together to ensure the efficient and effective use of existing training centres.

28.2.1.2 Irish Water and the Local Authority will develop a shared service proposal in relation to training centres.

28.2.2 Irish Water Responsibility

Irish Water will agree a comprehensive training programme with the Local Authority (Water Services Training Group (WSTG)) within the Annual Service Plan and wherever possible, use the Local Authority training centres at an agreed cost/ price structure.

28.2.3 Local Authority Responsibility

The Local Authority will continue to provide training centre services to Irish Water and training services shall be charged out to Irish Water on a cost reflective basis. Irish Water and the Local Authority will develop a shared service proposal in relation to training centres.

28.3 [Intentionally Left Blank]

28.4 Other Facilities

28.4.1 Shared Objective(s)

Both parties will work together to ensure the efficient use of existing Local Authority office facilities, depots, stores, fleets, specialist equipment, storage facilities and archives, insofar as it relates to the Services.

28.4.2 Shared Responsibilities

- 28.4.2.1 Where Local Authority and Irish Water staff are co-located, rents shall be charged by the party in whose premises such staff are located at agreed rates unless otherwise covered under support service costs. Where staff are co-located, appropriate access to offices and facilities will be provided to all such staff.
- 28.4.2.2 The Local Authority will continue to provide fleet services to Irish Water unless and until agreed otherwise. The Local Authority working with Irish Water will define the fleet requirement specifications and equipment suitability. The Local Authority shall if requested by Irish Water, also be responsible for procuring fleet as required with approval from Irish Water. Irish Water and the Local Authority will develop a shared service proposal in relation to fleet procurement and management.
- 28.4.2.3 The parties will work together to ensure the efficient use of existing Local Authority specialist equipment. Where specialist equipment is shared, Irish Water and the Local Authority will develop an equitable charge out arrangement.
- 28.4.2.4 The charges for facilities will be agreed as part of the Annual Service Plan.
- 28.4.2.5 Where staff use their own vehicles for work Local Authority travel and subsistence expenses will apply.

28.4.3 Irish Water Responsibilities

- 28.4.3.1 Where Irish Water are using 'other shared facilities' e.g. a depot, Irish Water staff will follow the local access control policy and comply with health and safety procedures, inductions and other site specific requirements.

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28.4.3.2 Irish Water will nominate which Irish Water staff should be given access to which shared facilities.

28.4.3.3 Irish Water will utilise the fleets that Local Authority have in place currently.

28.4.4 **Local Authority Responsibilities**

28.4.4.1 The Local Authority will provide suitable office and related accommodation and services for Irish Water staff where reasonably feasible. Where there are costs associated with accommodating Irish Water staff, these will be borne by Irish Water.

28.4.4.2 The Local Authority will provide access to Irish Water to water services ICT systems, SCADA, telemetry and locations and any reasonably incurred incremental costs shall be recouped under this Agreement.

28.4.4.3 The Local Authority will maintain the current access controls to avoid unauthorised access.

28.4.4.4 The Local Authority will provide archive services in respect of all information records or materials held by the Local Authority as set out in clause 34.1 at an agreed rate to Irish Water unless and until decided otherwise. The Local Authority and Irish Water will jointly develop and agree a plan to deal with the records over time. This plan will cover record management, document retrieval and document archiving (including computer records).

28.4.4.5 The Local Authority will provide car parking to Irish Water staff, where reasonably feasible.

28.5 **Local Authority assets on/in Irish Water Premises**

28.5.1 **Shared Objective**

To facilitate the continued use by the Local Authority and third parties employed by the Local Authority of assets belonging to the Local Authority or which are required by the Local Authority to perform its functions other than the Services whether or not those assets have transferred to Irish Water and which are located on or in the Irish Water Premises.

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28.5.2 Shared Responsibilities

Develop a procedure to allow for the continued use of the Local Authority's assets whether or not they have transferred to Irish Water or which are required by the Local Authority to perform its functions other than the Services and which are on or in the Irish Water Premises.

28.5.3 Irish Water responsibilities

Notwithstanding the arrangements for the transfer of the Assets, provide access to the Local Authority's assets which have not transferred to Irish Water or which are required by the Local Authority to perform its functions other than the Services but which are located on the Irish Water Premises.

28.5.4 Local Authority Responsibilities

Minimise the disruption or inconvenience to Irish Water as a result of accessing the Local Authority's assets on Irish Water Premises.

COMMUNICATION

29 Customer Contact Management

29.1 Shared Objectives

The parties agree shared objectives with regard to customer contact management as follows:

- 29.1.1 handle all customer contacts efficiently to meet customer service expectations;
- 29.1.2 migrate customer contact handling to Irish Water at the earliest feasible date after the Effective Date while ensuring existing standards are maintained; and
- 29.1.3 develop best-in-class customer contact process, procedures and systems.

29.2 Shared Responsibilities

- 29.2.1 Irish Water and the Local Authority will work together to develop systems and procedures to facilitate the timely and accurate collection and transfer of information to support communications and resolution of customer issues.
- 29.2.2 Irish Water and the Local Authority are committed to handling all contacts for which they are agreed as the appropriate party and providing clear and helpful re-direction in respect of contacts for which they are not. At any point in time only one party (Irish Water or Local Authority) will be the agreed appropriate recipient of customer contact.
- 29.2.3 The Local Authority and Irish Water will support reciprocal dynamic links to each others websites to provide access for customers.

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- 29.2.4 Irish Water and the Local Authority will collect the data necessary to record contact handling performance and to support efficient customer contact.
- 29.2.5 Irish Water and the Local Authority will work together to develop call handling scripts to allow the call handling agents to effectively deal with calls.

29.3 Irish Water Responsibilities

- 29.3.1 Irish Water is ultimately responsible for handling customer contact.
- 29.3.2 Irish Water is responsible for identifying and putting in place efficient contact handling channels, systems and procedures.
- 29.3.3 Irish Water is responsible for ensuring that the Irish Water Customer Contact Centre staff are adequately trained to filter calls so that no unnecessary work is raised for the Local Authority.
- 29.3.4 Irish Water is responsible for providing systems to the Local Authority in order to facilitate the Local Authority address work and issues raised by Irish Water and for the Local Authority to update the progression of work and to close off work completed.
- 29.3.5 Irish Water is responsible for implementing a solution that will allow for the real time sharing of information updates between the Local Authority and the Irish Water Customer Contact Centre.
- 29.3.6 Irish Water will reimburse the Local Authority for all reasonably incurred customer contact related costs.

29.4 Local Authority Responsibilities

- 29.4.1 The Local Authority will continue to provide customer contact, as required, until the Effective Date. The Local Authority will maintain current customer response standards until the Effective Date.
- 29.4.2 The Local Authority will provide information on volumes, patterns, categories of calls and call handling procedures, where available, until transfer to Irish Water.
- 29.4.3 The Local Authority will keep the Irish Water Customer Contact Centre up to date with events arising out of or caused by the provision of the Services that are likely to impact the customer in the Local Authority's area.
- 29.4.4 The Local Authority will deploy and operate technologies, channels, systems and processes developed and delivered by Irish Water to manage customer contact and associated follow-on activities.
- 29.4.5 The Local Authority will ensure that systems updates are timely and meaningful, providing Irish Water call handling agents the opportunity to inform and update customers.

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29.4.6 The Local Authority will work with Irish Water to develop and improve call handling scripts to enable quality contact 'triage' and the creation of appropriate follow-on work.

30 Non-Customer Communications

30.1 Shared Objectives

The parties agree as a shared objective to ensure effective communications for the Irish water industry to achieve business objectives and to build public confidence and a good working relationship with key stakeholders.

30.2 Shared Responsibilities

Irish Water and the Local Authority will develop collaborative working arrangement to share information required for public relations in a timely fashion between both parties.

30.3 Irish Water's responsibilities:

Irish Water shall be responsible for:

- 30.3.1 defining the strategic communications objectives for Irish Water;
- 30.3.2 developing all communications policies;
- 30.3.3 developing communication strategy;
- 30.3.4 developing and delivering all major communications campaigns (including media, on-line and public affairs);
- 30.3.5 developing project communications strategies to support the delivery of capital projects;
- 30.3.6 managing the relationship with key stakeholders external to Irish Water;
- 30.3.7 managing the communications for major incidents;
- 30.3.8 supporting the Local Authority in respect of communications required in the execution of Irish Water's statutory obligations with respect to incident management; and
- 30.3.9 identifying communications training needs, including scenario training, and agreeing a communications training plan with the Local Authority.

30.4 Local Authority Responsibilities:

The Local Authority shall:

- 30.4.1 support the work of the regional communications manager of Irish Water;
- 30.4.2 work with Irish Water to deliver on the objectives with respect to communications set out in both the Long Term Service Plan and the Annual Service Plan;

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- 30.4.3 communicate Irish Water messages as appropriate through the existing communications channels (website; multi-media; phone line etc.); and
- 30.4.4 provide support to Irish Water in responding to media queries.

ADMINISTRATION

31 Intellectual Property

31.1 Shared Responsibilities

- 31.1.1 Neither party will acquire any right, title or interest in or to the Intellectual Property rights of the other party which was developed prior to this Agreement or is subsequently developed by either party independently of that parties obligations under this Agreement unless otherwise provided in this Agreement, otherwise agreed between the party's or unless transferred by operation of Law.
- 31.1.2 It is agreed that all Intellectual Property rights developed by Irish Water under this Agreement shall vest in and remain solely the property of Irish Water.
- 31.1.3 It is agreed that all Intellectual Property rights developed by the Local Authority and paid for by Irish Water under this Agreement or developed between the parties jointly and paid for by Irish Water under this Agreement shall vest in and remain solely the property of Irish Water. The Local Authority hereby assigns to Irish Water, including by way of present assignment of future rights, such Intellectual Property rights. The Local Authority shall execute any further documents and agreements reasonably required to vest such Intellectual Property rights in Irish Water.
- 31.1.4 Irish Water hereby grants a non-exclusive royalty-free licence to the Local Authority to use any Intellectual Property, which vest in or is licensed to Irish Water to the extent reasonably required for the effective operation of the Services. The Local Authority agrees that it will comply with the conditions of any licence between the relevant licensor and Irish Water which applies in respect of such licensed Intellectual Property to the extent that such terms are disclosed by Irish Water to the Local Authority.
- 31.1.5 Irish Water agrees to grant a non-exclusive royalty-free licence to the Local Authority on such terms as Irish Water may specify from time to time (including but not limited any restrictions on use and/or assignment) to use any Intellectual Property which is developed by Irish Water in connection with this Agreement for the operations carried out by the Local Authority, other than in connection with this Agreement. The Local Authority agrees that it will comply with the conditions of any licence between the relevant licensor and Irish Water which applies in respect of such licensed Intellectual Property to the extent that such terms are disclosed by Irish Water to the Local Authority.

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31.1.6 The parties shall work together to identify potential issues relating to the transfer of Intellectual Property to Irish Water during the first 6 months after the Effective Date.

31.2 Local Authority Responsibilities

31.2.1 The Local Authority hereby grants a non-exclusive licence to Irish Water to use any Intellectual Property, which is licensed to the Local Authority to the extent reasonably required for the effective operation of Water Services Functions. Irish Water agrees that it will comply with the conditions of any licence between the relevant licensor and the Local Authority which applies in respect of such licensed Intellectual Property to the extent that such terms are disclosed by the Local Authority to Irish Water.

32 Freedom of Information

32.1 Shared Objectives

32.1.1 Irish Water and the Local Authority will comply with all relevant Freedom of Information Acts, to the extent that it applies to each of them.

32.1.2 It is acknowledged that all information and records, including Irish Water information and records, held by the Local Authority will be subject to the FOI Acts, unless they are confidential and/or commercially sensitive or one of the other mandatory or discretionary exemptions under the legislation applies.

32.2 Shared Responsibilities

32.2.1 Irish Water and the Local Authority agree that the Information and Records Protocol will include a detailed procedure whereby the Local Authority will consult with Irish Water in relation to any FOI request which may include Irish Water information and records.

32.2.2 Both the Local Authority and Irish Water agree that confidential and/or commercially sensitive information and records are exempt from release under the FOI Acts and will not be released unless such release is directed by Law.

32.3 The Local Authority and Irish Water acknowledge that they are both independently subject to the AIE Regulations.

32.4 Irish Water and the Local Authority will co-operate as necessary to ensure compliance with the AIE Regulations, including the disclosure of information and records in accordance with an AIE request.

33 Data Protection

33.1 Shared Objective

33.1.1 Both parties shall comply with their respective obligations under the DPA.

33.2 Shared Responsibilities

- 33.2.1 Each Party will comply with the provisions of the DPA. For the purposes of this clause “Personal Data”, “Processes” / “Processing”, “Data Controller”, “Data Processor” and “Data Subject” shall have the meaning given in the DPA.
- 33.2.2 To the extent that this Agreement involves the accessing or processing of Personal Data, the parties shall comply with their respective obligations as set out in the DPA.
- 33.2.3 The Local Authority and Irish Water acknowledge and agree that they shall Process Personal Data for and on behalf of the each other (as applicable) as required to deliver their obligations under this Agreement.
- 33.2.4 To the extent that one party processes Personal Data under this Agreement in its capacity as Data Processor on behalf of the other party in its capacity as Data Controller, the Data Processor shall:
- 33.2.4.1 save as otherwise required by Law, only act on instructions from the relevant Data Controller regarding the Processing of Personal Data pursuant to this Agreement;
 - 33.2.4.2 ensure that appropriate technical and organisational measures shall be taken against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access to such Personal Data as well as reasonable security programmes and procedures for the purpose of ensuring that only authorised personnel have access to such Personal Data;
 - 33.2.4.3 ensure the integrity of the Processing equipment to be used to Process such Personal Data and that any persons whom it authorises to have access to such Personal Data shall respect and maintain all due confidentiality;
 - 33.2.4.4 from time to time comply with any reasonable request made by the relevant Data Controller to ensure compliance with the measures mentioned above at clause 33.2.4.1;
 - 33.2.4.5 take reasonable steps to ensure any of its employees or sub-contractors who have access to the Personal Data provided by the Data Controller are appropriately trained in the handling of such data;
 - 33.2.4.6 not transfer any Personal Data outside of the European Economic Area (including transfer via electronic media) without the prior written consent of the relevant Data Controller;

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- 33.2.4.7 notify the relevant Data Controller promptly if it receives an access, erasure or modification request from a Data Subject or a complaint or request relating to the DPA;
- 33.2.4.8 provide the relevant Data Controller with full cooperation, assistance and information in relation to any complaint or request made;
- 33.2.4.9 permit the Data Controller or its representatives, to inspect the relevant Data Processor's data processing activities (and/or those of Data Processor group, its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Data Controller to enable the Data Controller to verify and ensure that the Data Processor is in full compliance with its obligations under this Agreement;
- 33.2.4.10 undertake not to perform its obligations under this Agreement in such a way as to cause the Data Controller to breach any of its applicable obligations under the DPA; and
- 33.2.4.11 notify the Data Controller and the other party immediately in the event that it becomes aware of a threatened, suspected or actual breach of the DPA in respect of its Processing of Personal Data on behalf of the Data Controller, including but not limited to notifying the Data Controller of any data security issues for the purpose of facilitating the Data Controller's compliance with the Data Protection Commissioner's Personal Data Security Breach Code of Practice.

33.2.5 Irish Water in developing its initial policy on data protection will seek to align its data protection policies with policies in place in the Local Authority. In the context of regulatory change, both parties will seek to align their data protection policies and procedures to the greatest degree possible recognising the respective legislative obligations of both parties, as a Data Controller and Data Processor.

33.2.6 Where required under the data protection policy described at Clause 33.2.5, the audit of data security measures will be undertaken by an independent party on behalf of Irish Water and/or the Local Authority respectively.

34 Information Sharing

- 34.1 All information, records and materials whether created before, on or after the Effective Date (including information and records generated internally by the Local Authority) held by the Local Authority in connection with the Services or any functions transferred to Irish Water pursuant to the Water Services (No.2) Act 2013 shall be the property of Irish Water, excluding Local Authority employee information

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not relevant to this Agreement. Irish Water authorise the Local Authority to use such information for the purpose of providing the Services.

34.2 The parties shall work together to identify potential issues relating to the transfer of information to Irish Water during the first 6 months after the Effective Date.¹

34.3 Irish Water authorises the Local Authority to use, process and store Irish Water information and records to the extent necessary to provide the Services and to perform its obligations under this Agreement.

34.4 The Local Authority will take all reasonable measures to protect Irish Water data in its possession. Segregation of Irish Water information and records from Local Authority data will be implemented where practicable.

34.5 The parties shall, and shall ensure that their respective Personnel shall, keep confidential

34.5.1 information which is not in the public domain that the other party notifies them is confidential; and

34.5.2 any other information which ought reasonably to be regarded as confidential.

34.6 Sub-clause 34.4 shall not prevent disclosure of information, to the extent permitted by Law;

34.6.1 to the Local Authority's Personnel, the Irish Water's Personnel or other professional advisors to the Local Authority or Irish Water, who have first entered an undertaking in the terms of this sub-clause 34.4, to the extent necessary for the provision of the Services or to enforce this Agreement or

34.6.2 when required by Law or order of a court or, in the case of disclosure by the Employer, for governmental, parliamentary, statutory, administrative, fiscal or judicial purposes, or the publication of an award notice or

34.6.3 that has, except as a result of breach of confidentiality, become available or generally known to the public at the time of the disclosure.

34.7 Irish Water and the Local Authority will develop a detailed protocol (the "**Information and Records Protocol**") for the management of information including treatment of confidential and commercially sensitive information. In developing the Information and Records Protocol on data protection Irish Water will seek to align its data protection policies with policies in place in the Local Authority.

34.8 Local Authority Responsibility

The Local Authority agrees that it will hold information, records and materials (including internally generated information and records) on behalf of Irish Water in accordance with the retention periods and other requirements set out in the

¹ This additional clause is proposed on the basis that some information may constitute Intellectual Property and would therefore be subject to the IP indemnity being provided by Irish Water.

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Information and Records Protocol and that it will provide Irish Water with such access to and copies of any such information, records and materials as Irish Water may require.

35 Human Resources

35.1 Shared Responsibilities

35.1.1 Irish Water and the Local Authority shall develop and implement a joint approach to long term staff and workforce planning.

35.1.2 Irish Water and the Local Authority shall implement the transformation programme in order to meet the challenges facing the Irish water industry.

35.2 Irish Water Responsibilities

In preparing the Annual Service Plan and determining the Historic Performance and setting the Performance Targets, Irish Water will take account of the reduced headcount levels, any restrictions on recruitment on the Local Authority, the performance capability and the condition of the infrastructure in the Local Authority.

35.3 Local Authority Responsibilities

35.3.1 The Local Authority will pay staff at rates approved by the Department of Public Expenditure and Reform and the DECLG and pre-existing Local Authority arrangements.

35.3.2 The management of Local Authority personnel remains solely the remit of the Local Authority and will be undertaken in accordance with Local Authority policies and procedures. The Local Authority will resolve industrial relation issues through the normal Local Authority procedures.

35.3.3 The headcount provided for the water services for the Local Authority for 2014 is [•] full time equivalents subject to alignment with the notified budget. This headcount will be reviewed each year as part of the preparation and approval of the following years Annual Service Plan. The review will reflect where appropriate, new infrastructure, changes in systems, processes, procedures, structure for delivery of services, or where the Local Authority takes on additional activities on behalf of Irish Water.

35.3.4 Where a post becomes vacant during the Annual Service Plan year, the Local Authority may appoint on a short term contract (where required this will be subject to the prior written approval of DECLG) or transfer on a temporary basis a replacement, on a like for like basis without recourse to Irish Water, to the end of the Annual Service Plan year. The estimated cost of temporary arrangements will be advised to Irish Water and will be considered at the Monthly Review Meeting. The parties will agree any budget and performance variances. Where the Local Authority wishes to appoint a longer term or permanent replacement, it shall make its case and obtain agreement with Irish Water through the Management Process and no such

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longer term or permanent replacement shall be made until such agreement has been obtained (where required this will be subject to the prior written approval of DECLG).

35.3.5 Changes to staffing by the Local Authority will be implemented in consultation with Irish Water.

FINANCE

36 Manage Costs, Payment & Budgeting

36.1 Shared Objectives

The parties agree to work together to:

36.1.1 move to a standardised accounting and budgeting system which will:

36.1.1.1 facilitate monitoring and evaluation of the Costs in a manner which will help improve performance;

36.1.1.2 comply with relevant accounting standards and regulatory reporting requirements;

36.1.2 agree Budgets in a timely manner and take all appropriate measures to maintain expenditure within Budget;

36.1.3 support the payment process through open lines of communication and the sharing of information with respect to expenditures.

36.1.4 Irish Water Responsibilities

36.1.4.1 Irish Water shall be responsible for:

36.1.4.1.1 leading the development and agreeing timelines for standardising the approach to accounting and budgeting which meets the shared objectives and considers the existing systems in the Local Authority;

36.1.4.1.2 supporting the Local Authority in implementing the above standardised approach to accounting and budgeting;

36.1.4.1.3 ensuring the efficient validation, approval and payment of invoices issued by the Local Authority to Irish Water through a clearly understood procedure for invoicing and processing expenditure variations from Budgets and plans; and

36.1.4.1.4 in consideration of the performance by the Local Authority of the Services, paying all:

36.1.4.1.4.1 Costs that are reasonably incurred by the Local Authority; and

36.1.4.1.4.2 if applicable, Incentive Payments.

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- 36.1.4.1.5 For the purposes of this Agreement it is assumed (unless shown otherwise) that a Cost is reasonably incurred by the Local Authority if it is:
 - 36.1.4.1.5.1 a Cost that is within the relevant budget category set out in the Budget; or
 - 36.1.4.1.5.2 a Variance Cost that has been approved by Irish Water either through the Change Control Procedure and supported by a duly signed Variance Costs Approval Form or by Retrospective Approval.

36.1.5 Local Authority Responsibilities

The Local Authority shall:

- 36.1.5.1 work with Irish Water to develop a standardised approach to accounting and budgeting that meets the shared objectives;
- 36.1.5.2 undertake accounting in line with agreed procedures and provide Budgets on a timely basis and in a form agreed with Irish Water.

36.2 Agreed Items for Payment & Payment Types

36.2.1 Invoices shall be raised by the Local Authority and payments shall be made by Irish Water on the basis of the following:

- 36.2.1.1 Costs within the Budget, including the Cost items described in Clause 36.2.2.1.1;
- 36.2.1.2 Variance Costs; and
- 36.2.1.3 if applicable, Incentive Payment.

36.2.2 Irish Water Responsibilities

- 36.2.2.1 Irish Water shall pay the Local Authority the actual Costs within the Budget including, without limitation, the following:
 - 36.2.2.1.1 salaried staff (excluding staffing costs included within the CMC) in line with the agreed percentage allocation for their time, covering operations and maintenance, health and safety, capital programmes staff and other relevant functions covering salaries, non salary and approved travel and subsistence costs;
 - 36.2.2.1.2 “Outdoor staff” where such staff: (1) dedicate 100% of their time to the provision of the Services; or (2) work part of their

time in providing the Services under an agreed percentage allocation of time between their Services-related work and non-Services-related work for the Local Authority; or (3) where staff are brought in ad hoc from Local Authority resource pool to the Services area and their cost is supported by time sheet data and is covered by the budget or approved as a Variance Cost;

- 36.2.2.1.3 purchase costs for goods and services that have not migrated to Irish Water systems;
- 36.2.2.1.4 minor purchase costs for goods and services in accordance with Budget or approved under the Variance Cost approval process;
- 36.2.2.1.5 health and safety and other training costs related to water and wastewater in accordance with the Budget;
- 36.2.2.1.6 CMC on the basis of agreed allocations in the Budget for head office and Support Services;
- 36.2.2.1.7 each other Cost item that is provided for under this Agreement.

36.2.3 Efficiencies

Without prejudice to Clause 36.1.3, where efficiencies in the delivery of the Services have been identified and agreed between Irish Water and the Local Authority, and where the actual Costs remain higher than the projected Costs after those efficiencies have been implemented, then Irish Water shall continue to pay the higher Costs (including costs of staff that are surplus to the Local Authority's staffing requirements) while the Local Authority and Irish Water use reasonable endeavours to implement the agreed measures to realise the identified savings on Costs.

36.2.4 Local Authority Responsibilities

The Local Authority shall:

- 36.2.4.1 prepare each month an invoice for the amount of: (i) Costs within the Budget; (ii) Variance Costs; and (iii) any Incentive Payment due in relation to the Services provided in the previous calendar month in the form agreed in the Managed Costs Protocol;
- 36.2.4.2 prepare and submit an electronic file of supporting documentation in the form agreed in the Managed Costs Protocol;

36.2.4.3 in relation to Variance Costs, provide Irish Water with monthly reports and data to adequately demonstrate to the reasonable satisfaction of Irish Water prior to payment of the invoice that each cost comprising the overall Variance Costs was approved appropriately by: (1) Irish Water; or (2) the Local Authority under delegated authorities agreed with Irish Water in writing; or (3) should be approved retrospectively under Retrospective Approval;

36.2.4.4 for Incentive Payments, provide Irish Water with data to enable the calculation of any Incentive Payment, using the agreed mechanism defined in the Annual Service Plan for the year in question.

36.2.5 Retrospective Approval

Retrospective Approval shall be made by Irish Water where there are material expenditures outside Budget that have been incurred by the Local Authority where Local Authority management were confronted with a situation that required rapid decision-making and responsiveness by the Local Authority without time for prior approval by Irish Water, including, without limitation, emergency situations involving issues of public health, environmental protection or safety. In this circumstance the Local Authority will provide an appropriate immediate verbal report to Irish Water of the Variance Costs that it has incurred followed with a Variance Cost Approval Form for formal retrospective approval within the agreed timescale set out in the Managed Costs Protocol.

36.3 Timely Invoicing & Payment

36.3.1 The parties shall ensure open communication and sharing of information with respect to expenditures to ensure the efficient approval and payment of invoices.

36.3.2 Irish Water Responsibilities

Irish Water shall:

36.3.2.1 ensure open lines of communication with the Local Authority through the periodic management meetings contemplated by Clause 8 and Schedule 4 (Management Processes) with respect to specific expenditures;

36.3.2.2 discuss and agree with the Local Authority the information provided by the Local Authority at Management meetings pursuant to the Tier 2 Management Process along with any further material information from either party and approve invoiced amounts;

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- 36.3.2.3 pay the undisputed portion of each invoice within 30 days of the date of the relevant invoice, or such earlier date as may be agreed by the parties;
 - 36.3.2.4 participate in good faith in activities to resolve payment issues and disputes prior to and during management meetings; and
 - 36.3.2.5 working with the Local Authority in good faith, use reasonable endeavours to resolve the disputed portion of each invoice by the next review meeting, and, if necessary, thereafter escalate the matter to the next following quarterly management meeting pursuant to the Tier 2 Management Process.
- 36.3.3 Irish Water may dispute any amount of an invoice and withhold payment of that disputed amount if Irish Water, acting reasonably, considers that in respect of that disputed amount:
- 36.3.3.1 the Local Authority has failed to comply with clause 36.2.4; or
 - 36.3.3.2 the Local Authority has not undertaken works comprised in the Services for which it has invoiced Irish Water; or
 - 36.3.3.3 with respect to particular Cost item that is included in the invoice, the Local Authority has failed to use reasonable endeavours to implement the agreed measures to realise the identified savings on Costs in accordance with clause 36.2.3 in respect of that Cost item.
- 36.3.4 Amounts that, in the reasonable opinion of Irish Water, are not vouched by any of the items of supporting documentation described in Clause 36.2.4.1 will not be paid with the monthly invoice but will be held over for the next month when appropriate supporting documentation is provided or until the outcome of the escalation by the parties of the matter for resolution in accordance with the dispute resolution procedure set out in Clause 12.
- 36.3.5 Each amount stated as payable by a party (the **Paying Party**) to the other party (the **Invoicing Party**) under this Agreement:
- 36.3.5.1 shall be paid by electronic funds transfer to such bank account of the Invoicing Party as it may specify in writing to the Paying Party from time to time, or in such other manner as the Invoicing Party may from time to time stipulate on not less than 40 days notice in writing;
 - 36.3.5.2 is exclusive of any value added tax (if exigible) and, accordingly, is to be construed as a reference to that amount plus any value

added tax exigible in respect of it; and any such value added tax shall be paid by the Paying Party to the Invoicing Party in addition to the amount in question upon presentation by the Invoicing Party to the Paying Party of an invoice in accordance with the Value Added Tax Consolidation Act 2010 for the amount in question, plus value added tax, showing as a separate figure the amount of value added tax due;

36.3.5.3 shall not be reduced by any right of set-off or counterclaim, recoupment, defence or other right which the Paying Party may have, whether in connection with this Agreement or otherwise (save in the case of any monies collected by the Local Authority in relation to non-domestic billing and connection charges, in which case the amount otherwise due by Irish Water shall be reduced by the amount collected by the Local Authority and not already paid to Irish Water);

36.3.5.4 the Invoicing Party shall be entitled to make any deduction or withholding on account of tax required by Law or the practice of the Revenue Commissioners.

36.3.6 The parties acknowledge that where Relevant Contracts Tax applies there are particular VAT provisions which apply under Law and the parties agree to comply with such provisions.

36.3.7 Local Authority Responsibilities

The Local Authority shall:

36.3.7.1 present information prior to the Tier 3 Management Process monthly meetings to enable the joint review of Costs within Budget , Variance Costs and Incentive Payments and the timely approval of invoices for payment in accordance with the Managed Cost Protocol;

36.3.7.2 ensure that each invoice will be certified as being correct by an accountable person of the Local Authority;

36.3.7.3 participate in activities to resolve payment issues and disputes prior to and during governance meetings; and

36.3.7.4 working with Irish Water, use reasonable endeavours to resolve disputed items by the next review meeting, thereafter, if necessary, escalate to the next following quarterly management meeting pursuant to the Tier 2 Management Process.

36.4 Interest

Interest (as well after as before any judgment) on any amount due under this Agreement, from the due date to the date of payment in full, shall be calculated at the rate per cent per annum as may be specified from time to time pursuant to the regulation 5 of the European Communities (Late Payment in Commercial Transactions) Regulations 2012 (S.I. No. 580 of 2012).

36.5 Advance Payment

36.5.1 Shared Objective

- 36.5.1.1 Ensuring that the Local Authority has funding to undertake activity on behalf of Irish Water as set out in the Annual Service Plan up to agreed Budget thresholds.

36.5.2 Shared Responsibilities

The parties shall work collaboratively to calculate the advance payment amount as set out in this Agreement.

36.5.3 Irish Water Responsibilities

Irish Water shall:

- 36.5.3.1 provide an initial advance payment ("**Advance Payment**") to the Local Authority to fund activity being undertaken on its behalf; the initial Advance Payment is dependent on Irish Water receiving its funding from the DECLG, and is to cover normal operating costs associated with the first month in 2014;
- 36.5.3.2 assess the Advance Payment in advance of the 10th Business Day after the Effective Date and, if required, quarterly, there after; the assessed Advance Payment will be equal to one twelfth of the annual payroll costs and one twelfth of the annual CMC charge agreed in the Budget with the Local Authority for the first year of operation of this Agreement;
- 36.5.3.3 pay the Advance Payment on the 10th business day after the Effective Date; and
- 36.5.3.4 where the assessed Advance Payment shall increase from the previous quarter's assessment an incremental amount will be

paid to the Local Authority equal to the incremental increase in the Advance Payment from the previous quarter. Where the assessed Advance Payment decreases then the amount of the reduction will be offset against a payment to the Local Authority.

36.5.4 Local Authority Responsibilities

36.5.4.1 The Local Authority shall use the Advance Payment provided by Irish Water to fund payroll and CMC costs while working under this Agreement.

36.5.4.2 The Local Authority shall repay the Advance Payments by netting off against the final payments due to the Local Authority under this Agreement. If the Advance Payment has not been repaid in full prior to the expiry of the Handover Period the whole of the balance remaining shall become due and payable immediately.

37 Insurance

37.1 Shared Responsibilities

The parties agree to work to ensure both Irish Water and the Local Authority have adequate insurances in place so that all parties are appropriately protected from losses including third party bodily injury and property damage.

37.2 Local Authority Responsibilities

The Local Authority shall:

37.2.1 take out and maintain or have in place the insurances specified in Schedule 1 Part 1 (at a minimum, on the terms specified therein) and any other insurances as may be required from time to time by Law (the “**Local Authority Required Insurances**”). The Local Authority Required Insurances shall be on the terms specified and with insurers regulated by, or authorised to operate on a freedom of services basis by, the Central Bank of Ireland or other appropriate regulatory authority and such insurers shall at least have a financial rating of BBB+ (Standard & Poor’s). Where the Local Authority proposes to procure any of the Local Authority Required Insurances from insurers which do not have at least a financial rating of BBB+ (Standard & Poor’s), the prior written consent of Irish Water shall be obtained prior to the appointment of the said insurers for the purposes of the relevant Local Authority Required Insurances;

37.2.2 comply with any requirements of Irish Water’s property damage insurance.

37.2.3 ensure that all engineering statutory inspections are carried out in accordance with Law and any requirements of the Local Authority’s insurers on all such Local Authority owned plant, equipment and facilities;

37.2.4 develop a consistent approach in the event of incidents/claims occurring and ensure that the Local Authority is in compliance with the claims procedure;

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- 37.2.5 indemnify Irish Water under Local Authority's public/products/pollution liability insurances, as joint insured but only in respect of claims made directly against Irish Water for which the Local Authority is deemed to be legally liable/responsible. Non vitiating/cross liability clauses shall be included and provide that the Insurer accepts the term "Insured" as applying to each Insured as if a separate policy of insurance had been issued to each of them, but without the overall limit of indemnity being increased as a result, and that non-compliance by the Insured or any other Insured will not affect Irish Water's rights.
- 37.2.6 procure, without delay, any increased indemnity and/or additional cover that Irish Water requires by issuing a Change Order (including by removing any of the exclusions under relevant policies) under any of the Local Authority Required Insurances and/or to take out any of the Local Authority Required Insurances which were not, in accordance with the terms of Schedule 1 Part 1 (Local Authority Required Insurances), required to be taken out by the Local Authority as at the Effective Date. The parties shall agree any alteration or adjustment to the payments pursuant to Clause 36 (Payment) and the Local Authority shall not be required to implement the Change Order under this clause until Costs are agreed;
- 37.2.7 on the Effective Date and thereafter as requested by Irish Water from time to time, complete an insurance questionnaire as provided by Irish Water with respect to the Local Authority Required Insurances and/or (at Irish Water's election) provide copies of its certificates of insurance (including any renewal certificates from time to time) together with confirmation that all premiums are paid in full under such policies, showing that all insurances required by the Local Authority pursuant to this Agreement are in full force and effect for the periods specified;
- 37.2.8 notify Irish Water immediately in the event that any of the Local Authority Required Insurances cease to be available (either entirely or on the terms required by this Agreement) or if it is notified by its insurers that they intend to cancel any such Local Authority Required Insurances;
- 37.2.9 not permit any contractor to perform any work in connection with the Services unless the contractor is and remains insured in accordance with the insurance requirements of this Agreement (including that the contractor has such of the Local Authority Required Insurances in place as are relevant to the scope of its activities in connection with the Services) and the Local Authority's relevant insurances provides an indemnity to the Local Authority in respect of the activities of such contractors. The Local Authority shall procure that the Local Authority Required Insurances include an indemnity to Irish Water for any damage, loss or injury suffered by Irish Water in respect of the activities of such contractors;
- 37.2.10 procure that insurance policies in respect of the Local Authority Required Insurances include:
- 37.2.10.1 a waiver by the insurers of their subrogation rights against

directors and employees of the insured except where there is fraud; and

- 37.2.10.2 a provision whereby the insurer undertakes to give written notice to Irish Water of cancellation, non-renewal or material variation of the policies.
- 37.2.11 promptly and diligently deal with all claims relating to the Local Authority Required Insurances in accordance with the insurers' requirements; and
- 37.2.12 during the Term, not make any material alteration to the Local Authority Required Insurances without the prior written consent of Irish Water, which approval shall not be unreasonably withheld. In the case of any material alteration made by a relevant insurer to any of the Local Authority Required Insurances, the Local Authority shall immediately provide notice in writing to Irish Water of such alteration.
- 37.2.13 effect and maintain a policy of insurance to indemnify the Local Authority in respect of any underlying excess which may prevail under the respective employers/public/products/pollution liability insurance policies of the Local Authority which has entered into this agreement with Irish Water, and subject to any underlying excess prevailing at the time of a claim and attaching to the Policy of Insurance as described under Schedule 1 Part 1 subsections 1 and/or 2 of the Local Authority Required Insurances. The objective of this policy of insurance is to ensure that the Local Authority is not exposed to any policy excess under the policy of insurance in the Local Authority's name and therefore providing the Local Authority with ground up cover solely in respect of Irish Water activities which are the subject of this Agreement.

37.3 Irish Water Responsibilities

Irish Water shall:

- 37.3.1 take out and maintain or have in place the insurances specified in Schedule 1 Part 2 (at a minimum, on the terms specified therein) and any other insurances as may be required from time to time by Law (the "**Irish Water Required Insurances**"). The Irish Water Required Insurances shall be on the terms specified and with insurers regulated by, or authorised to operate on a freedom of services basis by, the Central Bank of Ireland or other appropriate regulatory authority.
- 37.3.2 Irish Water shall ensure that engineering statutory inspections are carried out in accordance with Law and any requirements of the Irish Water's insurers for all such Irish Water plant, equipment and facilities owned by Irish Water.
- 37.3.3 Irish Water shall maintain the insurances set out at Schedule 1 Part 2 (Irish Water Required Insurances).
- 37.3.4 Irish Water shall indemnify the Local Authority under Irish Water's public/products/pollution liability insurances as joint insured but only in

respect of claims made directly against the Local Authority for which Irish Water is deemed to be legally liable/responsible. Non vitiating/cross liability clauses shall be included and provide that the Insurer accepts the term "Insured" as applying to each Insured as if a separate policy of insurance had been issued to each of them, but without the overall limit of indemnity being increased as a result, and that non-compliance by the Insured or any other Insured will not affect the Local Authority rights.

- 37.3.5 In the event that any claim is made directly against the Local Authority and where such claim is for an amount exceeding the limit of indemnity provided under the Local Authority employers/public/products/pollution liability insurance as set out in Schedule 1 Part 1 subsection 1.1 and 2.1 (Local Authority Required Insurances) or where such claim is excluded under the Local Authority employers/public/products/pollution liability insurances, and to the extent that insurance is provided under the Irish Water employers/public/products/pollution liability insurances, the Irish Water employers/public/products/pollution liability insurance shall provide indemnity to the Local Authority on a difference in limits/difference in conditions basis subject to the policy limit of indemnity, terms, conditions, exceptions, restrictions, warranties and exclusions of the Irish Water employers/public/products/pollution liability insurance.
- 37.3.6 notify the Local Authority immediately in the event that any of the Irish Water Required Insurances cease to be available (either entirely or on the terms required by this Agreement) or if it is notified by its insurers that they intend to cancel any such Irish Water Required Insurances;
- 37.3.7 not permit any contractor to perform any work in connection with the Services unless the contractor is and remains insured in accordance with the insurance requirements of this Agreement (including that the contractor has such of the Irish Water Required Insurances in place as are relevant to the scope of its activities in connection with the Services) and Irish Waters relevant insurances provide an indemnity to Irish Water in respect of the activities of such contractors. Irish Water shall procure that the Irish Water Required Insurances include an indemnity to the Local Authority for any damage, loss or injury suffered by the Local Authority in respect of the activities of such contractors;
- 37.3.8 procure that insurance policies in respect of the Irish Water Required Insurances include a waiver by the insurers of their subrogation rights against directors and employees of the insured except where there is fraud; and
- 37.3.9 promptly and diligently deal with all claims relating to the Irish Water Required Insurances in accordance with the insurers' requirements.

38 Indemnities

38.1 Indemnities by Irish Water

- 38.1.1 Irish Water agrees to indemnify and keep indemnified the Local Authority

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and its Related Persons from and against any and all Losses that arise out of or result from:

- 38.1.1.1 injuries or death to persons, damage to or loss of any property arising after the Effective Date that are caused by the Local Authority or its Related Persons in providing the Services excluding:
 - (a) where it is on account of the negligence, neglect or deliberate act or omission by the Local Authority or its Related Persons; or
 - (b) Losses for which the Local Authority is obliged to maintain the Local Authority Required Insurances and in each case up to the limit of indemnity set out in Schedule 1 part 1;
- 38.1.1.2 injuries or death to persons, damage to or loss of any property in any way arising out of or occasioned by, caused by or on account of the negligence, neglect or deliberate act or omission by Irish Water or its Related Persons;
- 38.1.1.3 any infringement or alleged infringement of any third party Intellectual Property Rights in consequence of:
 - (a) the provision by the Local Authority to Irish Water of information and/or access to third party Intellectual Property Rights in accordance with this Agreement from the Effective Date until the date 6 months from the Effective Date; or
 - (b) the use by the Local Authority of any Intellectual Property provided by Irish Water for the purpose of providing the Services.
- 38.1.1.4 any Employment Liabilities arising from or incurred by reason of any claims made under the Employee Transfer Requirements, made by any Affected Employees in circumstances where such claim relates to:
 - 38.1.1.4.1 any failure by Irish Water to comply with its obligations under the Employee Transfer Requirements, except where such failure is caused by an act or omission of the Local Authority; or
 - 38.1.1.4.2 any event or occurrence related to or arising out of the employment of an Affected Employee after the date of the transfer of the Affected Employee to Irish Water for which Irish Water is liable as employer, other than events or circumstances described in clause 38.2.1.3.

38.1.2 The Local Authority agrees to notify Irish Water within fifteen (15) business days of any written claims or demands against the Local Authority and its Related Persons for which Irish Water is responsible under this Clause 38.1. The Local Authority shall provide Irish Water with such assistance as Irish Water reasonably requires to facilitate the defence of any such claim, demand or suit. No amounts shall be payable by Irish Water pursuant to this Clause 38.1 in respect of claims settled or compromised without Irish Water's prior written consent (not to be unreasonably withheld or delayed).

38.2 Indemnity by Local Authority

38.2.1 The Local Authority agrees to indemnify and keep indemnified Irish Water and its Related Persons from and against any and all Losses that arise out of or result from:

38.2.1.1 injuries or death to persons or damage to or loss of any property (not deemed to include loss of or damage to the property of Irish Water or such property which is in the course of transfer to Irish Water and is Insured under Irish Water's property damage policy), in any way arising out of or occasioned by, caused by or on account of the negligence, neglect or deliberate act or omission by the Local Authority or the Local Authority Personnel in providing the Services;

38.2.1.2 any Losses (excluding liabilities expressly transferred by a ministerial order pursuant to Section 13 (Transfer of rights and certain liabilities, and continuation of leases, licences and permissions granted by water services authorities) and/or Section 14 (Transfer of other liabilities) and/or section 15 (Liability for loss occurring before the relevant day) of the Water Services (No.2) Act 2013) arising out of the performance or otherwise of the Local Authority of its functions as a water services authority prior to the Effective Date;

38.2.1.3 any Employment Liabilities (excluding liabilities under clause 38.2.1.3.2 that are expressly transferred by a ministerial order pursuant to Section 13 (Transfer of rights and certain liabilities, and continuation of leases, licences and permissions granted by water services authorities) and/or Section 14 (Transfer of other liabilities) and/or section 15 (Liability for loss occurring before the relevant day) arising from or incurred by reason of any claims made under the Employee Transfer Requirements or any claims made by any Affected Employees in circumstances where such claim relates to:

- 38.2.1.3.1 the Local Authority's failure to comply with its obligations under the Employee Transfer Requirements;
 - 38.2.1.3.2 any event or occurrence related to or arising out of the employment of an Affected Employee, or the termination of that employment, prior to the date of transfer of that Affected Employee to Irish Water for which the Local Authority is liable as employer; or
 - 38.2.1.3.3 any material term of any contract of employment (whether written or oral) not disclosed to Irish Water or disclosed inaccurately in a material respect to Irish Water and which term has effect as if originally made between Irish Water and any Affected Employee as a result of the provisions of the Employee Transfer Requirements.
- 38.2.1.4 all Employment Liabilities (excluding liabilities relating to expressly transferred by a ministerial order pursuant to Section 13 (Transfer of rights and certain liabilities, and continuation of leases, licences and permissions granted by water services authorities) and/or Section 14 (Transfer of other liabilities) relating to any person employed or engaged by the Local Authority other than the Affected Employees, including:
- 38.2.1.4.1 Employment Liabilities arising from events or occurrences relating to such person's employment or engagement (or the termination of that employment or engagement) by the Local Authority prior to the termination of this Agreement; or
 - 38.2.1.4.2 Employment Liabilities arising from claims that such persons were employees, agents or sub-contractors of Irish Water during the Term.
- 38.2.2 Irish Water agrees to notify the Local Authority within fifteen (15) business days of any written claims or demands against any the Irish Water and its Related Persons for which the Local Authority is responsible under this Clause 38.2. Irish Water shall provide the Local Authority with such assistance as the Local Authority reasonably requires to facilitate the defence of any such claim, demand or suit. No amounts shall be payable by the Local Authority pursuant to this Clause 38.2 in respect of claims settled or compromised without the Local Authority's prior written consent (not to be unreasonably withheld or delayed).

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38.3 Limitation of liability

38.3.1 Nothing in this Agreement shall limit or exclude the liability of either of the parties:

38.3.1.1 for fraud or wilful misconduct of either party or its subcontractors; or

38.3.1.2 for death or personal injury caused Breach of Duty.

38.4 Indirect and consequential loss

Subject to Clause 38.3, neither party shall be liable in contract, tort (including but not limited to negligence) or otherwise howsoever for any of the following Losses or damage (whether or not such Losses or damage was foreseen, foreseeable, known or otherwise):

38.4.1 loss of revenue (other than payments that are payable under this Agreement),

38.4.2 loss of actual or anticipated profits,

38.4.3 loss of contracts,

38.4.4 loss of the use of money,

38.4.5 loss of anticipated savings,

38.4.6 loss of business,

38.4.7 loss of opportunity,

38.4.8 loss of goodwill,

38.4.9 loss of reputation,

38.4.10 loss of, damage to or corruption of data, or

38.4.11 any indirect or consequential Loss howsoever caused (including, for the avoidance of doubt, whether such Loss or damage is of a type specified in sub-clauses 38.4.1 to 38.4.10 above).

whether arising out of, or in connection with, or in relation to any goods or services supplied under this Agreement or the supply or non-supply or purported supply or delay in supply of any goods or services under this Agreement or otherwise out of or in connection with or in relation to this Agreement or any transaction or matter contemplated by it.

38.5 Exclusive remedies

The remedies under this Agreement are to the exclusion of any other remedy that each party may have against the other party. The obligations of the parties pursuant to this Agreement are exclusive and in lieu of all conditions, representations, and promises, express or implied, oral or written, statutory or otherwise, of performance,

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merchantability, quality, fitness for a particular purpose, availability, custom, usage, or otherwise not contained in this Agreement.

38.6 Duty to mitigate

Nothing in this Agreement shall or shall be deemed to relieve either party of any common law duty to mitigate any Losses or damage incurred by it.

39 Audit

39.1 Shared Objective

To ensure that both parties have an appropriate and robust system of internal controls in place, to ensure compliance with applicable requirements and regulations for their respective organisations.

39.1.1 The parties agree to keep under review the system of internal control, in line with the regulations and requirements for their respective organisations.

39.1.2 To support the activities of auditors whether performed by the Local Government Audit Service, the Local Authority, Irish Water or external parties appointed by either party.

39.2 Irish Water Responsibilities

Irish Water shall:

39.2.1 agree the plan and scope of internal audit activities with the Local Authority;

39.2.2 appoint auditors by agreement with the Local Authority to undertake specific activities.

39.3 Local Authority Responsibilities

The Local Authority shall:

39.3.1 undertake internal audit reviews of Services activities as part of their audit programme and provide reports to Irish Water, where requested by Irish Water; and

39.3.2 facilitate the work of the Irish Water internal audit department or auditors that have been appointed by Irish Water including facilitating access to any information, records and materials held by the Local Authority in connection the Services and any historic information, records or materials held by the Local Authority in connection with the Local Authority's functions as a water services authority prior to the Effective Date.

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40 Inventory Management

40.1 Shared Objectives:

The parties shall:

- 40.1.1 manage inventory to support the delivery of the required service standards in the most cost effective manner.

40.2 Shared Responsibilities:

The parties shall:

- 40.2.1 manage inventory to ensure receipts and issues of stock are made in a timely manner and stock holding costs are minimised;
- 40.2.2 work to develop and implement an inventory management system and practices and procedures for the Irish Water industry.

40.3 Irish Water Responsibilities:

Irish Water shall:

- 40.3.1 pay the Local Authority for Local Authority inventory issued to water services jobs, until stock items are migrated to the Irish Water inventory management system;
- 40.3.2 implement the Irish Water inventory management system and make available to the Local Authority; and
- 40.3.3 work with the Local Authority in implementing best practices in inventory management.

40.4 Local Authority Responsibilities:

The Local Authority shall:

- 40.4.1 provision a stores and inventory management service on behalf of Irish Water utilising the Local Authority inventory management system initially and migrating to the Irish Water inventory management system;
- 40.4.2 support Irish Water in the development of practices and procedures; and
- 40.4.3 implement best practices in inventory management in line with procedures developed with Irish Water.

SCHEDULES

SCHEDULE 1

INSURANCE

PART 1

LOCAL AUTHORITY REQUIRED INSURANCES

1. Employers liability

1.1 Limit of indemnity

Not less than €13,000,000 for each and every claim or series of claims arising from a single event and unlimited in the period.

1.2 Minimum requirements

1.2.1 The Local Authority shall be insured pursuant to the Employer's Liability Insurance against any liability for death, loss or injury to an employee or other persons deemed to be engaged under a contract of service or apprenticeship by the Local Authority arising out of or in connection with the provision of the Services or the carrying out of the Local Authority's obligations pursuant to this Agreement;

1.2.2 The Employer's Liability Insurance shall include an indemnity to Irish Water and its Related Persons and any other indemnity that may be requested by Irish Water from time to time with respect to the Services; and

1.2.3 Without prejudice to the generality of clause 37.2.8 (Insurance), in respect of contracts entered into on or after the Effective Date the Local Authority shall require that any contractor involved in the provision of the Services shall take out and maintain employer's liability insurance in the same manner as the Local Authority pursuant to this Paragraph 1 (Employer's liability insurance) including that the said policy shall include an indemnity to Irish Water and its Related Persons as set out in Paragraph 1.2.2.

1.3 Permitted exclusions

1.3.1 War risk; Asbestos, Radioactive Contamination, RTA risks, Terrorism, Demolition,

1.4 Period of insurance

From the Effective Date for the Term.

2. Public, Products and Pollution Liability Insurance

2.1 Limit of indemnity

2.1.1 Public liability: Not less than €13,000,000 for each and every claim or series of claims arising from a single event and unlimited in the period, restricted to any one period of insurance for property damage resulting from vibration, removal and weakening of supports;

2.1.2 Products Liability: Not less than €13,000,000 for each and every claim or series of claims arising from a single event and in the period.

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2.1.3 Pollution Liability: Not less than €13,000,000 for each and every claim or series of claims arising from a single event and in the period. (sudden and unforeseen pollution only).

2.2 Minimum requirements

2.2.1 The Local Authority shall be insured pursuant to the Public, Products and Pollution Liability Insurance against any damage, loss or injury which may occur to any property or to any person (other than any operative or other person in or deemed to be in the employment of the Local Authority) arising out of or in connection with the provision of Services or the carrying out of the Local Authority's obligations pursuant to this Agreement.

2.2.2 The Public, Products and Pollution Liability Insurance shall include indemnity to Irish Water as joint insured in respect of the negligent acts of any contractors engaged by the Local Authority. In addition and in respect of contracts entered into on or after the effective date the Local Authority will ensure that any contractor engaged by them will include an indemnity to Irish Water under their Public/Products and Pollution Liability insurance.

2.3 Permitted exclusions

2.3.1 war risks;

2.3.2 radioactive contamination / nuclear explosion;

2.3.3 sonic boom;

2.3.4 persons under a contract of service or apprenticeship with the Local Authority;

2.3.5 defective workmanship and materials (but not damage resulting there from);

2.3.6 mechanically propelled vehicles to which the Road Traffic Acts 1961 to 2011 apply; and

2.3.7 loss or damage due to design undertaken for a specific fee.

2.3.8 Terrorism/Asbestos

2.3.9 Gradual Pollution or contamination

2.3.10 Fines, penalties, liquidated damages

2.4 Period of insurance

From the Effective Date for the Term and for a period of three years following expiry or termination of this Agreement.

3. Motor Insurance

3.1 Limit of indemnity

3.1.1 Not less than €5,000,000 with respect to third party property damage for any one accident or occurrence and unlimited in respect of death and bodily injury liability;

3.2 Minimum requirements

3.2.1 The Local Authority shall be insured pursuant to the motor insurance against all liability arising from or in connection with its ownership, use (incl. tool of trade), possession, custody or control of any mechanically propelled vehicle, including with

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respect to third party property damage, which is used for the purpose of or in connection with the Services;

3.2.2 The motor insurance shall include an indemnity to Irish Water.

3.3 **Period of insurance**

From the Effective Date for the Term.

4. **Professional Indemnity**

4.1 **Limit of indemnity**

Not less than €3,000,000 for each and every claim or series of claims arising from a single event and in the period.

4.2 **Minimum requirements**

The Local Authority shall be insured pursuant to the Professional Indemnity Insurance against any negligence or default in undertaking any design or specification services and/or providing advice in relation to any works or services provided by the Local Authority.

4.3 **Period of insurance**

From the Effective Date for the Term and, whichever is the later, for a period of three years following expiry or termination of this Agreement and any period of maintenance under a works contract relevant to the Services.

4.3.1 **Permitted Exclusions**

Third Party Bodily injury / Third Party Property Damage

Injury to employees

Provision of finance or advice on financial matters

Malicious, criminal or deliberate illegal acts

Insolvency

Fines, penalties, liquidated damages or any penal, punitive, exemplary, non-compensatory or aggravated damages

Failure of information technology

Contractual Liability that would not apply in the absence of the contract

5. **Marine Insurance (If applicable)**

5.1 **Limit of indemnity**

Not less than €6,500,000 for each and every claim or series of claims arising from a single event and unlimited in the period.

5.2 **Minimum requirements**

5.2.1 To the extent that any vessels are required and/or used by the Local Authority in providing the Services or otherwise discharging its obligations pursuant to this Agreement, the Local Authority shall be insured pursuant to a Marine Liability

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Insurance policy against any damage, loss or injury which may occur to any property or to any person arising out of or in connection with the use of such vessels.

In this Paragraph, "vessels" means any boat or waterborne craft (of any size, make or propulsion) and any structure floating on water (including floating platforms and jetties).

5.2.2 The Marine Liability Insurance shall include an indemnity:

5.2.2.1 to the Local Authority in respect of the negligent acts of any contractors engaged by the Local Authority; and

5.2.2.2 to Irish Water and its Related Persons in respect of damage to vessels owned or leased by Irish Water that may be deemed to be in the care custody or control of the Local Authority.

5.3 **Period of insurance**

From the Effective Date for the Term.

6. **Contractors All Risks**

6.1 **Limit of indemnity**

Not less than the value of the contract works and 12.5% of the value contracts works in respect of professional fees.

6.2 **Minimum requirements**

Where requested by Irish Water from time to time with respect to any works undertaken by the Local Authority as part of the Services, but only in circumstances where the value of the contract works is in excess of €250,000, the Local Authority shall be insured pursuant to Construction All Risks Insurance against loss or damage caused to the works and materials (including those supplied free by the party for whom the works are undertaken) and all other property used for or in connection with the works other than existing property which is the subject of the property insurance held by Irish Water. The provisions of clause 37.2.5 (Insurance) shall apply with respect to any request by Irish Water that this insurance be taken out by the Local Authority.

6.3 **Period of insurance**

For the period of the relevant works.

6.3.1 **Permitted Exclusions**

War, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped power

Pressure waves caused by aircraft or other airborne objects travelling at sonic or supersonic speeds

Radioactive Risks

Use or occupation of the Works by the Irish Water except in connection with the Works

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Unless otherwise specified in the Works Requirements, cost of making good defects in the Works but not damage caused by such defects to other sound parts of the Works

Wear, tear, normal upkeep or normal repair or gradual deterioration

Inventory Losses

Loss of use or any consequential loss of any nature including penalties for delay, non-completion or non-compliance

Failure of information technology

Mechanical or electrical breakdown but not resulting damage

Cessation of the Works for more than 3 months

SCHEDULE 1 PART 2

IRISH WATER REQUIRED INSURANCES

1. **Employers liability**

1.1 **Limit of indemnity**

1.2 Not less than €50,000,000 for each and every claim or series of claims arising from a single event and unlimited in the period.

1.3 **Minimum requirements**

1.3.1 Irish Water shall be insured pursuant to the Employer's Liability Insurance against any liability for death, loss or injury to an employee or other persons deemed to be engaged under a contract of service or apprenticeship by Irish Water and/or by any contractor of Irish Water arising out of or in connection with the provision of the Services or the carrying out of Irish Water's obligations pursuant to this Agreement; and

1.3.2 The Employer's Liability Insurance shall include an indemnity to the Local Authority and its Related Persons with respect to Irish Water's obligations under this Agreement;

1.4 **Permitted exclusions**

1.4.1 War risk; Asbestos, Radioactive Contamination, RTA risks, Terrorism, Demolition,

1.5 **Period of insurance**

From the Effective Date for the Term.

1.6 **Period of insurance**

From the Effective Date for the Term.

2. **Public, Products and Pollution Liability Insurance**

2.1 **Limit of indemnity**

2.1.1 Public liability: Not less than €100,000,000 for each and every claim or series of claims arising from a single event and unlimited in the period;

2.1.2 Products Liability: Not less than €100,000,000 for each and every claim or series of claims arising from a single event and in the period.

2.1.3 Pollution Liability: Not less than €100,000,000 for each and every claim or series of claims arising from a single event and in the period. (sudden and unforeseen pollution only).

2.2 **Minimum requirements**

2.2.1 Irish Water shall be insured pursuant to the Public, Products and Pollution Liability Insurance against any damage, loss or injury which may occur to any property or to any person (other than any operative or other person in or deemed to be in the employment of Irish Water) arising out of the carrying out of Irish Water's obligations pursuant to this Agreement.

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2.2.2 The Public, Products and Pollution Liability Insurance shall include an indemnity to the Local Authority as joint insured in respect of the negligent acts of any contractors engaged by Irish Water.

2.3 Permitted exclusions

2.3.1 liability in excess of €100,000,000 for each and every claim or series of claims arising from a single event and in the period in respect of products/pollution liability;

2.3.2 war risks;

2.3.3 radioactive contamination / nuclear explosion;

2.3.4 sonic boom;

2.3.5 persons under a contract of service or apprenticeship with the Local Authority;

2.3.6 defective workmanship and materials (but not damage resulting there from);

2.3.7 mechanically propelled vehicles to which the Road Traffic Acts 1961 to 2011 apply; and

2.3.8 loss or damage due to design undertaken for a specific fee.

2.3.9 Terrorism/Asbestos

2.3.10 Gradual Pollution or contamination

2.3.11 Fines, penalties, liquidated damages

2.4 Period of insurance

From the Effective Date for the Term

3. Property Damage Insurance

3.1 Property damage insurance subject to a policy limit of €250m in respect of any one claim reducing to €25m any one claim for underground services/infrastructure and €50m any one claim for offshore assets and include the Local Authority as an additional insured under its property insurance and shall procure that this policy has a non-vitiating clause in favour of the Local Authority.

4. Professional Indemnity

4.1 Limit of indemnity

Not less than €3,000,000 for each and every claim or series of claims arising from a single event and in the period.

4.2 Minimum requirements

Irish Water shall be insured pursuant to the Professional Indemnity Insurance against any negligence or default in undertaking any design or specification services and/or providing advice in relation to any works or services provided by the Local Authority.

4.3 Period of insurance

From the Effective Date for the Term and, whichever is the later, for a period of three years following expiry or termination of this Agreement and any period of maintenance under a works contract relevant to the Services.

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4.3.1 Permitted Exclusions

Third Party Bodily injury / Third Party Property Damage

Injury to employees

Provision of finance or advice on financial matters

Malicious, criminal or deliberate illegal acts

Insolvency

Fines, penalties, liquidated damages or any penal, punitive, exemplary, non-compensatory or aggravated damages

Failure of information technology

Contractual Liability that would not apply in the absence of the contract

5. Environmental Impairment Liability

5.1 Limit of indemnity

5.2 Not less than €13,000,000 for each and every claim or series of claims arising from a single event and in the aggregate

5.3 Minimum requirements

5.3.1 Irish Water shall be insured pursuant to the Environmental Impairment Liability Insurance against liability for natural resource damages and remedial measures (including remediation expense / own-site accident cost) including statutory clean up costs, death, loss or injury to third party property arising out of or in connection with the provision of the Services or the carrying out of Irish Water's obligations pursuant to this Agreement;

5.3.2 The Local Authority shall be included as joint insured and such policy shall contain a non vitiation clause.

5.3.3 Permitted Exclusions

Asbestos and Lead

Contractual Liability

Employee Injury

Fines and Penalties

Radioactive Contamination

RTA Liability

War, Terrorism

6. Motor Insurance

6.1 Limit of indemnity

6.1.1 Not less than €5,000,000 with respect to third party property damage for any one accident or occurrence and unlimited in respect of death and bodily injury liability;

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6.2 **Minimum requirements**

6.2.1 Irish Water shall be insured pursuant to the Motor Insurance against all liability arising from or in connection with its ownership, use (incl. tool of trade), possession, custody or control of any mechanically propelled vehicle, including with respect to third party property damage, which is used for the purpose of or in connection with the Services;

6.2.2 The Motor Insurance shall include an indemnity to the Local authority.

6.3 **Period of insurance**

From the Effective Date for the Term.

SCHEDULE 2
SERVICE PLANS

1. Service Plans

1.1 The relationship between the Long Term Service Plan the Annual Service Plan and the relevant subset of Irish Water’s strategic goals are illustrated below at Table 1.

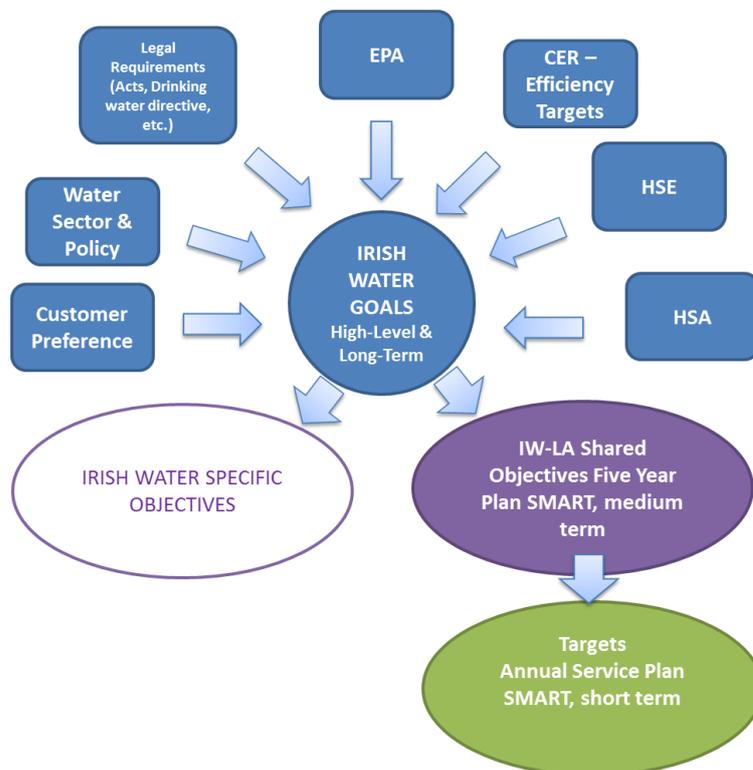


Table 1

1.2 Both the Long Term Service Plan and the Annual Service Plan will be developed during each Year’s planning cycle as demonstrated in Table 2 below.

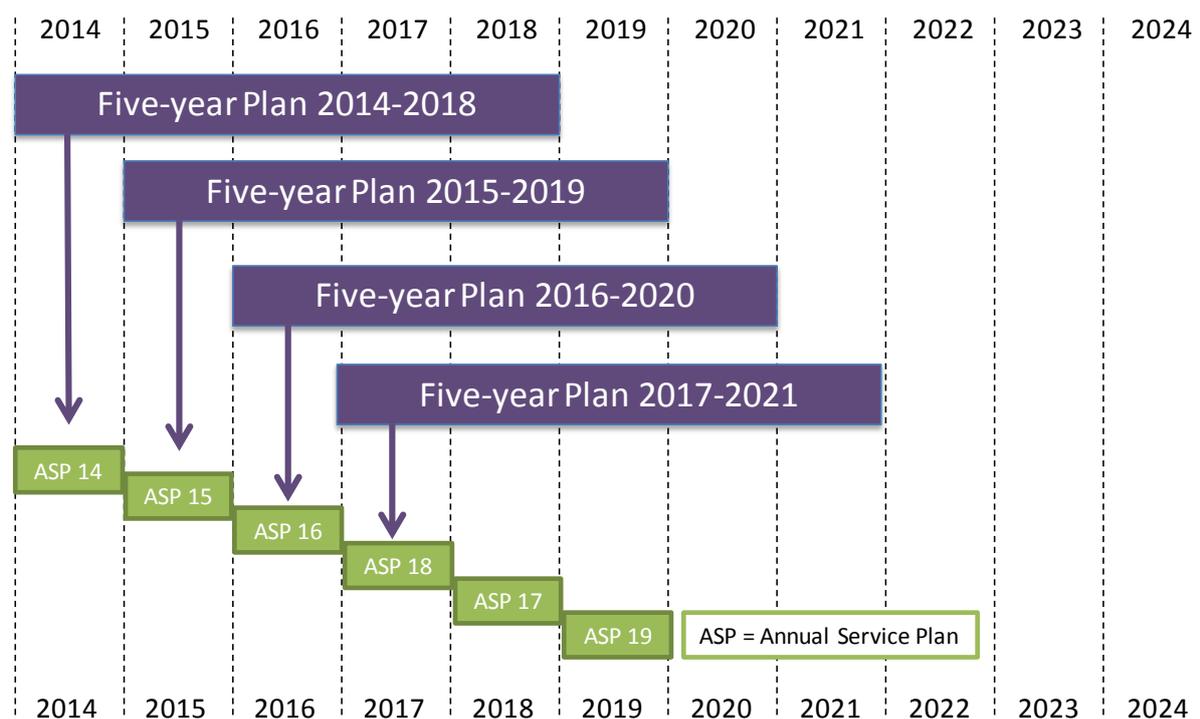


Table 2

2. Long Term Service Plan

2.1 Shared Objectives for Long Term Service Plan:

The parties agree that the Long Term Service Plan should meet the following shared objectives:

- 2.1.1 quantify and agree goals, objectives and targets for the development of water and wastewater services over the planning period;
- 2.1.2 develop and agree the actions required to achieve these goals, objectives and targets through investment in infrastructure, effective communications and cost-effective operations and maintenance over the planning period and document the investment in infrastructure, transformation and the operating budget required to deliver the objectives and targets;
 - 2.1.2.1 establish and agree targets against which progress can be monitored so that goals are achieved or corrective action taken as required in a timely manner; and
 - 2.1.2.2 clearly document the priorities of managers in Irish Water and the Local Authority.



Table 3

2.2 Irish Water Responsibilities

Irish Water shall:

- 2.2.1 determine the structure and content of the Long Term Service Plan;
- 2.2.2 drive the annual planning and development process to ensure that the Long Term Service Plan is produced on time and to the quality required;
- 2.2.3 set out clear goals and objectives for the services jointly provided by Irish Water and the Local Authority;
- 2.2.4 set out the investments required to deliver the goals and objectives and
- 2.2.5 determine and agree with the Local Authority, how these goals and objectives can be achieved in a cost-effective and sustainable way.

2.3 Local Authority Responsibilities

The Local Authority shall:

- 2.3.1 work with Irish Water in the annual planning and development process to ensure that the Long Term Service Plan is produced on time and to the quality required; and
- 2.3.2 work with Irish Water in determining and agreeing how goals and objectives for water and wastewater services can be achieved in a cost-effective and sustainable way.

3. Annual Service Plan

3.1 Shared Responsibilities

- 3.1.1 The Annual Service Plan commits both parties to deliver specific agreed objectives and standards of performance against a budget covering headcount, goods and services and investment in the forthcoming Year.

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- 3.1.2 Where both parties agree there is a compelling case to change part of the Annual Service Plan during the Year in which it is effective, this can be agreed through the Management Process.

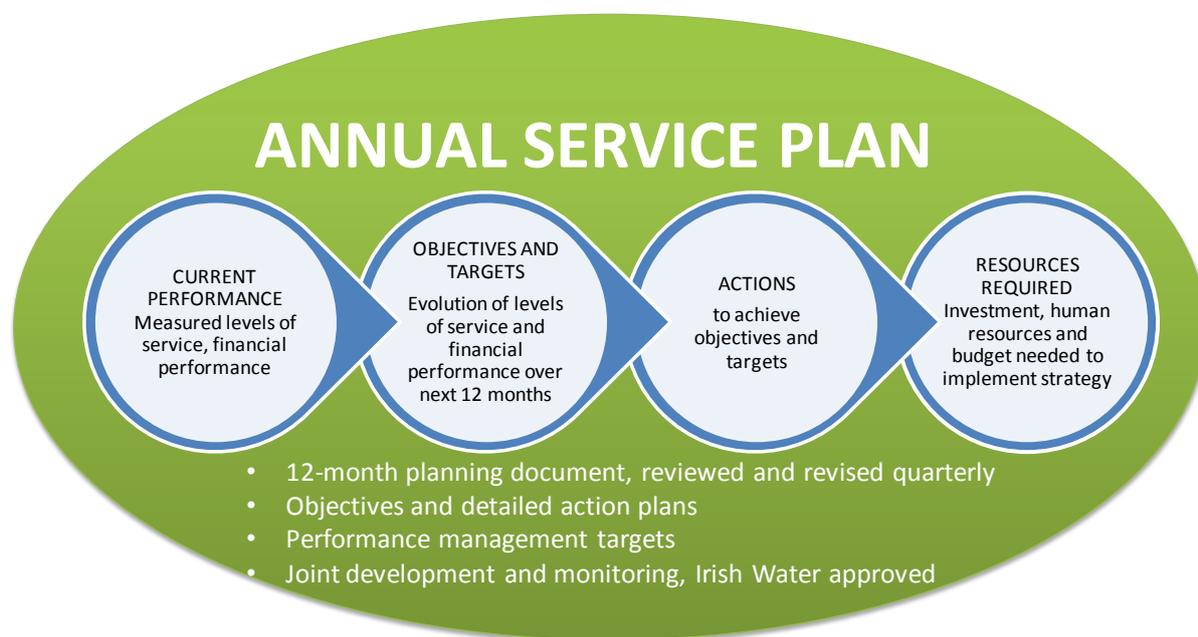


Table 4

3.2 Irish Water Responsibilities

Irish Water shall:

- 3.2.1 agree the structure and content of the Annual Service Plan in consultation with the Local Authority;
- 3.2.2 require any specific activities, acting reasonably, to be included in the Annual Service Plan provided that where there is a dispute over commercial implications this will be dealt with through the Dispute Avoidance and Resolution Process;
- 3.2.3 drive the annual planning and development process to ensure that the Annual Service Plan is produced on time and to the quality required.
- 3.2.4 support and work with the Local Authority to agree the Budgets, list and projected volumes of Services (i.e. volumetric forecasts of things that are capable of being quantified and forecasted) action plans, resource plan and performance measure;
- 3.2.5 agree with the Local Authority, how these goals and objectives can be achieved in a cost-effective and sustainable way; and
- 3.2.6 commit to implementing Irish Water obligations under the Annual Service Plan

3.3 Local Authority Responsibilities

The Local Authority shall:

- 3.3.1 work with Irish Water in the annual planning and development process to ensure that the Annual Service Plan is produced and agreed on time and to the quality required;
- 3.3.2 work with Irish Water in determining how objectives and targets for water and wastewater services can be achieved in a cost-effective and sustainable way; and
- 3.3.3 commit to implementing the Local Authority obligations under Annual Service Plan

4. Structure and Contents of Service Plans

- 4.1 The structure and content of Service Plans and Annual Service Plans will be similar. The difference shall be in the level of detail. The proposed structure for both documents is as set out in Table 5 below:

| Part of Plan | Rationale and contents |
|-------------------------------|--|
| Executive Summary | <p>The purpose of the executive summary is to clearly set out the purpose of the Long Term Service Plan / Annual Service Plan and summarise in a readily understandable manner the main key commitments (improvements in levels of service and resources to be committed) agreed in the Plan.</p> <p>The executive summary should be no more than, and preferably significantly less than 5 pages long</p> |
| Introduction | <p>Explains the purpose of the Long Term Service Plan / Annual Service Plan in greater detail, including the planning cycle</p> <p>Sets out the background to the current plan and how it was developed</p> <p>Explains the contents of the plan</p> |
| Sections on levels of service | <p>Sections setting out for both water and wastewater services, including customer services:</p> <p>Current performance</p> <p>Goals / objectives / targets to be achieved over the planning period (5 Years or one Year)</p> <p>Strategies explaining how these goals / objectives / targets will be met through investments in infrastructure, operations and maintenance and related ICT, people process and organization and</p> |

| | | |
|----------------------------|--|---|
| | | <p>The resources required to implement the Plan</p> <p>Activities jointly delivered across the Local Authority</p> |
| Sections on Transformation | | <p>Change Initiatives to drive performance improvement through ICT, HR, etc.</p> <p>Work areas to be subject to change programmes for improved performance, cost or energy savings or to achieve higher output from current Assets</p> <p>Work areas for regional support</p> |
| Finance and budget | | <p>Section(s) bringing together all the resource requirements of the earlier sections in a comprehensive Budget for the planning period</p> |
| Monitoring and Evaluation | | <p>Explanation of how the commitments in the Plan will be monitored and evaluated</p> <p>Explanation of process to be followed if goals / objectives / targets are not being met (corrective action and / or adjustment of goals / objectives / targets)</p> |

Table 5

4.2 As there will be up to 34 Long Term Service Plans and 34 Annual Service Plans, the parties agree that the structure and contents should be standardised at least at a generic level such as in the above table. Also, standard tabulated 'Action Plans' summarising objectives, strategies and the resources required would be helpful. The structure of the Annual Service Plan spreadsheet will also be standardised nationally to include the contents as set out in table 6 below:

| Worksheet Tab | Rationale and contents |
|---------------------------------|--|
| <u>Objectives & Targets</u> | <p>These objectives and targets are for both Irish Water and the Local Authority and are subject to review on a monthly basis. They will incorporate the regulatory requirements from the CER and EPA.</p> |

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| | |
|--|--|
| <p><u>Services and Activities:</u></p> | <p>A list and assessment of services and activities that will be undertaken by the Local Authority. Volume information will be developed for the various activities as part of the transformation initiatives included in the Service Plan.</p> |
| <p><u>Annual Budget</u></p> | <p>The annual Budget will include the capital and operational finance figures required to provide the Services and activities. The Budget for the provision of the Services will be prepared by the Local Authority in consultation with Irish Water. The basis for capturing costs will evolve over time starting with an agreed minimum structure progressing towards analysis by cost pools which will support Work And Management (WAM, which includes workflow management and inventory management systems and processes). The agreed minimum structure will be used for the 2014 Budget.</p> |
| <p><u>Capital Programme:</u></p> | <p>The capital programme will be prepared by Irish Water and will be broken out by scheme, based on anticipated delivery dates.</p> |
| <p><u>Headcount Plan:</u></p> | <p>This will set out the list of Local Authority staff names, grades the cost of staff and level of involvement in services. It will specify the cost of staff and the level of involvement (e.g. percentage of their time) in water services. It will also include a list of key staff for both Irish Water and the Local Authority including their phone numbers and email addresses to facilitate good communications and implementation of the agreement.</p> |
| <p><u>Transformation Initiatives</u></p> | <p>These are the initiatives/projects required to deliver Transformation. Each initiative shall include the responsibilities of each party, key milestones and dependencies. (This worksheet tab is currently a placeholder for Transformation Initiatives that will be developed post the Effective Date.)</p> |
| <p><u>Service and Infrastructure Performance & Initiatives (KPIs):</u></p> | <p>The proposed format for tracking performance will include Historic Performance, current performance, proposed Performance Targets, initiatives to achieve targets, costs, dependencies and risks, etc.</p> |
| <p><u>Assets and Facilities:</u></p> | <p>This will list the infrastructure and facilities managed by the Local Authority under the Annual Service Plan and facilities managed by third parties (e.g. DBOs) in the Local Authority's area.</p> |

Table 6

SCHEDULE 3

MANAGEMENT PROCESSES

1. Management Principles

The parties agree that the following management principles apply:

- 1.1 The Local Authority shall have responsibility for making decisions as set out in this Agreement and within the parameters agreed in the applicable Annual Service Plan and other business rules and/or Protocols as agreed by the parties from time to time.
- 1.2 Material issues and variations outside agreed parameters shall be escalated by the Local Authority for approval by Irish Water at the earliest opportunity with appropriate documentation shared between parties.
- 1.3 Management processes are to effectively support collaborative decision-making or where a collaborative decision cannot be agreed, deal with differences through a constructive and engaging process and if necessary, through the dispute avoidance and resolution provisions of this Agreement.
- 1.4 Management process required within Irish Water and the Local Authority for the performance of the Services should be effective and efficient.
- 1.5 Some decisions will require regional and national coordination. Decisions should be taken and issues resolved at the lowest level of management meetings without undue delay and in accordance with roles, responsibilities and powers set out in this Agreement. Matters should only be escalated when the parties have been unable to resolve the issue or decision at the lower level.
- 1.6 Irish Water and Local Authority shall develop and agree a management protocol including a standard format of meetings for use with the Local Authority based on paragraphs 1.2 to 1.5 of this Schedule and which shall include, but not be limited to:
 - 1.6.1 terms of reference for meetings
 - 1.6.2 attendees,
 - 1.6.3 quorum,
 - 1.6.4 decision-making procedures,
 - 1.6.5 consensus,
 - 1.6.6 appointment and involvement of chair;
 - 1.6.7 actions and risk logs;
 - 1.6.8 involvement of specialists/contractors in meetings
 - 1.6.9 minute taking;
- 1.7 Management meetings and interactions shall be between Local Authority Representatives and Irish Water Representatives with appropriate levels of capability and authority.

2. Management Framework

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2.1 The parties agree to adopt a management framework as set out in Table 1 below.

| Management Level | Irish Water representatives | Local Authority representatives | Scope includes: |
|------------------|-------------------------------|--|--|
| National | Managing director or nominees | LGMA or nominees | Sector wide: issues, initiatives, changes in Law, health and safety, standard operating procedures, co-ordination of changes. |
| Tier 1 | Senior management or nominees | Manager of Local Authority or nominees | Major amendments to Service Plan/Annual Service Plan, final governance level for resolution of Commercial Issues prior to conciliation and arbitration, health and safety, forecasting |
| Tier 2 | Regional management | Senior management | Quarterly Meetings, resolution of budget issues, review performance against Annual Service Plan, address variances and issues including health and safety and forecasting |
| Tier 3 | Regional management/nominees | Operational management | Monthly meetings, and weekly and daily interactions, performance, issues, initiatives, invoices, costs, health and safety, forecasting |

Table1: Management and Reporting Structure

- 2.2 The parties are jointly responsible for operating this Agreement and Annual Service Plan through a management framework as set out in clause 8 and this Schedule.
- 2.3 The National Management Process will be conducted by LGMA on behalf of the Local Authority and Irish Water managing director level. It will be the governance structure for handling sector wide initiatives and issues at a national level. The purpose of this management level is to agree and coordinate changes to the service agreements nationally.
- 2.4 The Tier 1 Management Process will be conducted by the Manager of the Local Authority or his nominee and senior Irish Water management. The purpose of this management level is to agree and coordinate major changes to the Annual Service Plan and to be the final recourse for dispute resolution in accordance with Clause 12 between the Local Authority and Irish Water before referring to the Dispute Avoidance and Resolution Process for resolution in accordance with Clause 12.
- 2.5 The Tier 2 Management Process will be conducted by the Local Authority management staff and Irish Water regional management. The purpose of this management level is to make decisions beyond the scope of the Tier 3 Management Process meetings including reviewing progress and performance against the Annual Service Plan and establishing mechanisms for coordination, collaboration and implementation. This management level also provides a forum to raise serious issues or concerns or requirements to change the Annual Service Plan. It is bilateral between Irish Water and the Local Authority.
- 2.6 The Tier 3 Management Process will be conducted by the Local Authority operation staff and Irish Water staff. The purpose of this management level is to facilitate sharing information, alerting either party to concerns and issues, implementing

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required change programmes at site level, data capture and unexpected variances and to facilitate decisions on operations and expenditure. It is bilateral between Irish Water and the Local Authority.

- 2.7 Daily and weekly interactions will take place as required. The parties are responsible for ensuring sufficient contact to make informed decisions.
- 2.8 Tier 3 Management Process meetings will be held monthly and/or as required and will be attended by the Local Authority Personnel managing the provision of the Services and the Annual Service Plan.
- 2.9 Tier 2 Management Process meetings will be held on a quarterly basis and/or as required and will be attended by senior Irish Water representatives and Local Authority senior management from operations, commercial and finance.

3. **Tier 2 Management Process Meetings**

3.1 Shared objectives.

In developing the agreed Management Process pursuant to clause 8.2 the parties shall agree the Tier 2 Management Process to include the following shared objectives:

- 3.1.1 propose and agree procedures designed to ensure effective, productive meetings and follow up in accordance with clause 8.2;
- 3.1.2 propose efficiency measures /Continuous Improvements;
- 3.1.3 discuss and agree actions to address issues;
- 3.1.4 make proposals to improve the operation of this Agreement and changes to this Agreement;
- 3.1.5 participate in consultations on proposals for changes to this Agreement;
- 3.1.6 make decisions required to deal with operational issues that are beyond the delegated scope of the Local Authority or have not been resolved through the Tier 3 Management Process including daily and weekly interactions and to agree region wide programmes;
- 3.1.7 review performance against the Annual Service Plan and to discuss and address Significant Variances;
- 3.1.8 areas to be addressed include, but are not limited to:
 - 3.1.8.1 health and safety;
 - 3.1.8.2 operational improvements;
 - 3.1.8.3 integrating capital schemes to operations;
 - 3.1.8.4 operational and financial performance;
 - 3.1.8.5 operational and financial forecasts; and
 - 3.1.8.6 approval of variations from Annual Service Plan.
- 3.1.9 Irish Water Responsibilities

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Irish Water shall be responsible for chairing, running and documenting meeting in accordance with the agreed procedures.

4. Tier 3 Management Process Meetings

4.1 Shared objectives

In developing the agreed Management Process pursuant to clause 8.2 the parties shall agree the Tier 3 Management Process to include the following shared objectives:

- 4.1.1 build a good quality working relationship given that this level of management will deal with and resolve the majority of issues;
- 4.1.2 propose and agree the Chair of Tier 3 Management Process meetings;
- 4.1.3 propose and agree procedures designed to ensure effective, productive meetings and follow up in accordance with clause 8.2;
- 4.1.4 propose efficiency measures /Continuous Improvements;
- 4.1.5 discuss and agree actions to address issues.
- 4.1.6 make decisions required to deal with operational issues that are beyond the delegated scope of the Local Authority and resolve issues through daily and weekly interactions.
- 4.1.7 review performance against the Annual Service Plan and to discuss and address Significant Variances;
- 4.1.8 areas to be addressed include, but are not limited to:
 - 4.1.8.1 health and safety;
 - 4.1.8.2 operational improvements;
 - 4.1.8.3 integrating capital schemes to operations;
 - 4.1.8.4 operational and financial performance;
 - 4.1.8.5 operational and financial forecasts; and
 - 4.1.8.6 approval of variations from Annual Service Plan.
 - 4.1.8.7 All impacts of transformation activities and efficiencies

4.1.9 Irish Water Responsibilities

Irish Water shall be responsible for running and documenting the meeting in accordance with agreed procedures.

5. National Management Processes

5.1 Sub-objective

The parties share objectives with regard to the National Management Process as follows:

- 5.1.1 approve proposals and recommendations for change to the Agreement, deal with disputes and other matters referred to it and Irish Water and Local Authority attendees shall have the necessary authority to negotiate proposed changes to:

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- 5.1.1.1 the Agreement, including the implementation of national initiatives, following collaborative work between industry participants; and
- 5.1.1.2 the change programme required to meet regulatory and/or budget objectives and seek to integrate to the revised Agreement.
- 5.1.2 agree any changes to the Agreement nationally, including the implementation of national initiatives;
- 5.1.3 consider if further programmes of change are required to meet regulatory and/or budget objectives and seek to integrate to the revised Agreements; and
- 5.1.4 implement agreed changes.

SCHEDULE 4**PROTOCOLS**

| Capability | Protocol Title |
|----------------------------|---|
| Capital | Administrative Support Services for Major Capital Works Delivery |
| | Operational Support Services for Major Capital Works Delivery |
| | Commercial & Legal Support Services for Capital Works Delivery |
| | Operational Support Services for Minor Capital Works Delivery |
| DBO | Payment & Reporting via DBO (Operation and Maintenance phase) |
| | O and M phase - The Handling of Issues |
| EPA | Drinking Water Reporting |
| | EPA Wastewater Discharge Authorisations & Wastewater Reporting |
| | Wastewater Sludge Date Required Under Legislation |
| | Statutory Consultee for the EPA Regarding Consent of Discharge to Sewer for IPC, IED and Waste Licence Applications |
| | Management of Discharge to Sewer (Section 16) Licences |
| | Water Safety Plans |
| HSQE | HSQE Monthly Reporting |
| | Planned IW HSQE Audits and Inspections |
| | Statutory Inspections |
| | Application of Construction Regulations to Maintenance Activities |
| Incident Management | Incident Management Governance |
| | Management of Drinking Water Incidents |
| | Management of Wastewater Incidents |
| | Management of Health and Safety Incidents at LA Places of Work |
| | Management of Environmental Incidents |
| Manage Works | Manage Customer Reactive Work (to be agreed by April 2014) |
| | Manage Pre-Planning Consultations (to be agreed by April 2014) |
| | Manage Observations on Planning Applications Day 1 |
| | Manage New Connections |
| | Manage Supervision of Connections-Day 1 (to be agreed by April 2014) |
| | Manage Meter Installation for New Connections (to be agreed by April 2014) |
| | Manage Adoption of Pre-2014 Development (to be agreed by April 2014) |
| | Manage Adoption of Post-2013 Development (to be agreed by April 2014) |
| Managing Costs | Managing Cost |
| Procurement | Purchasing Progress |
| Non-Domestic | Interim Non-Domestic Billing |
| Customer | Management of Customer Contact Ops State 1 - April 2014 |
| SLA | Access Protocol (to be agreed 2014) |
| | Fleet Management Protocol (to be agreed 2014) |
| | Information & Records Protocol (to be agreed 2014) |
| | AIE Protocol (to be agreed 2014) |
| | Termination Protocol |

SCHEDULE 5

TEMPORARY SERVICES

The Temporary Services shall relate to the services more particularly described in the following Clauses:

- Clause 15 (Manage Works);
- Clause 18 (Manage the DBO Contracts and O&M Contracts);
- Clause 20 (Incident Management);
- Clause 21 (Issue and Management of Licences for Discharges to Sewers);
- Clause 23 (Non-Domestic Billing); and
- Clause 29 (Customer Contact Management).

Execution copy

IN WITNESS WHEREOF this Agreement is executed by the parties as follows:-

| | | |
|--|--|--|
| Signed by for and on behalf of Irish Water: | | |
| Name: | | |
| Title: | | |
| Date: | | |

| | |
|--|--|
| Signed by for and on behalf of the Local Authority: | |
| Name: | |
| Title: | |
| Date: | |