

**CONFIDENTIALITY AGREEMENT**

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## CONFIDENTIALITY AGREEMENT

**THIS AGREEMENT** is made this [ ] day of [ ] 200[ ]

**BETWEEN**

**BRISTOL WATER PLC** whose Registered Office is PO Box 218 Bridgwater Road,  
Bristol BS99 7AU and

LWS whose Registered Office is [ ] (“Name”).

**WHEREAS** Bristol Water plc and Name (“the parties”) for their mutual benefit may have exchanged and wish further to exchange certain information of a confidential nature and wish to protect such information in the manner set out in this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

**1. Definitions**

- 1.1 For the purposes of this Agreement the following expressions shall have the following meanings:
- (a) **“Authorised Representative”** shall mean any employee, director, officer or professional and financial advisor of the receiving party;
  - (b) **“Confidential Information”** shall mean any and all confidential, commercial, financial, marketing, technical, environmental information governed by the Environmental Information Regulations 2004 or other information or data of whatever nature relating to the disclosing party or to the disclosing party’s business or affairs (including but not limited to this Agreement, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Project) in any form or medium whether disclosed in writing , orally or by any other means to one party by the disclosing party or by a third party on behalf of the disclosing party whether before or after the date of this Agreement together with any reproductions of such information in any form or medium or any part(s) of such information);

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- (c) **“Project”** shall mean any discussions and negotiations between or within the parties concerning or in connection with the establishment or possible establishment of a business relationship between the parties relating to the wholesale supply of potable water.

**2. Confidentiality Obligations**

2.1 Subject to clause 2.2 in consideration of the mutual exchange and disclosure of Confidential Information each party undertakes in relation to the Confidential Information disclosed to it by the other party either during the continuance of the Project or within 2 years after the Project has terminated or resulted in the parties establishing a business relationship in respect of the Project:

- (a) to treat all and any of such Confidential Information as confidential and secret and not use any of such Confidential Information for any purpose other than the purpose of evaluating such Confidential Information in connection with the Project;
- (b) to take all reasonable steps to protect the confidentiality of such Confidential Information and to prevent disclosure of same to unauthorised persons;
- (c) not to disclose any of such Confidential Information in whole or in part to any third party without the prior written consent of the other party save to its Authorised representatives who need to know the same for the purpose of evaluating such Confidential Information in connection with the Project;
- (d) to ensure each Authorised Representative to whom it discloses such Confidential Information is made aware of the provisions of this Agreement before such Authorised Representative receives any such Confidential Information and agrees in writing to be bound by obligations of confidentiality and non-disclosure to third parties in respect of such Confidential Information and to return or destroy such Confidential Information in accordance with the provision of clause 4.

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

- (a) is or subsequently comes into the public domain otherwise than as a result of

any breach of this Agreement by the receiving party or any of its Authorised Representatives;

- (b) is already known to the receiving party prior to disclosure which prior knowledge the receiving party can clearly demonstrate with written material;
- (c) becomes known to the receiving party by disclosure from a third party who has a lawful right to receive and disclose the Confidential Information; or
- (d) is required to be disclosed by law or by any regulatory authority provided that the receiving party informs the disclosing party in advance of the circumstances of the disclosure and exactly what is to be disclosed and uses all reasonable endeavours to obtain confidentiality undertakings from the recipients in respect of the Confidential Information disclosed.

3. **Intellectual Property**

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

4. **Return of Information**

- 4.1 Each party shall within one week of a request from the other party in writing give to the other party or (at the other party's discretion) itself destroy all the Confidential Information of the other party and all copies thereof in its possession, custody or control including for the avoidance of doubt Confidential information contained within computers, word processors or other devices (including computer discs or other information storage equipment).
- 4.2 The return of Confidential Information shall not release either party from its other obligations under this Agreement.

5. **No Representation or Warranty**

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

6. **Reference to the Parties**

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

7. **Duration**

7.1 This Agreement shall continue in force from the date hereof until terminated by mutual consent or by one party giving to the other party not less than one month's prior written notice. The provisions of clauses 2, 4, 6 and 7 shall survive the termination of this Agreement.

8. **No Contract**

8.1 No documents or information made available to the one party or its Authorised Representatives by the other will constitute an offer or invitation or form the basis of any contract. Either party shall be entitled at any time to decline to provide or to continue to provide any Confidential Information to the other or to the other's Authorised Representatives or to decline to deal with the other without incurring any liability to the other whatsoever.

9. **Notices**

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

The facsimile number for each of the parties shall be :

<u>Party</u>	<u>Facsimile number</u>
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Bristol Water plc	0117 9633755
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Name	[ ]
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10. **Consequences of Breach**

10.1 Without prejudice to any other rights or remedies that either party may have Name acknowledges and agrees that:-

- (a) Bristol Water plc and its parent company Sociedad General De Aguas De Barcelona SA (“Agbar”) and other subsidiary companies of Agbar would be irreparably harmed by a breach of any of the provisions of this Agreement;
- (b) Damages would not be an adequate remedy for any such breach;
- (c) Agbar, Bristol Water plc and any other relevant subsidiary company of Agbar shall be entitled to the remedies of injunction, specific performance and any other equitable relief for any threatened or actual breach of the provisions of this Agreement by Name or its Authorised Representatives;
- (d) No proof of special damages shall be necessary for the enforcement of this Agreement.

11. **No Waiver**

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

12. **Non-assignment**

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

13. **Entire Agreement**

13.1 This Agreement sets out the entire agreement between the parties in respect of the Confidential Information disclosed by either party to the other and supersedes all previous understandings and undertakings in such respect.

14. **Costs**

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

15. **Severance**

15.1 Each provision of this Agreement is severable and distinct from the others. The parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If any such provision is or

at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law it shall to that extent be deemed not to form part of this Agreement but it and all the other provisions of this Agreement shall continue in full force and effect and their validity, legality and enforceability shall not therefore be affected or impaired.

16 **Governing Law**

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

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

**SIGNED** on behalf of NAME )

(Signature)

(Position)

(Date)

**SIGNED** on behalf of BRISTOL WATER PLC )

(Signature)

(Position)

(Date)

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