

DATED

2018

NORTHUMBRIAN WATER LIMITED

and

[PARTICIPANT NAME]

WATER NETWORK LEAKAGE HACKATHON 'HACK & SHARE'

RELEASE OF DATA

CONFIDENTIALITY AGREEMENT

Legal Affairs
Northumbrian Water Limited
Boldon House
Wheatlands Way
Pity Me
Durham
DH1 5FA

CONTENTS

1	INTERPRETATION	2
2	CONFIDENTIAL INFORMATION	3
3	CONFIDENTIALITY OBLIGATIONS	4
4	MANDATORY DISCLOSURE	4
5	RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION	5
6	RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT	5
7	INADEQUACY OF DAMAGES	6
8	NO OBLIGATION TO CONTINUE DISCUSSIONS	6
9	ENDING DISCUSSIONS AND DURATION OF CONFIDENTIALITY OBLIGATIONS.....	6
10	NO PARTNERSHIP OR AGENCY	6
11	GENERAL	6

BETWEEN:-

- (1) **NORTHUMBRIAN WATER LIMITED** incorporated and registered in England and Wales with company number 02366703 whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ (**Party 1**); and
- (2) [FULL PARTICIPANT NAME] of [PARTICIPANT ADDRESS] (**Party**

2) BACKGROUND

- (A) The parties intend to enter into discussions relating to the Purpose which will involve the disclosure of confidential information from Party 1 to Party 2.
- (B) The parties have agreed to comply with this agreement in connection with the disclosure and use of Confidential Information.

Agreed terms

1 INTERPRETATION

1.1 Definitions:

Business Day means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Confidential Information has the meaning given in clause 2.

Discloser means Party 1, being the party that discloses its Confidential Information, directly or indirectly, to the Recipient.

Group means in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

Group Company means in relation to a company, any member of its

Group. **holding company** has the meaning give in clause 1.2.5.

Purpose means the evaluation of the Discloser's data to improve and enhance the Discloser's asset management with respect to water distribution systems and in particular identifying solutions to the problem of network leakage.

Recipient means Party 2, being the party that receives Confidential Information, directly or indirectly, from the Discloser.

Representative(s) means in relation to a party:

- (a) its officers and employees and those of its Group Company that need to know the Confidential Information for the Purpose;
- (b) its professional advisers or consultants who are engaged to advise that party in connection with the Purpose;

(c) its contractors and sub-contractors engaged by that party in connection with the Purpose; and

(d) any other person to whom the other party agrees in writing that Confidential Information may be disclosed in connection with the Purpose.

subsidiary has the meaning give in clause 1.2.5.

1.2 Interpretation.

1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** includes email.

1.2.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.2.5 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

2 CONFIDENTIAL INFORMATION

2.1 **Confidential Information** means all confidential information relating to the Purpose which the Discloser or its Representatives or its Group Company, or their Representatives directly or indirectly discloses to the Recipient, before, on or after the date of this agreement. This includes:

2.1.1 the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;

2.1.2 the terms of this agreement;

2.1.3 all confidential or proprietary information relating to:

(a) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Discloser or of the Discloser's Group Company; and

(b) the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Discloser, or of the Discloser's Group Company;

2.1.4 any information, findings, data or analysis derived from Confidential Information; and

2.1.5 any other information that is identified as being of a confidential or proprietary nature, but excludes any information referred to in clause 2.2.

2.2 Information is not Confidential Information if:

- 2.2.1 it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Recipient in breach of this agreement;
- 2.2.2 it was available to the Recipient on a non-confidential basis prior to disclosure by the Discloser;
- 2.2.3 it was, is, or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not under any confidentiality obligation in respect of that information;
- 2.2.4 it was lawfully in the possession of the Recipient before the information was disclosed by the Discloser;
- 2.2.5 it is developed by or for the Recipient independently of the information disclosed by the Discloser; or
- 2.2.6 the parties agree in writing that the information is not confidential.

3 CONFIDENTIALITY OBLIGATIONS

- 3.1 In return for the Discloser making Confidential Information available to the Recipient, the Recipient undertakes to the Discloser that he shall:
 - 3.1.1 keep the Confidential Information secret and confidential;
 - 3.1.2 not use or exploit the Confidential Information in any way except for the Purpose;
 - 3.1.3 not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with this agreement;
 - 3.1.4 not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose. Any such copies, reductions to writing and records shall be the property of the Discloser;
 - 3.1.5 not use, reproduce, transform or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means outside his usual place of business; and
 - 3.1.6 apply the same security measures and degree of care to the Confidential Information as the Recipient applies to his own confidential information, which the Recipient warrants as providing adequate protection from unauthorised disclosure, copying or use.
- 3.2 The Recipient shall establish and maintain adequate security measures (including any reasonable security measures proposed by the Discloser from time to time) to safeguard the Confidential Information from unauthorised access or use.

4 MANDATORY DISCLOSURE

- 4.1 Subject to the provisions of this clause 4, the Recipient may disclose Confidential Information to the minimum extent required by:
 - 4.1.1 an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction; or
 - 4.1.2 the laws or regulations of any ⁵ country to which his affairs are subject.

4.2 Before the Recipient discloses any Confidential Information pursuant to clause 4.1 he shall, to the extent permitted by law, give the Discloser as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with clause 4.2, the Recipient shall take into account the Discloser's requests in relation to the content of this disclosure.

4.3 If the Recipient is unable to inform the Discloser before Confidential Information is disclosed pursuant to clause 4.1 he shall, to the extent permitted by law, inform the Discloser of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.

5 RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION

5.1 If so requested by the Discloser at any time by notice in writing (which shall include by email) to the Recipient, the Recipient shall promptly:

5.1.1 destroy or return to the Discloser all documents and materials (and any copies) containing, reflecting, incorporating or based on the Discloser's Confidential Information;

5.1.2 erase all the Confidential Information from his computer and communications systems and devices used by him, or which is stored in electronic form;

5.1.3 to the extent technically and legally practicable, erase all the Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and

5.1.4 certify in writing (which shall include by email) to the Discloser that he has complied with the requirements of this clause 5.1.

5.2 Nothing in clause 5.1 shall require the Recipient to return or destroy any documents and materials containing or based on the Confidential Information that the Recipient is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction to which he is subject. The provisions of this agreement shall continue to apply to any documents and materials retained by the Recipient pursuant to this clause 5.2.

6 RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT

6.1 The Discloser reserves all rights in its Confidential Information. The disclosure of Confidential Information by the Discloser to the Recipient does not give the Recipient or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in this agreement.

6.2 Except as expressly stated in this agreement, the Discloser makes no express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.

6.3 The disclosure of Confidential Information by the Discloser shall not form any offer by, or representation or warranty on the part of, the Discloser to enter into any further agreement with the Recipient.

7 **INADEQUACY OF DAMAGES**

Without prejudice to any other rights or remedies that the Discloser may have, the Recipient acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement. Accordingly, the Discloser shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this agreement by the Recipient.

8 **NO OBLIGATION TO CONTINUE DISCUSSIONS**

Nothing in this agreement shall impose an obligation on the Discloser to continue discussions or negotiations in connection with the Purpose, or an obligation on the Discloser, or its Group Company to disclose any information (whether Confidential Information or otherwise) to the Recipient.

9 **ENDING DISCUSSIONS AND DURATION OF CONFIDENTIALITY OBLIGATIONS**

9.1 If the Discloser decides not to continue to be involved in the Purpose with the Recipient, it shall notify the Recipient in writing immediately.

9.2 Notwithstanding the end of discussions between the parties in relation to the Purpose pursuant to clause 9.1, each party's obligations under this agreement shall continue in full force and effect for a period of five years from the date of this agreement.

9.3 The end of discussions relating to the Purpose shall not affect any accrued rights or remedies to which either party is entitled.

10 **NO PARTNERSHIP OR AGENCY**

10.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

10.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

11 **GENERAL**

11.1 **Assignment and other dealings.** Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

11.2 **Entire agreement.**

11.2.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.2.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

- 11.3 **Variation.** No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.4 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.5 **Severance.** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 11.6 **Notices.**
- 11.6.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, e-mail.
- 11.6.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.6.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
- 11.6.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 11.7 **Third party rights.** No one other than a party to this agreement shall have any right to enforce any of its terms.
- 11.8 **Governing law.** This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.
- 11.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

THIS AGREEMENT has been entered into on the date stated at the beginning of it.

Signed by (Print Name)

duly authorised for and on behalf of
Northumbrian Water Limited

.....
(Signature)

Signed by (Print Name)

duly authorised for and on behalf of
[insert participant name]

.....
(Signature)