

DATED

2007

BRISTOL WATER PLC

and

WSL LIMITED

Wholesale Supply Agreement
Draft 1: 11 May 2007

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Term	Definition
	public or bank holiday in England
Charges Scheme	WU's published Charges Scheme under the provisions of the Act detailing the charges it shall make for providing its services
Competent Authority	The WSRA or any local, national or supra-national agency, authority, department, inspectorate, minister, official court, tribunal or public or statutory person of the United Kingdom or the European Union which has jurisdiction over WU or an LWS or the subject of this Agreement
Confidential Information	Shall have the meaning given in clause 17.3
Connection Charge	The charge payable to WU to cover the direct cost of works and materials required to connect a premises to its main as set out in the Charges Scheme
Customer Annex	Shall mean an annex to this Agreement containing case specific terms and conditions relating to an LWS Customer
Day	One calendar day
DG Standard	A level of service in accordance with Condition J of the WU Licence
Discontinuance Date	Shall have the meaning given in clause 14.1
Discontinuance Notice	Shall have the meaning given in clause 14.2
Dispute	Disagreement between the Parties

Term	Definition
Effective Date	Shall have the meaning given in clause 4.1
EIR	The Environmental Information Regulations 2004
EIR Exemption	Any applicable exemption to the EIR
Exempted Information	Any information or category of information, document, report, contract or other material containing information relevant to this Agreement that has been designated by the mutual agreement of the Parties as potentially falling within a EIR Exemption
Exit Point	The controlling stop valve being the point on the Supply System where the LWS is permitted to draw off an agreed supply to service its customer(s)
[Feasibility Study	The study carried out by or on behalf of WU in relation to the LWS's application for use of the Supply System a copy of which is annexed hereto at Annex 1 <i>NBamend/delete as applicable]</i>

Term	Definition
Force Majeure	Shall have the meaning given in clause 8.1
Group	Either Party and any of its subsidiaries holding companies or any subsidiary of any such holding company (as such terms are defined in the Companies Act 1985)
Instrument of Appointment	An Instrument of Appointment granted under the Act to enable a party to provide water services to a defined geographical area
Intellectual Property	Copyright, confidential information, design rights, topographical rights, patents, trade marks (registered or unregistered), service marks, registered designs or any applications thereof, and all other intellectual or industrial property rights of a similar nature
Legal Requirement	Any order of a Competent Authority or Act of Parliament, Directive, regulations or licence, consent or similar permission issued by a Competent Authority including an Instrument of Appointment
Licensed Water Supplier	Means a company which is the holder for the time being of a Water Supply Licence under the terms of the Act
LWS Customer(s)	Person(s) being provided with water services by the LWS via a Wholesale Supply Agreement

Term	Definition
LWS Default	Shall have the meaning given in clause 14.3
LWS's Works	Where applicable all of the works necessary to comply with LWS's obligations under this Agreement such works as are described in any Customer Annex
Metering	Measurement of flow
Modification	Shall have the meaning given in clause 22.1
a Party	By reference to this Agreement shall mean WU or the LWS and "the Parties" shall mean WU and the LWS
Physical Interface	The connection from the Supply System to the LWS Customer's pipework at the Exit Point
Pipework	Pipes that are owned and maintained by the LWS or a third party other than WU
Plant	Mechanical and electrical equipment forming part of WU's assets
Price Review	A periodic review of charges applied to the LWS by WU as set out in Schedule 2
Retail Licence	Shall have the meaning as set out in Section 17A (4) of the Act
Supply Charges	The charges levied by WU for use of the Supply System as set out in Schedule 2
Supply System	Shall mean the supply system of WU by reference to the meaning given to the supply system of a water undertaker in Section 17 B (5)

Term	Definition
	of the Act
Supply System Configuration Changes	Where applicable all of the works on the Supply System necessary to accommodate a supply to an LWS Customer such works as are described in any Customer Annex
Termination	Termination of this Agreement for whatever reason
Undertaker	A company appointed to provide water and/or sewerage services to a defined geographical area, acting under an Instrument of Appointment under the Act
the WSRA	The Water Services Regulation Authority, being a government office which serves as the economic regulator for the water industry in England and Wales
Water Meter	A device installed at an Exit Point to measure the quantity of water delivered to an LWS Customer's premises
Water Quality	Properties of water defined by reference to specific criteria specified by the Legal Requirements
Water Quality Regulations	The Water Supply (Water Quality) Regulations 1989 and 2000 and all amendments.
Water Services	The collection, treatment and distribution of water for domestic and non-domestic purposes as defined by the Act

Term	Definition
Water Supply Licence	Shall have the meaning as set out in Section 17A of the Act
the WU Licence	The Instrument of Appointment held by WU as a statutory water undertaker under the terms of the Act

- 1.2 References to any statute, or to any statutory provision, statutory instrument, order or regulation made thereunder, includes that statute, provision, instrument, order or regulation as amended, modified, consolidated, re-enacted, or replaced from time to time, whether before or after the date of this Agreement and also includes any previous statute, statutory provision, instrument, order or regulation, amended, modified, consolidated, re-enacted or replaced by such statute, provision, instrument, order or regulation but excludes any such thing having retrospective effect.
- 1.3 All references to a statutory provision shall be construed as including references to all statutory instruments or orders, regulations or other subordinate legislation made pursuant to that statutory provision.
- 1.4 Unless the context otherwise requires, references to the singular include the plural, references to any gender include all other genders, and references to "persons" shall include bodies corporate, unincorporated associations and partnerships.
- 1.5 A reference in this Agreement to any party shall include a reference to that party's successors and assigns.
- 1.6 The Schedules and any Annexes to this Agreement shall form part of this Agreement.
- 1.7 Words importing persons shall include firms and corporations and vice versa.

- 1.8 Words importing the singular shall include the plural and vice versa.
- 1.9 Clause headings are for ease of reference only and shall not affect the interpretation of this Agreement or of the clause to which they relate.
- 1.10 References to “include” or “including” shall be construed without limitation to the generality of the words.
- 1.11 To the extent that there is a conflict between or ambiguity relating to any document referred to in or forming part of this Agreement the terms set out in this Agreement shall prevail.
- 1.12 Words and expressions defined in the Companies Act 1985 (as amended) shall have the same meanings when used in this Agreement unless the context otherwise requires.

2. COMMENCEMENT AND TERM

- 2.1 This Agreement shall subject as provided below come into effect on the [*To be agreed*] and unless terminated earlier in accordance with the provisions of clause 14 shall continue in force [for a period of [*To be agreed*] years].

3. USE CONDITIONS

- 3.1 The LWS confirms and warrants that it holds a Retail Licence.
- 3.2 The LWS confirms that it shall supply the [*following services to be disclosed by LWS*] to [*To be disclosed by LWS*].
- 3.3 The provisions of this Agreement are conditional upon each of the following matters being fulfilled to the reasonable satisfaction of WU:
- 3.3.1 Production by the LWS of the Security Deposit referred to in clause 23; and
- 3.3.2 [*any other condition precedents WU requires once it understands nature of proposed arrangements eg inter alia: timescales with long*

stop date for capital works, regulatory approvals; financial security, metering of LWS Customers, provision re outstanding charges].

- 3.4 Each Party shall use all reasonable endeavours to procure attainment of the above conditions precedent to the extent that such attainment is within the power and authority of that Party.
- 3.5 Each Party shall use all reasonable endeavours to procure that each of the above conditions precedent which it is responsible for securing, once satisfied, and save to the extent such condition precedent has been waived, remains satisfied at all times while this Agreement remains in force.
- 3.6 Each Party shall notify the other in writing as soon as it reasonably considers that the conditions precedent which it is responsible for securing have been satisfied, which shall be substantiated by appropriate supporting documents.
- 3.7 Subject to clause 3.10, if any of the above conditions precedent is not satisfied or waived by WU on or before the date which is [*To be agreed*] months from the date of this Agreement, this Agreement shall terminate and clause 15 shall apply.
- 3.8 The LWS undertakes to disclose in writing to WU, and WU undertakes to disclose in writing to the LWS, anything which will or may prevent any of the above conditions precedent from being satisfied within the period set out in clause 3.7 immediately it comes to the notice of either Party and in such circumstances the Parties shall meet to discuss methods and proposals for their satisfaction or waiver as soon as practicable thereafter.
- 3.9 WU may waive in whole or in part all or any of the conditions precedent at clause 3.3.
- 3.10 WU may extend the period in which the conditions precedent are to be satisfied with the consent of the LWS and the LWS may extend the period in which the conditions precedent are to be satisfied with the consent of WU provided that, in each case, the period in which the conditions precedent are to be satisfied shall not be extended beyond

the date which is six months from the expiry of the period set out in clause 3.7.

- 3.11 If no extension is agreed or if any of the above conditions precedent are not satisfied or waived at the end of the extended period, then this Agreement shall terminate and clause 15 shall apply.

4. SUPPLY TO LWS CUSTOMER(S) VIA THE SUPPLY SYSTEM

- 4.1 WU shall supply Water Services to the premises of LWS Customer(s) via the Supply System in accordance with the terms of this Agreement and in particular the terms and conditions set out in Schedule 1 and each relevant Customer Annex with effect from [*To be agreed*] on [] 200[] [or X Business Days after satisfaction of all of the conditions precedent under clause 3] (“the Effective Date”).

5. CHARGES

- 5.1 In consideration of the provision of Water Services in accordance with clause 4.1 above, the LWS, (subject to the provisions of clause 5.4), subject to receipt of invoices from WU and compliance by WU with the terms of this Agreement, shall pay to WU the Supply Charges as described, varied and set out in Schedule 2 and the Customer Annexes and which shall be subject to the Price Review mechanism so set out.
- 5.2 The Supply Charges specified in Schedule 2 shall be further adjusted throughout the period of this agreement to take into account any additional expense to which WU has been put by compliance with any Legal Requirement coming into effect after the date of this Agreement provided that such adjustment shall not take place if the expense is otherwise included in the Price Review WU shall give at least 2 months’ notice to the LWS of any adjustment to the Supply Charges in accordance with this clause.

- 5.3 Invoices for the Supply Charges shall be raised for periods of one calendar month commencing [*To be agreed*] 200[] and shall be submitted to the LWS by the 15th day of the following month.
- 5.4 All Supply Charges shall be payable without any deduction or right of legal or equitable set-off unless the LWS shall notify WU that it has a bona fide complaint in respect of the provision of the use of the Supply System or Water Services provided by WU for which WU has made a charge in which event payment of the disputed element of the charge shall be suspended until the complaint has been resolved in accordance with Schedule 3.
- 5.5 All amounts expressed as payable by an LWS pursuant to this Agreement and whether the amount thereof is set out in this Agreement or determined elsewhere are exclusive of any applicable Value Added Tax (“VAT”) and accordingly VAT shall be payable in addition to the Supply Charges at the rate from time to time in force against delivery of a valid VAT invoice.
- 5.6 If any Supply Charges are not paid on the due date for payment (save as contemplated by clause 5.4) then the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 shall apply to the amount outstanding.

6. ENTITLEMENTS UNDER THE ACT

- 6.1 Nothing in this Agreement shall prevent WU from exercising any entitlement or discharging any duty under the Act or pursuant to the WU Licence which may involve the disconnection of or the refusal to convey water to or allow water to be conveyed to any premises.
- 6.2 Where under the Act or pursuant to the WU Licence WU is not required to connect or maintain a connection of or has exercised or is entitled to exercise any right to disconnect or is required to disconnect any premises, or (having disconnected them) is not required to

reconnect any premises or is entitled to refuse to convey water or to allow water to be conveyed to any premises, WU shall not be in breach of its obligations under this Agreement.

- 6.3 WU shall inform the LWS (save in the case of emergency) as soon as reasonably practicable prior to the exercise of an entitlement as described under clause 6.2 above to disconnect or refuse to convey water or allow water to be conveyed and shall notify the LWS as soon as reasonably practicable once such entitlement has been exercised.

7. OWNERSHIP OF THE SUPPLY SYSTEM

- 7.1 Nothing within this Agreement alters WU's ownership of the Supply System or its responsibility to manage and operate the Supply System and this Agreement does not confer any responsibilities for ownership, maintenance or other use of the Supply System to the LWS or to the LWS Customer(s).

- 7.2 For the avoidance of doubt any financial contribution direct or indirect by the LWS to the improvement reinforcement and / or replacement of the Supply System does not give any right of ownership in respect thereof to the LWS and the Supply System shall be and remain the sole property of WU at all times and the LWS shall not have any rights of use of the Supply System other than such rights as are specifically granted by this Agreement for the period this Agreement remains in force.

- 7.3 Nothing in this Agreement shall prevent or restrict WU from altering amending expanding developing or re-developing its Supply System.

8. FORCE MAJEURE

- 8.1 For the purposes of this Agreement, subject to clause 8.2, "Force Majeure" means:

- 8.1.1 war declared or undeclared, threat of war, act of public enemy, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism;
- 8.1.2 strike, lockout or other industrial disturbance;
- 8.1.3 governmental restraint or the coming into force of any Legal Requirement;

beyond the reasonable control of either Party and which causes or results in the failure of the affected Party to perform or delay in performing any of its obligations owed to any other Party under this Agreement.
- 8.2 Inability (however caused) to pay or a Legal Requirement which makes the carrying out of a Party's obligations more expensive shall not be Force Majeure.
- 8.3 The act or omission of any agent or contractor of a Party shall not be Force Majeure unless such act or omission is caused by or results from events and/or circumstances which would be Force Majeure within the meaning of clause 8.1 if such person were the affected party.
- 8.4 Subject to clause 8.5, the affected Party shall be relieved from liability (including any requirement under this Agreement to make payment of any sum or to take any other action) for any delay or failure in the performance of any obligation under this Agreement which is caused by or results from Force Majeure.
- 8.5 The affected Party shall be relieved from liability under clause 8.4 only for so long as and to the extent that the occurrence of Force Majeure and/or the effects of such occurrence could not be overcome by measures which the affected Party might reasonably be expected to take with a view to resuming performance of its obligations.
- 8.6 Following any occurrence of Force Majeure the affected Party shall:
 - 8.6.1 as soon as reasonably practicable notify the other Party of the occurrence and nature of the Force Majeure, the expected duration thereof (insofar as the same can reasonably be assessed) and the

- obligations of the affected Party's whose performance is affected thereby; and
- 8.6.2 from time to time thereafter provide to the other Party reasonable details of:-
- (a) developments in the matters notified under clause 8.6.1, and
 - (b) the steps being taken by the affected Party to overcome the Force Majeure occurrence or its effects and to resume performance of its relevant obligations.
- 8.7 For the avoidance of doubt a serious deficiency of supplies caused by an exceptional shortage of rain shall not constitute Force Majeure however the provisions of The Water Resources Act 1991 shall apply to the same.
- 8.8 This clause shall not apply to the satisfaction of the conditions precedent set out in clause 3 above.

9. LIABILITY

- 9.1 The LWS warrants and undertakes to WU to perform its obligations hereunder with all due care and diligence and in any event in accordance with the requirements of each relevant Competent Authority, Legal Requirements and to those standards which constitute good industry practice in respect of the water industry.
- 9.2 Subject to clause 9.3 below neither Party nor any of its officers, employees or agents shall be liable to the other Party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of;
- 9.2.1 physical damage to the property of the other Party; its officers, employees or agents; and / or

- 9.2.2 the liability of such other Party to any other person for loss in respect of physical damage to the property of any person

Provided that the liability of either Party in respect of all claims for such loss shall in no circumstances exceed [*£To be agreed*] per incident or series of related incidents and provided further that either Party shall be entitled to deduct from any sums payable in respect of its liability for loss or damage in respect of any event under this Agreement any sums which it is liable to pay to a person who has a connection to the Supply System or any other person in respect of the same loss or damage in respect of the same incident or series of related incidents.

- 9.3 Where:

- (a) this Agreement provides for WU to do anything at or affecting any LWS Customer or the off-take of water from the Supply System at any Exit Point;
- (b) in doing that thing WU complies with the requirements of this Agreement and any other agreement with the LWS, an LWS Customer or supplier in relation thereto, does not act unlawfully, and is not negligent; and
- (c) by reason of WU doing that thing the LWS Customer or supplier suffers loss or damage or claims to have done so or otherwise makes any claim or complaint or brings any action or proceeding against WU (other than pursuant to a contract between WU and such LWS Customer or supplier)

the LWS shall indemnify WU and hold it harmless against any liability to such LWS Customer or supplier in respect of any such loss, damage, claim, complaint, action or proceeding, and all costs and expenses incurred in connection therewith.

- 9.4 Nothing in this Agreement shall exclude or limit the liability of the Party liable for death or personal injury resulting from the negligence of the Party liable or any of its officers, employees or agents and the Party liable shall indemnify and keep indemnified the other Party, its officers, employees or agents, from and against all such liability and

any loss or liability which such other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party liable or any of its officers, employees or agents.

9.5 Provided always that:

9.5.1 neither Party shall admit liability in respect of any such matter or thing for which the other Party is or may be liable without first notifying the other Party of such claim and giving that other Party such opportunity as is reasonable in the circumstances to limit, negate or mitigate such loss or claim; and

9.5.2 if by virtue of its statutory obligations or if it shall desire to do so WU may have the conduct of any such claim in which event if liability is accepted or agreed by WU to an extent or in an amount that the LWS would not have accepted or agreed then WU shall pay the difference;

9.5.3 the Party having the conduct of a claim shall consult with and keep the other informed of the progress of such claim to the intent that the Party having the conduct of a claim shall have regard to clause 9.6 below, in particular where WU is contemplating the acceptance or agreement to liability in the manner described in proviso 9.5.2 above the LWS shall state its position in writing when requested to do so by WU within a reasonable period having regard to the nature and status of the claim in question.

9.6 No Party shall in any circumstances be liable in respect of any breach of this Agreement to any other Party for:

9.6.1 any loss of profit, loss of revenue, loss of use, loss of contract, loss of goodwill, or increased cost of working save as provided in clauses 9.2 or 15; or

9.6.2 any indirect or consequential loss save as provided in clauses 9.2, or 15; or

- 9.6.3 except as provided in clauses 9.2 and 11, loss resulting from the liability of any Party to any other person howsoever and whensoever arising.
- 9.7 Save as otherwise expressly provided in this Agreement, this clause 9 insofar as it excludes or limits liability shall override any other provision in this Agreement provided that nothing in this clause 9 shall exclude or restrict or otherwise prejudice or affect any of;
- 9.7.1 the rights, powers, duties and obligations of either Party which are conferred or created by the Act or by any Instrument of Appointment granted pursuant to the Act or any subordinate legislation made under the Act; or
- 9.7.2 the rights, powers, duties and obligations of any Competent Authority in respect of any such Instrument of Appointment or otherwise howsoever.
- 9.8 For the avoidance of doubt, nothing in this clause 9 shall prevent any Party from or restrict it in enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.
- 9.9 Nothing in this clause 9 shall constitute a waiver by either Party of any right or remedy it may have (other than pursuant to this Agreement) in respect of a breach by the other Party of any Legal Requirement.
- 9.10 Each Party acknowledges and agrees that the provisions of this clause 9 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date of this Agreement.
- 9.11 Where this Agreement prescribes a Dispute Resolution procedure or action the operation of that procedure or action shall be without prejudice to the operation of this Agreement generally.
- 9.12 For the avoidance of doubt the provisions of Schedule 9 to The Water Resources Act 1991 shall apply to the question of liability where there exists a serious deficiency of supplies caused by an exceptional shortage of rain.

- 9.13 Nothing in this Agreement shall be construed as imposing upon WU any obligation or duty to or enforceable by an LWS Customer or a supplier and the LWS shall not make any commitment to any LWS Customer or supplier binding on or purporting to bind WU.
- 9.14 Nothing in this Agreement shall prevent WU from exercising any right or remedy which it may have against an LWS Customer or supplier at law or pursuant to the Act or otherwise.
- 9.15 Each of the sub-clauses of this clause 9 shall be constructed as a separate and severable contract term and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the parties and survive termination of this Agreement.
- 9.16 Each Party hereby acknowledges and agrees that the other Party holds the benefit of clause 9.2 above for itself and as trustee and agent for its officers, employees and agents.

10. DISPUTE RESOLUTION

- 10.1 If any Dispute concerning this Agreement shall arise between the Parties such Dispute shall be resolved only in accordance with this clause 10.
- 10.2 The Parties shall, within ten (10) Business Days of a written request by one Party to the other meet and negotiate in good faith and shall use their reasonable respective endeavours to resolve such Dispute.
- 10.3 Any Dispute that cannot be resolved by the Parties within ten (10) Business Days of the written request referred to in sub clause 10.2 shall within a further five (5) Business Days be referred by either Party to a LWS Senior Manager and a WU Senior Manager who shall meet and negotiate in good faith and shall use their reasonable respective endeavours to solve amicably the Dispute The Parties hereby agree to provide the LWS Senior Manager and WU Senior Manager with all

such information as they reasonably require to enable them to determine the Dispute or difference.

- 10.4 If the Dispute or any part of the Dispute cannot be resolved within 20 (twenty) Business Days of the Dispute being referred in accordance with clause 10.3 above the matter shall be referred for resolution in accordance with Schedule 3.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 All Intellectual Property (and any appropriate Know How) in the Supply System and any Plant or equipment associated with it or developed from or arising out of the Supply System shall belong to and vest in WU.
- 11.2 Any disclosure or provision of Intellectual Property Rights by either Party to the other shall be for the purposes of implementation of this Agreement and no other purpose.

12. EFFECT OF THIS AGREEMENT

- 12.1 The LWS and WU agree that the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
- 12.2 This Agreement is without prejudice to any Legal Requirement Any obligation to comply with any Legal Requirement shall not constitute a breach of this Agreement.

13. COMPLIANCE WITH LEGAL REQUIREMENTS

- 13.1 The LWS shall be responsible for ensuring that all operations or activities carried out by the LWS or others engaged by it in pursuance of this Agreement comply at all times with all relevant Legal Requirements and with all relevant regulations codes of practice

guidance or directions whether or not notified by WU to the LWS or issued by any other relevant Competent Authority.

- 13.2 The LWS shall use its reasonable endeavours to ensure that at all times it is kept fully and accurately informed of all Legal Requirements and codes of practice guidance or directions relevant to the water industry which are relevant to the performance of its obligations under this Agreement and shall comply fully with the same insofar as the same apply to the LWS.
- 13.3 The LWS shall cooperate fully with WU in relation to the enforcement of the Water Supply (Water Fittings) Regulations 1999, SI 1999/1148.

14. TERMINATION

- 14.1 This Agreement may terminate early pursuant to clause 14.2 or 14.3 and for the purposes of this Agreement the “Termination Date” is the date with effect from which (in accordance with clause 14.2 or 14.3 of by effluxion of time) this Agreement terminates.
- 14.2 The LWS may at any time by giving notice (“Discontinuance Notice”) to WU apply to terminate this Agreement.
 - 14.2.1 This Agreement shall not be allowed to terminate under this clause 14.2 until such time as:
 - (a) all amounts payable or (other than in respect of any recurrent charge becoming payable by reason only of the lapse of time after the date on which the last of the other requirements of this clause 14.2.1 is satisfied) which may become payable by the LWS to WU pursuant to any provision of this Agreement have been paid in full; and
 - (b) any outstanding breach being a breach capable of remedy and of which WU has given notice to the LWS by the LWS of any provision of this Agreement shall have been remedied;

- 14.2.2 Where the LWS has given notice under this clause 14.2 the LWS and WU shall remain bound by this Agreement to which the LWS is party until the requirements of clause 14.2.1 are satisfied;
- 14.2.3 Where the LWS has given notice under this clause 14.2, after the satisfaction of the last of the requirements of clause 14.2.1 to be satisfied this Agreement shall terminate with effect from the 5th Business Day following such satisfaction;
- 14.3 For the purposes of this clause there shall have occurred an “LWS Default” in relation to the LWS in any of the following events or circumstances:
- 14.3.1 where in relation to any amount (or amounts in aggregate) of not less than £10,000 which has become due for payment by the LWS under this Agreement (excluding for the avoidance of doubt amounts the subject of a complaint which by virtue of clause 5.4 have not become due for payment);
- (a) the LWS has not paid the amount in full by the 5th Business Day after the due date for payment, and
 - (b) on or after the 5th Business Day after the due date for payment WU has given notice to the LWS requiring payment of such amount, and
 - (c) the LWS has not paid such amount in full by the 5th Business Day after the date of WU’s notice under clause (b); or
- 14.3.2 where:-
- (a) the LWS is in material breach, other than such a breach as is referred to in clause 14.9, of any material provision (other than a payment obligation) of this Agreement; and
 - (b) the breach is capable of remedy by the LWS; and
 - (c) WU has given notice (making reference to this clause 14.3) of such breach to the LWS; and

- (d) within 14 Days after WU's notice under clause 14.3.2 (c), the LWS does not either:
 - (i) remedy the breach in all material respects, where the breach is capable of remedy within such period of 14 Days; or
 - (ii) where the breach is not so capable of remedy, provided to WU a programme (setting out the steps to be taken by the LWS and the timetable for taking such steps) for the remedy of the breach as soon as is reasonably practicable; and
- (e) in the case in clause 14.3.2 (d)(ii); the LWS does not:
 - (i) remedy the breach in all material respects with all reasonable diligence and so far as reasonably practicable in accordance with the programme provided under that clause or a revised programme pursuant to clause 14.3.2(e)(ii); and
 - (ii) where notwithstanding the reasonable diligence of the LWS it is not reasonably practicable for the LWS to remedy the breach in accordance with that programme, provide to WU a revised such programme; and
- (f) the breach remains unremedied in any material respect after the expiry of 7 Days after a further notice by WU to the LWS to the effect that the LWS has not complied with clause (d) or (e) or

14.3.3 where:

- (a) the LWS is in material breach, other than such a breach as is referred to in clause 14.9, of any relevant provision (other than a payment obligation) of this Agreement; and
- (b) the breach is not capable of remedy; and
- (c) WU has given notice (making reference to this clause 14.3) of the breach to the LWS; and

- (d) At any time within the period of 12 months following WU's notice under clause 14.3.3 (c), there occurs a further material breach by the LWS of the same provision of this Agreement; and
- (e) WU has given a notice of such further breach to the LWS and a period of 7 Days has expired following such notice; or

14.3.4 where:

- (a) the LWS is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986, but subject to clause 14.4), or any voluntary arrangement is proposed in relation to it under Section 1 of that Act or it enters into any composition or scheme of arrangement (other than for the purpose of a bona fide solvent reconstruction or amalgamation); or
- (b) the LWS has a receiver (which expression shall include an administrative receiver within the meaning of Section 29 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or
- (c) the LWS has an administration order under Section 8 of the Insolvency Act 1986 made in relation to it; or
- (d) the LWS passes any resolution for winding-up (other than for the purpose of a bona fide solvent reconstruction or amalgamation); or
- (e) the LWS becomes subject to an order by the High Court for winding-up; or

14.3.5 where any of the Use Conditions under clause 3 are no longer fulfilled or in existence (save where WU has agreed to such in writing); or

14.3.6 where any of the provisions set out in Schedule 1 provides that WU shall have the right to termination this Agreement such circumstances as set out have been fulfilled and WU exercises such right; or

14.3.7 any material governmental or other licence, consent or authority required by the LWS to enable it to observe or perform any of its

obligations under this Agreement ceases to be in full force and effect so that it becomes unlawful for the LWS to observe or perform any of its obligations hereunder; or

- 14.3.8 the continuation of a Force Majeure event affecting the LWS for a period of time which in the reasonable opinion of WU materially prejudices compliance by the LWS of its obligations to WU.
- 14.4 For the purposes of clause 14.3.4(a), Section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted “£5,000”; and the LWS shall not be deemed to be unable to pay its debts for the purposes of that Section if any such demand as is mentioned in the said Section is being contested in good faith by the LWS with recourse to all appropriate measures and procedures.
- 14.5 Upon the occurrence of an LWS Default, and at any time after such occurrence at which the LWS Default is continuing, WU may give notice (“Termination Notice”) to the LWS to the effect that the LWS shall cease to be allowed use of the Supply System with effect from the date (which may be any date on or after the date on which the notice is given) specified in the notice.
- 14.6 Where WU gives a Termination Notice to the LWS, with effect from the date specified in the notice, this Agreement shall terminate.
- 14.7 The giving of a Termination Notice and the application of clause 14.6 shall not affect the rights and obligations of WU and the LWS under this Agreement accrued up to the date referred to in clause 14.6, which shall continue to be enforceable notwithstanding that clause.
- 14.8 Where WU has given a Termination Notice it shall be entitled to inform such persons as it thinks fit that it has done so, including the WSRA, the LWS Customers and any person (if such exists) from whom WU believe the LWS to have purchased water for delivery to the Supply System.
- 14.9 For the purposes of clause 14.3.2(a) and 14.3.3(a) the following breaches are excluded:

- 14.9.1 a breach which results from a breach by WU of this Agreement; and
- 14.9.2 a breach other than a wilful breach of a provision of this Agreement where this Agreement specifically provides some other remedy for such breach and such other remedy may reasonably be considered to be adequate in the circumstances.
- 14.10 For the purposes of clause 14.3 a breach is a material breach of a relevant provision of this Agreement where and only where:
 - 14.10.1 in the case of a material provision, the breach is wilful or reckless; or
 - 14.10.2 in the case of any provision, as a result of the breach WU or the LWS is in material breach of any material provision of this Agreement or any Legal Requirement or incurs any material liability or expense.

15. CONSEQUENCES OF TERMINATION

- 15.1 WU shall arrange for final meter readings to be taken and final invoices to be rendered.
- 15.2 Except where expressly stated to the contrary, the rights and obligations of the Parties under this Agreement shall cease immediately upon Termination however any Termination shall be without prejudice to the operation or continued operation of clauses 5, 9, 11, 15 or 17 of this Agreement and any other provisions of this Agreement which are capable of operating or expressed to operate after Termination.

16. INTERIM SUPPLIER

- 16.1 The LWS shall serve a notice on WU upon the LWS ceasing to supply water to any premises of an LWS Customer informing WU to that effect and providing WU with a final meter reading for such supply to those premises.

- 16.2 Upon the LWS ceasing to supply water to any premises of an LWS Customer the LWS shall remain liable for the Supply Charges for any water supplied to those premises until the earlier of:
 - 16.2.1 WU receiving a notice in accordance with clause 16.1 above; or
 - 16.2.2 WU receiving notice that the provisions of section 63AC (1) of the Act apply.

17. INFORMATION AND CONFIDENTIALITY

- 17.1 The confidentiality obligations contained herein shall supersede the terms of the Confidentiality Agreement between the Parties dated [*To be confirmed*].
- 17.2 Where under the provisions of this Agreement either Party is required to disclose information to the other the requirement shall be to only disclose information as is reasonably necessary to enable each Party to undertake their respective obligations under this Agreement.
- 17.3 The LWS and WU shall each procure that all confidential information which may already have come into its ownership, possession or control or of a Group company pursuant to or in the course of the negotiation, implementation or performance of this Agreement relating to the affairs of the other or its operation or management, or otherwise in connection with or in anticipation of the performance of this Agreement (hereinafter referred to as "the Confidential Information"), shall:
 - 17.3.1 not be used for any purpose other than the performance of this Agreement and the carrying on of a water undertaking business, the operation, administration, maintenance and development of the Supply System;
 - 17.3.2 not be disclosed during the continuance of this Agreement to any third party (other than a Competent Authority requiring such disclosure) except insofar as this may be required for the proper operation of this

Agreement, and then only under appropriate conditions of confidence approved by the other; and

- 17.3.3 not after Termination be used for any purpose whatever or disclosed to any third party.
- 17.4 Upon Termination, each Party shall procure that all documents and other written material (including material on disks and tape) containing Confidential Information relating to the other Party shall be returned (together with all copies thereof) to the other Party.
- 17.5 Each Party shall take such steps as the other Party may from time to time reasonably require:
 - 17.5.1 in the case of the LWS unless otherwise agreed by WU, to include in the contract of any person employed in performing work in connection with this Agreement, provisions restricting the disclosure or use of the Confidential Information, consistent with the terms of this Agreement and appropriate for the different persons or categories of persons engaged by the LWS in performing work in connection with this Agreement;
 - 17.5.2 to endeavour to procure (if requested) that any person or persons employed in performing work in connection with this Agreement stipulated from time to time by the other Party shall give a written undertaking direct to the other Party in a form and terms consistent with the terms of this Agreement;
 - 17.5.3 to inform the other Party immediately if it comes to the notice of a Party that any Confidential Information has been improperly disclosed or misused; and
 - 17.5.4 to prevent (including if necessary and if economically viable, by the commencement and prosecution of any legal proceedings the improper disclosure or misuse of any Confidential Information, and in this connection to promptly give to the other Party such information about any legal proceedings or proposed legal proceedings) of whatever kind; and at the expense of the other Party to take such steps in connection with any legal proceedings or proposed legal proceedings as the other

Party may from time to time reasonably and properly require and pursue such other remedies as the other Party may from time to time reasonably and properly require.

17.6 For the purposes of clause 17.3:

17.6.1 information obtained by a Party in the course of the negotiation of this Agreement shall be Confidential Information only insofar as such information was obtained in writing;

(a) the following information shall (without prejudice to the generality of clause 17.2) be treated as information relating to the affairs of an LWS:

(i) the identity, address and any other details of a supplier or LWS Customer, or any representative thereof, insofar as disclosed by the LWS to WU pursuant to or for the purposes of this Agreement;

(ii) (without prejudice to clause 17.3) information provided by the LWS to WU pursuant to Schedule 1 and details of the LWS's record of payment of charges under this Agreement

17.6.2 the following information shall (without prejudice to the generality of clause 17.3) be treated as relating to the affairs of WU:

(a) information provided by WU to the LWS to WU in relation to its assets, operations and performance pursuant to or for the purposes of this Agreement.

17.7 The terms of this Agreement are not Confidential Information.

17.8 For the avoidance of doubt, the provisions of this Agreement are without prejudice to the requirements of The Data Protection Act 1998 and the obligations of the Parties to comply with the same.

17.9 Where Confidential Information is disclosed by either Party as permitted under clause 17.3 the receiving Party shall (without prejudice to its obligations under this clause 17) take all reasonable steps to secure that the person to whom the information is disclosed:

- 17.9.1 is aware of the receiving Party's obligations under this clause 17 in relation thereto; and
- 17.9.2 does not use or disclose the information other than as is permitted of such Party in accordance with this clause 17.
- 17.10 Nothing in clause 17.3 shall apply:
- 17.10.1 to the disclosure or use by the receiving Party of Confidential Information to which the other Party has consented in writing;
- 17.10.2 to any Confidential Information which:
- (a) before it is obtained by the receiving Party is in the public domain; or
 - (b) after it is obtained by the receiving Party enters the public domain, in either case otherwise than as a result of a breach by the receiving Party of its obligations under this clause 17;
- 17.10.3 to the disclosure of any Confidential Information to any person if and to the extent that the receiving Party is required to make such disclosure to such person or such disclosure relates to a Dispute if such disclosure is made in good faith:
- (a) in compliance with the duties of the receiving Party under the Act or any other requirement of a Competent Authority; or
 - (b) in compliance with the conditions of the WU Licence or (as the case may be) the Instrument of Appointment held by the LWS or any document referred to in such Instrument of Appointment with which the receiving Party is required by virtue of the Act or such Instrument of Appointment to comply; or
 - (c) in compliance with any other Legal Requirement; or
 - (d) in response to a requirement of any stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or
 - (e) pursuant to any judicial or other arbitral process or tribunal having jurisdiction in relation to the receiving Party;

- 17.10.4 to any Confidential Information to the extent that the receiving Party is expressly permitted or required to disclose that information under the terms of any agreement or arrangement made with the other Party or to which the other Party is a party;
- 17.10.5 to the disclosure of Confidential Information to any lending or other financial institution proposing to provide or arrange the provision of finance to the receiving Party, where and to the extent that the disclosure of such information is reasonably required for the purposes of the provision or arrangement of such finance, and provided that the person to whom the information is disclosed undertakes in writing to and in terms reasonably satisfactory to the other Party to maintain the confidentiality of such information;
- 17.10.6 to the disclosure of Confidential Information to any insurer proposing to provide or arrange the provision of insurance to the receiving Party, where and to the extent that the disclosure of such information is reasonably required for the purposes of the provision or arrangement of such insurance, and provided that the person to whom the information is disclosed undertakes in writing to and in terms reasonably satisfactory to the other Party to maintain the confidentiality of such information;
- 17.10.7 to the disclosure of any Confidential Information to the WSRA, where the receiving Party considers in good faith that the other Party may be in breach of a condition of their Instrument of Appointment, to the extent reasonably necessary to draw such possible breach to the attention of the WSRA; and
- 17.10.8 to the disclosure of any Confidential Information to any person proposing to make a connection directly or indirectly to the Supply System, where and to the extent that the disclosure of such information is reasonably required for the purposes of supporting WU's charges or requirements to allow such proposed connection to the Supply System to be made and provided that the person to whom the information is to be disclosed is informed in writing of the confidentiality of such

information and that prior to disclosure, such person has entered into a confidentiality agreement with WU which prohibits use or disclosure of such Confidential Information in terms no less onerous than those contained in this clause 17.

- 17.11 Nothing in clause 17.3 shall apply to the disclosure by WU of Confidential Information to the WSRA where such information is accessible by the WSRA.
- 17.12 The provisions of clauses 17.3 to 17.11 shall continue, for a period of 3 years after the Discontinuance Date, to bind the LWS and WU, notwithstanding that the LWS has ceased to be a user of the Supply System and irrespective of the reason for such cessation.
- 17.13 Nothing in this Agreement shall be construed as requiring WU to disclose or use any information in breach of any requirement of the WU Licence.
- 17.14 Subject to clause 17.15.1, the data, including metering data, which is processed by or recorded or maintained by WU (including all intellectual property rights in such data) shall belong to WU; and subject to clause 17.15.2 WU may, but without prejudice to clause 17.3 or any other requirement of this Agreement, use and deal with such data as it thinks fit.
- 17.15 Where pursuant to this Agreement the LWS provides or arranges for the provision of data to WU:
 - 17.15.1 such data (as provided to WU by the LWS) shall belong to the LWS;
 - 17.15.2 the LWS hereby grants to WU a perpetual, non-exclusive, royalty-free licence (which shall survive the LWS Discontinuance Date) in respect of such data and all intellectual rights therein to use, copy, adapt and deal with such data for the purposes of performance and implementation of this Agreement and its water undertaking and for other purposes contemplated by this Agreement, but not otherwise;

17.15.3 clause 17.14 shall apply in respect of data derived (pursuant to any process) by WU from such data and in all compilations created by or on behalf of WU of such data.

18. EIR

18.1 The Parties recognise that they are subject to legal duties, which may require the release of information under the EIR and may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this Agreement in any way.

18.2 The Parties recognise that each request for information must be considered individually.

18.3 Notwithstanding anything in this Agreement to the contrary including, but without limitation, the general obligation of confidentiality imposed on the Parties pursuant to clause 17, in the event that either Party (“the Relevant Party”) receives a request for information under the EIR, the Relevant Party shall be entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the EIR PROVIDED ALWAYS that where the information requested is information that has been given to the Relevant Party by the other Party (“the Other Party”), the Relevant Party:

18.3.1 shall use reasonable endeavours to consult the Other Party as soon as reasonably practicable and the Other Party agrees to respond to such consultation within 7 Days of receiving the consultation notice;

18.3.2 shall not disclose any information that the Parties have agreed is Exempted Information and shall rely on the EIR Exemption, at the Other Party’s request and cost, and use reasonable endeavours to ensure that the Exempted Information remains withheld, including the lodging of any appeal against a decision by the Information Commissioner in relation to the request;

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

19. NOTICES

19.1 References in this clause 19 to a notice are to a notice or communication to be given by one Party to the other under this Agreement.

19.2 Any notice shall be in writing and shall be addressed to the recipient Party at the recipient Party's address, designated e-mail address or facsimile number referred to in Schedule 1 and marked for the attention of the representative (identified by name or title) referred to in that Schedule, or to such other address or facsimile number and/or marked for such other attention as the recipient Party may from time to time specify by notice given in accordance with this clause 19 to the other giving the notice.

19.3 The initial address, designated e-mail address or facsimile number of a Party, and representative for whose attention notices are to be marked, shall be as specified in Schedule 1.

19.4 Any notice given by delivery shall be given by letter delivered by hand, and any notice given by post shall be sent by first class prepaid post (airmail if overseas).

19.5 Any notice shall be deemed to have been received:

19.5.1 in the case of delivery by hand, when delivered; or

- 19.5.2 in the case of first class prepaid post, on the second Day following the day of posting or (if sent airmail overseas or from overseas) on the fifth day following the day of posting; or
- 19.5.3 in the case of e-mail or facsimile, on acknowledgement by the recipient Party's e-mail or facsimile receiving equipment.
- 19.6 Where a notice is sent by e-mail or facsimile:
 - 19.6.1 the Party giving the notice shall (but without prejudice to clause 19.5.3) if requested by the recipient Party, re-send as soon as reasonably practicable the notice by post; and
 - 19.6.2 in the case of a Termination Notice, WU shall in any event, within 2 Days following the sending of such e-mail or facsimile, send to the LWS a copy of the notice by first class prepaid post (airmail if overseas).
- 19.7 A Party may specify different addresses, e-mail addresses or facsimile numbers and representatives pursuant to clause 19.2 for the purposes of notices of different kinds or relating to different matters.
- 19.8 For the purposes of enabling Supply System communications to be given (where required or permitted to be so given) by telephone:
 - 19.8.1 Each Party shall provide to the other not more than 3 telephone numbers (or such other number as they may agree) and details (by name or title) of the representative to whom the Party giving such a communication should speak;
 - 19.8.2 Each Party shall use reasonable endeavours to ensure that a Party seeking to give such communication shall at any time be able to contact a representative (of the first Party) by means of one of such telephone numbers; and
 - 19.8.3 The Parties shall, if either of them shall so request, establish such further procedures as may be reasonable and appropriate for the purposes of ensuring:
 - (a) that a Supply System communication being given by telephone may be identified by the recipient as such; and/or

- (b) that such communications may be given securely, without delay and effectively.
- 19.9 Where a Party seeking to give a Supply System communication by telephone is unable to contact a representative of the receiving Party, such Party must give the communication by facsimile and the communication shall not be deemed to have been given except in accordance with clause 19.5.3.
- 19.10 Unless otherwise agreed between the Parties a telephone notice may not be given as a message recorded on a telephone answering device.
- 19.11 Where a Supply System communication is given by telephone:
- 19.12 WU shall promptly after the telephone communication is completed make and keep a record in which the time and content of the telephone notice is logged, but may do so by recording the telephone communication where it has notified the LWS (on the occasion or on a standing basis) of its intention to do so;
- 19.12.1 this Supply System communication shall be treated as given at the time at which the telephone communication is completed.
- 19.13 A Party may specify different telephone numbers and representatives pursuant to clause 19.8 for the purposes of receiving by telephone Supply System communications of different kinds or relating to different matters.

20. ASSIGNMENT

- 20.1 The LWS may only assign its rights and obligations under this Agreement to another company which is for the time being a member of the same group of companies as the LWS for the purposes of an internal reorganisation or group restructuring PROVIDED THAT:-
 - 20.1.1 the assignee company is a Licensed Water Supplier and has complied with all other requirements which (if the person were the LWS) it would be required under clause 3 to comply with ; and

- 20.1.2 the provisions of clause 23 are complied with in relation to the assignee company.
- 20.2 WU may only assign its rights and obligations under this Agreement to a person holds an Instrument of Appointment as an Undertaker under the Act.
- 20.3 Except as provided in this clause 20, a Party shall not assign or transfer and shall not purport to assign or transfer any of its rights or obligations under this Agreement.
- 20.4 Where a Party assigns its rights and obligations under this Agreement pursuant to this clause 20 the assigning Party shall be released from obligations under this Agreement arising after the time at which the assignment is effective, but shall remain liable for any obligations accruing up to such time.

21. WU PERFORMANCE

- 21.1 In relation to exercising its discretions and performing obligations under this Agreement WU shall at all times:
 - 21.1.1 act in a reasonable and prudent manner in relation to the management and operation of the Supply System; and
 - 21.1.2 act reasonably and in good faith in its dealings with the LWS and third party Licensed Water Suppliers;save that the foregoing shall not apply to the extent that:-
 - (a) there is any standard of performance already provided for by any Legal Requirement to which WU is subject; or
 - (b) WU would thereby be required to act in a manner which would conflict with any Legal Requirement.
- 21.2 For the avoidance of doubt the operation of this clause 21 shall not prevent WU from performing any obligation under this Agreement.

21.3 For the avoidance of doubt the provisions of this Agreement shall not prevent or constrain WU in providing access to or use of the Supply System to a third party Licensed Water Supplier.

22. MODIFICATION

22.1 Subject to the provisions of clause 24.5 no modification to Schedule 1 or the provisions of any Customer Annex (“Modification”) may be made by the LWS or WU otherwise than in accordance with the provisions of this clause 22.

22.1.1 If the LWS wishes to make a Modification it shall complete and submit to WU an application in writing.

22.1.2 WU shall make a Modification Offer to the LWS as soon as practicable and in any event not more than 3 months after receipt by WU of the application. The Modification Offer shall include details of any variations WU proposes to make to the Supply Charges. During such period WU and the LWS shall discuss in good faith the implications of the proposed Modification.

22.1.3 The Modification Offer shall remain open for acceptance for 3 months from the date of its receipt by the LWS unless either party makes an application to the WSRA, in which event the Modification Offer shall remain open for acceptance by the LWS until the date 14 Days after any determination by the WSRA pursuant to such application.

22.1.4 If the Modification Offer is accepted by the LWS Schedule 1 or the provisions of any Customer Annex as appropriate shall be varied to reflect the terms of the Modification Offer and the Modification shall proceed according to the terms of Schedule 1 or the provisions of any such Customer Annex as so varied.

22.1.5 If WU wishes to make a Modification to the Supply System that affects Schedule 1 or the provisions of any Customer Annex, WU shall advise the LWS in writing of any works which WU reasonably believes that the LWS may have to carry out as a result.

- 22.1.6 If the LWS considers that it shall be required to make a Modification as a result of the Modification proposed by WU then the LWS may as soon as practicable after receipt of the notice referred to in clause 22.1.5 and (save where the WSRA consents to a longer period) within the period stated therein (which shall be sufficient to enable the LWS to assess the implications of the proposed Modification and in any event shall not be less than 3 months) make an application to WU in accordance with clauses 22.1.1 to 22.1.4.
- 22.2 Subject to the payment of its reasonable costs, if any, as provided for in this clause WU undertakes to the LWS to provide all advice and assistance reasonably requested by the LWS to enable the LWS adequately to assess the implications (including the feasibility) of making a Modification affecting the Pipework, plant or other asset belonging to the LWS or LWS's Customer(s) (whether such Modification is to be made at the request of WU or of the LWS). If the proposed Modification affecting the LWS is or may be required as a result of a Modification proposed by WU then WU shall provide such advice and assistance free of charge. If the proposed Modification is or may be proposed by the LWS then WU may charge the LWS its reasonable costs for such advice and assistance. The provision of such advice and assistance shall be subject to any confidentiality obligations binding on WU and the LWS.
- 22.3 When giving such advice and assistance WU shall comply with good industry practice.
- 22.4 Provided always WU shall have no obligation to compensate the LWS for the cost or expense of any Modification required to be made by the LWS as a result of any WU Modification under clauses 22.1.5 and 22.1.6 where WU confirms in writing to the LWS that such Modification is essential in order to:

satisfy the requirements of another Licensed Water Supplier; or

maintain the integrity of the Supply System and/or the supply of drinking water to WU's customers that meets the Water Quality Regulations.

23. SECURITY DEPOSIT - *TO BE* AGREED SPECIFICALLY

- 23.1 The LWS shall provide a security deposit equivalent to 40 days of average consumption at the time of the premises of any LWS Customer transfers from WU to the LWS. Average consumption shall normally be based on the previous year's consumption for such premises or WU's estimate if a significant change has occurred, or is likely to occur, in the pattern of consumption.
- 23.2 The requirement to pay a security deposit will be waived if the credit rating of the LWS is BBB or better on the Standard and Poors rating or equivalent
- 23.3 WU may at its discretion, adjust the size of the security deposits as premises transfer between WU and the LWS. The transfer of premises shall not be allowed until the size of the security deposit has been amended.
- 23.4 Interest on security deposits will be calculated monthly and the resultant adjustment made to the monthly account. The rate of interest allowed will be [*To be agreed*]%
- 23.5 Any change in the LWS credit rating shall be notified to WU within 10 working days. If the LWS credit rating improves to Standard and Poors BBB then the LWS may request the return of the security deposit which will be paid, with appropriate interest, within 14 days of the request being received. If the LWS credit rating falls below Standard and Poors BBB, WU will bill the LWS as soon as practicable for 40 days average consumption. Such payments will be required as detailed in clause 5 above.]

24. GENERAL

- 24.1 This Agreement sets out the entire agreement between the Parties and supersedes all prior representations, arrangements, understandings and agreements between the parties relating to the subject matter hereof and subject to clause 24.2 sets forth the entire complete and exclusive agreement and understanding between the Parties hereto relating to the subject matter hereof. Neither Party has relied on any representation, arrangement, understanding or agreement (whether written or oral) not expressly set out or referred to in this Agreement.
- 24.2 Nothing contained in a document or referred to in this Agreement, beyond what is expressly contemplated by this Agreement as being contained in such document or is necessary for the purposes of giving effect to a provision of this Agreement, shall modify or have any effect for the purposes of this Agreement or be construed as relevant to the interpretation of this Agreement.
- 24.3 No failure to exercise nor any delay in exercising on the part of a Party to this Agreement any right of termination or any other right or remedy under this Agreement or otherwise howsoever arising shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies provided by law.
- 24.4 Nothing herein contained shall be construed as giving rise to the relationship of principal and agent (save as otherwise expressly provided herein) or partnership or joint venture.
- 24.5 No alternative or variation of the terms of this Agreement shall be effective unless agreed to by both Parties in writing expressed to be a variation to this Agreement and signed by a director on behalf of both Parties. WU and the LWS acknowledge that, because of the novel nature of this Agreement the provisions of Schedule 1 may be

inaccurate or deficient in some manner Accordingly, each WU and the LWS undertake to discuss in good faith the correct identification of the details of Schedule 1 with a view to amending the same as necessary to reflect the correct position. To the extent that agreement on the proposed alternative, variation or amendment cannot be reached within 3 months the matter shall be referred to Dispute Resolution in accordance with clause 10 of this Agreement and such details shall be amended accordingly following such agreement or determination (as the case may be).

- 24.6 If any term or provision of this Agreement shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Agreement but the validity and enforceability of the remainder of this Agreement shall not be affected.
- 24.7 Subject and without prejudice to the provisions of Schedule 3 the parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (collectively “proceedings”) arising out of or in connection with this Agreement may be brought in such courts.
- 24.8 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any proceedings in any such court in the jurisdiction as is referred to in clause 24.10 and any claim that any such proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any proceedings brought in the English courts shall be conclusive and binding upon such Party and may be enforced in the courts or any other jurisdiction.
- 24.9 Unless a right of enforcement is expressly provided for in this Agreement it is not intended that a third party shall have the right to enforce any term of this Agreement pursuant to the Contract (Rights of Third Parties) Act 1999.

- 24.10 The construction, validity and performance of this Agreement shall be governed in all respects by exclusive Jurisdiction of English law.
- 24.11 Every notice or other communication to be given by one Party to the other under this Agreement, shall be in the English language.

SCHEDULE 1 INFORMATION SCHEDULE
Text in italics is the guidance on what to include

Exit Point Information

1 Contact details

1.1 LWS name (including names of all of the parties in any consortium)

1.2 Contact Details

Address

Telephone no

Fax no

E-mail address

Company Registration Number

1.3 Details of LWS's Retail Licence

1.4 Nominated contact for LWS

Address

Telephone no

Fax no

E-mail address

1.5 Nominated contact for WU

Address

Telephone no

Fax no

E-mail address

2 Customer Transfer and Management

Customer Transfers

2.1 The LWS may transfer customers from WU to itself by making an Access Code Application in respect of each LWS Customer it wishes to transfer. Following the successful application, a new Customer Annex in respect of each new Customer will be signed by both parties and the

LWS may then initiate the transfer of the customer via the Customer Transfer Protocol (CTP).

- 2.2 Where WU has already been approached by a third party to transfer a customer to itself and the LWS subject to this Agreement has requested the transfer of the same Customer, WU will assume that the transfer is being made to the LWS making the initial approach unless or until evidence that the customer does not intend to transfer to that supplier is provided.
- 2.3 Where the LWS has requested the transfer of a customer from WU or another supplier and no action or ongoing communication over a signed Customer Annex is received and the CTP process has not commenced within a period of 3 months, WU will assume that the transfer will not go ahead and close negotiations and so the relevant Customer Annex will be revoked. If the LWS subsequently wishes to progress the application transfer, on request WU will offer a revised Customer Annex [within] to take account of any changes that may have occurred in relation to charges or services available.

Customer Annexes

- 2.4 Attached are individual Customer Annexes in respect of all LWS Customers covered by this Agreement.
- 2.5 Customer Annexes in respect of Individual LWS Customers covered by this Agreement may be added to or removed from this Agreement without the need to renegotiate this Agreement where the terms and conditions (other than the Supply Charges payable) not covered by the Customer Annexes for a wholesale supply in respect of the totality of LWS Customers remains the same.
- 2.6 Where the LWS advises WU that it wishes to add a customer to the Schedule, it will notify WU at the earliest opportunity. WU will provide the LWS with a draft Annex in respect of each new Customer on completion of the application follow the process set out in the WSRA's Access Code Guidance.

- 2.7 Following the signing of a Customer Annex in respect of an LWS Customer by both Parties, the Customer Annex will be appended to this Agreement on the completion of the successful transfer from one supplier to the LWS via the CTP.
- 2.8 A wholesale supply cannot be provided in respect of a customer until such time as a Customer Annex in respect of that customer has been signed by both Parties and a successful transfer of the customer to the LWS is achieved via the CTP.
- 2.9 Where the LWS wishes to vary the terms and conditions of service in respect of any LWS Customer covered by this Agreement, the conditions set out in clause 25 shall apply.
- 2.10 In the event that at any time there are no Customers covered by this Agreement and the LWS anticipates that it will require a wholesale supply in respect of customers within the WU appointed area in the future, the Agreement may remain in place for the term set out in clause 2 although WU reserves the right to terminate it after a period of 6 months' inactivity by following the process set out in clause 16.

Customer Management

- 2.11 WU shall use all reasonable endeavours to ensure that the LWS Customers receive the same level of service, relating to the supply system as that received by WU existing customers.
- 2.12 Unless detailed in this Agreement the LWS shall be responsible for all other water and sewerage services received by LWS Customers.
- 2.13 WU and LWS shall liaise on issues where the actions of each other may pose a threat to service standards provided by either Party.
- 2.14 The LWS shall be the first point of contact for all enquires from LWS Customers, including emergencies, general enquiries and complaints.
- 2.15 WU shall investigate any complaints regarding the Supply System and its operation and will report any findings to the LWS and if requested to its LWS Customer(s). The timescales for responding to such

complaints are [*to be agreed*].

- 2.16 Where there are to be planned interruptions to supply then WU shall inform the LWS and the LWS shall inform LWS Customers. However, where there is an unplanned interruption resulting in emergency action being required then WU may contact the LWS Customers directly and inform the LWS of this.
- 2.17 Communication with the LWS Customer shall remain the responsibility of the LWS, unless direct contact by WU is necessary for the carrying out of works.
- 2.18 In the first instance all complaints and queries from LWS Customers should be directed to the LWS. The LWS shall then forward any operational complaints which have a bearing on WU to WU.
- 2.19 The LWS shall supply LWS Customers with the correct contact details and procedures, along with an explanation of WU's responsibilities with regard to problems with the Supply System.
- 2.20 In the event of LWS Customer(s) contacting WU erroneously, and vice versa, each Party shall provide the LWS Customer with the appropriate correct contact details.
- 2.21 In the event that an LWS Customer wishes to revert from the LWS back to WU for its water supply services, it shall be the responsibility of WU to notify the LWS, along with the transfer date, within 30 Business Days of notification in writing by the LWS Customer of such wish.
- 2.22 In the event of Termination or the LWS ceases trading, the LWS shall notify LWS Customers that their water supply service will be undertaken by WU, along with relevant contact details for WU. The LWS shall also notify WU of the need for LWS Customers to transfer and shall supply a full and up to date list of LWS Customer details, along with a date on which transfer shall take place. In any event WU shall notify LWS Customers of the position within 24 hours of receiving such notification from the LWS.
- 2.23 The LWS shall be responsible for any financial enquiries from LWS

Customer(s), and shall be responsible for billing and revenue collection activities in relation to the same.

- 2.24 The LWS shall inform WU of LWS Customers' names, and addresses and other details, and of any changes in the LWS Customer base using the Network, reflecting WU's Supply System management role. The LWS shall inform WU if any additional LWS Customers are served within an existing premises supplied by the LWS, or of any modifications to buildings, including any alterations to existing premises that result in the creation of additional separately occupied properties or the merger of previously separately occupied properties. No alterations to pipework shall be made to supply water to new buildings or parts of buildings within an existing premises supplied by the LWS without the approval of WU.
- 2.25 The LWS shall be responsible for supplying WU with such details as WU requires to ensure that vulnerable and other similar customers are protected. This shall include, but is not limited to, customers who are special consumers under the terms of Condition R of WU's appointment.
- 2.26 Billing and LWS Customer information shall be supplied to WU to enable charging for sewerage services. Where the LWS operates in a third party Undertaker's sewerage undertaking area to enable that Undertaker to charge for sewerage services relevant billing and LWS Customer information shall be passed to the third party Undertaker to enable it to charge for sewerage services.

Customer protection

Large scale customer warning procedures [to be agreed if necessary]

Emergency compensation payments [to be agreed]

3 Metering and Meter Reading

- 3.1 Except where there are existing meters in place, WU will install and maintain the Output Meter and any associated apparatus at or as close as reasonably practicable to each Exit Point. All metering equipment will comply with the relevant water meters legislation. Where the Output Meter(s) are located within the LWS Customer's premises, the LWS shall ensure that arrangements for its access to the meter(s) remain in place for a meter reading to be obtained.
- 3.2 The Output Meter(s) and any associated apparatus remain the property of WU. If the LWS wishes to fit telemetry or other flow management devices to the Output Meter(s), it will obtain permission from WU first.
- 3.3 Where the Output Meter in place is unable to support the format of telemetry or flow management that the LWS requires, the LWS may request WU to exchange the Output Meters for one that will support its device. In carrying out such an exchange WU will charge the LWS for the cost of the meter(s) and associated work and apparatus.
- 3.4 Where either Party has undertaken within this Agreement to take readings from the Output Meter(s) at the frequency set out in the Customer Annex or where either Party obtains such a reading from the LWS Customer, it will provide that reading to the other Party and to the relevant sewerage undertaker at no cost. Any additional meter readings taken at any time or provided by any party will similarly be passed to the other Party and to the sewerage undertaker.
- 3.5 Meter readings will be provided by LWS or its contractor on a monthly basis and submitted to WU on the 14th day of every calendar month at the frequency agreed and set out in the Customer Annex. Readings will be in the following format.

Meter Reference Number	Reading	Date of reading	Previous reading	Reading status* (A, C, U, LE, CE, UE,)
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Reading Status is as follows

- A Actual read from LWS or its agent
- C LWS Customer read
- U WU read
- LE LWS's estimate
- CE LWS Customer's estimate
- UE WU estimate

The reading will be sent by [e-mail] in a [csv text file] format to [e-mail address] within [number of] days of the meter reading being taken.

4 Disconnection of the LWS Customers

- 4.1 WU may disconnect the supply to a LWS Customer(s) subject to this Agreement during planned works where notice has been given to the LWS and / or the LWS Customer or without prior notice during an emergency or unplanned works where it is necessary to interrupt or disconnect the supply for operational reasons.
- 4.2 WU will not disconnect the supply to the LWS Customer(s) as a result of any default on payment by the LWS where the Agreement remains in force and is not terminated or suspended.
- 4.3 WU will not disconnect a supply to the LWS Customer(s) at the request of the LWS in the event of any default of payment or other dispute between the LWS and the LWS Customer(s).
- 4.4 WU will not disconnect a supply to the LWS Customer(s) at the request of the LWS except where the request for disconnection is supported by signed notice from the LWS Customer(s).

- 4.5 The LWS may not use WU apparatus including any stop tap or valve to effect the disconnection of the LWS Customer(s) except where such disconnection is required in the event of an emergency and where any such disconnection is made by the LWS it will notify WU immediately using the contact points set out in the Customer Annex in respect of that LWS Customer.
- 4.6 The LWS shall make a request in writing to WU in the event that the LWS wishes to disconnect an LWS Customer and has power to do so.
- 4.7 The LWS shall pay WU's costs of disconnection where this can be carried out by WU.

5 Exit Information

Unmeasured Water Taken

- 5.1 Where water off-taken from the Supply System has been taken in breach of this Agreement at or at a point downstream of the point of off-take at a meter supply point, insofar as the quantity of water so taken has not been properly metered such adjustments shall be made in respect of the quantities treated as off-taken from the Supply System by the LWS as are required to ensure that the quantity of water estimated to be so taken is treated as off-taken by the LWS.

Fire Fighting

- 5.2 Where water is used by the LWS Customer or the LWS for the purposes of fire fighting or the testing of fire fighting equipment WU will allow the LWS a credit for the volume of such water used providing that; the LWS notifies WU in writing of the volume of water used and the dates on which it was used within 30 days of such use; and any additional evidence of such use that WU may reasonably require. Where notice is received from the LWS after an invoice has been issued by WU the invoice will remain fully payable and any credit allowed by WU will be made to a subsequent invoice.

Connection

- 5.3 The LWS Customer's connection together with that part of the service pipe which lies between the Exit Point and the water main from which the supply is taken will become the property of WU who shall be responsible for its maintenance.
- 5.4 The LWS shall install an Exit Point flow meter (to an agreed specification at the LWS's expense) to monitor flow from the Supply System at the Exit Point. Ownership of the flow meter shall be vested in WU. This flow meter shall be maintained to WU's normal standards and used in the calculation of all Exit Point volumes and flow rates for all contractual purposes. Any dispute shall be dealt with in accordance with Schedule 3. The LWS shall pay for the installation and maintenance of telemetry equipment (to an agreed specification) to transmit data from this flow meter to WU. Ownership of Exit Point flow meter information shall rest with WU.

Interference with meters

- 5.5 The LWS shall take all reasonable steps to ensure that:
- no person improperly breaks any seal affixed to any part of the Exit Point meter or tampers or otherwise interferes with any Supply Meter Installation; and
- upon each visit to the Exit Point meter by any representative of the LWS or by any person (or by WU where it is engaged as a meter reader) engaged by the LWS to obtain an on-site Meter-Read, there is promptly reported to WU any evidence which is or ought (having regard to the purpose for which that person is visiting the premises) to be apparent to such representative or person of any such seal or any such tampering or interference or otherwise of theft or attempt theft of water.

Other information and comments

- 5.6 [*Details of any other case specific Exit Point information relevant.*]

SCHEDULE 2 Charges

1. General

The terms of this Agreement are subject to the payment by the LWS of the charges specified in this Schedule.

1.1 Definitions

1.1.1 Connection and Supply System Extension/Reinforcement Charge

The Connection and Supply System Extension/Reinforcement Charge if applicable is payable in respect of the cost of any Works incurred by WU where necessary, in respect of reinforcement of the Supply System to accommodate the supply to LWS's Customer(s) via the Supply System. "Works" includes (inter alia) materials, design and supervision of construction, acquisition of rights or interest in land, and the reinstatement of any land.

1.1.2 Wholesale Access Charge

The charge for the provision of wholesale supplies to the LWS for the duration of this Agreement.

1.1.3 WU Standard Retail Tariffs

In the event that the LWS places a burden on the Supply System, the cost of which is not otherwise recovered for by way of other charges specified in 1.1 above, then the LWS shall pay for that burden in accordance with the WU standard retail tariffs as set out in the Charges Scheme.

1.2 Billing and Debt

1.2.1 WU and the LWS shall be responsible for billing their respective customers and each party shall be responsible for the collection of monies due in respect of those bills.

SCHEDULE 3
Dispute Resolution

1. Introduction

- 1.1 This Schedule 3 provides for the resolution of certain disputes between WU and the LWS.
- 1.2 For the purposes of this Schedule:
 - (a) a “dispute” is any dispute or difference arising between WU and the LWS or third party Licensed Water Suppliers under or in connection with this Agreement, and the WU Network Access Code;
 - (b) in respect of any dispute “parties” means WU and the LWS or third party Licensed Water Suppliers party to such dispute, and “party” shall be construed accordingly.

2. Dispute resolution

- 2.1 For the purposes of this Agreement “Expert Determination” means the determination of an expert pursuant to section 3.
- 2.2 Where this Agreement provides or the parties have agreed that a dispute is to be referred to or resolved by Expert Determination:
 - (i) section 3 shall apply; and
 - (ii) subject to section 2.4, no party shall commence proceedings in any court in respect of or otherwise in connection with such dispute.
- 2.3 The parties may agree to refer any dispute to mediation in accordance with section 4.
- 2.4 Nothing in this Schedule shall prevent any party from seeking interim or interlocutory relief in any court.
- 2.5 Except where otherwise provided in this Schedule, any notice, submission, statement or other communication relating to any dispute to be given pursuant to this Schedule by or to any party, an expert, a mediator, the disputes secretary or a third party Licensed Water Supplier shall be in writing.

- 2.6 WU shall designate one or its employees as secretary (“disputes secretary”) for the administrative purposes provided in this Schedule and may from time to time change the person designated as disputes secretary.
- 2.7 WU shall keep the LWS informed of the identity of the disputes secretary for the time being.
- 2.8 The disputes secretary shall not represent WU in any dispute under this Schedule.

3. Expert Determination

- 3.1 A dispute which is to be referred to or resolved by Expert Determination shall be determined by an individual appointed as expert in accordance with this section 3.
- 3.2 In this section 3 a “listed expert” is an individual whose name is for the time being on the list of experts maintained under section 4.
- 3.3 No person shall be nominated as a proposed expert under section 4 unless that person has the requisite qualifications to resolve a dispute referable under this Agreement to Expert Determination by virtue of his education, experience or training.
- 3.4 Any party to a dispute which is to be resolved by or referred to Expert Determination may give notice of the dispute in accordance with section 3.5.
- 3.5 The notice shall be given to each other party and shall:
 - (a) provide brief details of the issues to be resolved; and
 - (b) nominate three persons as proposed experts (who may but need not be listed experts).
- 3.6 Within 5 Business Days after any notice under section 3.4 was given, each party (other than the party giving such notice) shall by notice to each other party nominate three persons as proposed experts (who may but need not be listed experts).

- 3.7 The parties shall endeavour within 10 Business Days after the notice under section 3.4 was given to agree upon the selection of an expert, and may meet for this purpose.
- 3.8 If within 10 Business Days after the notice under section 3.4 was given the parties shall not have agreed upon the selection of an expert, each shall within a further 5 Business Days give to the others a notice (“preference notice”) specifying the names of five listed experts in order of preference and assigning to each a number (“preference number”) from 5 (the most preferred) to 1 (the least preferred), and sections 3.9 and 3.10 shall apply.
- 3.9 The listed expert whose name appears in the majority of preference notices, or if more than one appears the preferred listed expert (in accordance with clause 3.10.1(a)), shall be selected.
- 3.10 For the purposes of section 3.9:
- 3.10.1 “preferred listed expert” means the listed expert with the greatest aggregate preference number;
- 3.10.2 a listed expert’s “aggregate preference number” is the aggregate of the preference numbers assigned to him under each preference notice; and
- 3.10.3 where two or more experts have the same aggregate preference number they shall be ranked in the order in which their names appear in the list of experts maintained under section 4.
- 3.11 At the request of any party, all parties shall submit a copy of their preference notice to the disputes secretary who shall ascertain and inform the parties of the selected expert in accordance with this section.
- 3.12 Upon the selection under this section of an expert, the parties shall forthwith notify the expert selected of his selection and request him to confirm within 5 Business Days whether or not he is willing and able to accept the appointment.
- 3.13 The notification to the expert shall include the following:
- (a) the names of the parties and a summary of the disputes;
 - (b) a request that the expert provide the confirmation required under section 3.3.1;
 - (c) a request for confirmation of the expert’s scale of fees;

- (d) a statement that the expert's fees and expenses shall be paid as provided in section 3.34 to 3.37;
 - (e) a statement that the information disclosed in the notification is confidential and that it should not be disclosed, copied or revealed whether the appointment is accepted or not;
 - (f) a copy of this Schedule; and
 - (g) a request for confirmation that the expert is able and willing to act in accordance with the procedure set out herein.
- 3.14 If the selected expert is unwilling or unable to accept the appointment, or shall not have confirmed his willingness and ability to accept such appointment within the period required under section 3.12, or the amount of his remuneration or terms of his appointment are not agreed within the period required under section 3.15, the parties shall endeavour to agree upon the selection of another expert within 3 Business Days, failing which another expert shall be selected in accordance with section 3.8 to 3.10.
- 3.15 The parties shall use all reasonable endeavours to ensure that the terms of the contract of appointment of the expert are agreed with him within 10 Business Days following his confirmation of ability and willingness to act, and agree that if the parties are unable to agree with the expert the amount of his remuneration or any other terms of his appointment then:
- (i) if one or more of the parties is willing to agree what the expert proposes, such amount or terms shall be determined by the President for the time being of the Law Society whose decision shall be final and binding on the parties to the dispute and whose costs of such reference shall be borne by the parties to the dispute equally; and
 - (ii) if none of the parties is willing to agree what the expert proposes, or the expert is not willing to agree what is determined pursuant to clause (i), another expert shall be selected in accordance with section 3.14.
- 3.16 The expert shall be an independent contractor and the relationship of the parties and the expert shall in no event be construed to be that of principal and agent or master and servant.

- 3.17 The expert shall neither act as an arbitrator (and accordingly the provisions of the Arbitration Acts 1950-1996 shall not apply) nor as mediator.
- 3.18 No later than 5 Business Days following his appointment, the expert shall by giving reasonable notice to each party convene a meeting with the parties at which he shall raise any matters upon which he requires clarification and discuss with the parties any additional procedural requirements he or they may have.
- 3.19 The parties shall, not later than 10 Business Days after the appointment of the expert, submit to the expert and to each other party written submissions of not more than 10 pages in length together with all supporting documentation, information and data which they wish to submit in respect of the dispute; and the parties may also submit a statement of facts which they have agreed between themselves to the expert.
- 3.20 Each party may, not later than 20 Business Days after the appointment of the expert, submit to the expert and each other party written submissions of not more than 10 pages in length, together with any additional supporting documentation, information and data, in reply to the submissions made under section 3.19.
- 3.21 The expert shall disregard any documentation, information, data or submissions supplied or made (other than pursuant to section 3.26) by any party later than 20 Business Days after his appointment unless the same are provided in response to a request from the expert.
- 3.22 If the expert shall wish to obtain independent professional and/or technical advice in connection with the dispute he shall first obtain the consent (not to be unreasonably withheld) of the parties.
- 3.23 The expert may at his discretion and at any time request information from any of the parties orally but shall only do so in the presence of the other parties.
- 3.24 At any time after the period referred to in section 3.20 expires, with the written consent of the parties, the expert may (but shall not be required to) convene a hearing upon giving the parties reasonable notice.

- 3.25 The expert shall provide a draft of his determination, which shall be a report in writing giving reasons for the determination, to the parties not later than 35 Business Days following his appointment.
- 3.26 Each party may, within 10 Business Days following delivery of the draft determination, submit to the expert any documentation, information, data, submissions or comments not exceeding 5 pages in length on or in respect of the draft determination.
- 3.27 The expert shall submit his final determination, which shall be a report in writing giving reasons for his determination of the dispute, to the parties not later than 50 Business Days following his appointment.
- 3.28 If the expert fails to submit the final determination by the time required under section 3.27 at the request of any party another expert may be appointed in accordance with the provisions of this Schedule and the appointment of the previous expert shall cease unless before the appointment of the new expert, the previous expert shall have submitted his final determination hereunder, in which case the new expert shall be forthwith informed that his services shall not be required.
- 3.29 The expert's final determination shall (unless given after the appointment of another expert under section 3.28) be final and binding on the parties except in the event of fraud or where it is so clearly erroneous on its face that it would be unconscionable for it to stand, in which case another expert may be appointed in accordance with the provisions of this Schedule.
- 3.30 Except as provided in section 3.29, no party shall commence proceedings in respect of or refer to any court any finding by the expert, whether made at any time after his appointment or in his determination, as to the dispute or the construction of or otherwise in respect of this Agreement.
- 3.31 The expert shall confirm to the parties before his appointment that he does not hold any interest or duty which would or potentially would conflict with the performance of his duties under his contract with the parties.

- 3.32 The parties and the expert shall keep the fact that the Expert Determination is taking place and its outcome confidential.
- 3.33 All documentation, information, data, submissions and comments disclosed or delivered whether in writing or otherwise by any party to the expert or to any other party either in connection with or in consequence of the appointment of the expert shall be regarded and treated as confidential; and the expert and the parties shall not disclose any or all of the documentation, information, data, submissions and comments including the contents and copies thereof in any form except in connection with any proceedings in any court which a party is not prohibited under this Schedule from commencing.
- 3.34 Each party shall bear its own costs including without limitation costs of providing documentation, information, data, submissions or comments under this section 3 and all costs and expenses of all witnesses and other persons retained by it.
- 3.35 The expert shall provide the parties with a breakdown of:
- (a) his fees; and
 - (b) his reasonable expenses, including the fees of and reasonable expenses incurred by any technical or professional advisers.
- 3.36 The expert's fees and expenses under section 3.35 shall be payable by the parties in equal amounts, unless the expert (having regard to the conduct of the parties with respect to the dispute in question) shall direct in his final determination that such costs and expenses should be borne by one or some only of the parties, in which case the parties shall pay such fees and expenses in accordance with such direction.
- 3.37 If the terms of the expert's appointment provide for the payment of his fees and expenses before the delivery of the final determination, the parties shall pay such fees and expenses in equal amounts, and shall make adjustment payments inter se following any such direction as is referred to in section 3.36.
- 3.38 The expert shall not be held liable for any act or omission unless it shall be shown that the expert has acted fraudulently or in bad faith.

4 List of Experts

- 4.1 The disputes secretary shall maintain a list of experts comprising (except in the case of any casual vacancy) 10 persons available to act as experts in accordance with section 3 and listed in alphabetical order by surname.
- 4.2 No person shall be nominated as expert under this section 4 unless he has first confirmed in writing to the disputes secretary that he accepts his nomination.

5 Mediation

- 5.1 A dispute which is to be referred to mediation shall be referred to a single mediator who shall explore the interests of the parties to the dispute and encourage the parties to resolve the dispute in light of such interests.
- 5.2 Within 5 Business Days after agreeing to refer a dispute to mediation the parties shall meet and use all reasonable endeavours to agree upon a person to act as mediator, unless they have agreed upon a mediator when agreeing so to refer the dispute.
- 5.3 Where the parties agree upon a mediator they shall request such person to accept appointment as mediator, and shall use all reasonable endeavours to agree (between themselves and with the mediator) upon the terms of his appointment.
- 5.4 A person shall be treated as appointed as a mediator for the purposes of this section 5 when he has confirmed his acceptance to act as mediator in accordance herewith.
- 5.5 Within 5 Business Days following his appointment, the mediator shall require each party to provide him with a written summary of the dispute, which written summary shall not exceed 5 pages.
- 5.6 The mediator may in his discretion:
 - 5.6.1 request any party to provide him with copies of any documentation or information which he believes shall assist to explain any such summary; and

- 5.6.2 provide any such written summary and/or any information or copy documentation received under 5.6.1 to the other party(ies) to the dispute.
- 5.7 Within 10 Business Days following his appointment, the mediator shall require each party to provide him with a written summary of the dispute, which written summary shall not exceed 5 pages.
- 5.8 Each party shall attend the meeting with the mediator with a maximum of three representatives, one of whom shall be a person with decision making authority in relation to the subject matter of the dispute and one of whom may be the legal adviser of that party.
- 5.9 No additional persons shall attend without the prior written consent of the mediator.
- 5.10 The mediator may convene more than one meeting with the parties but shall not convene any meetings later than 40 Business Days following his appointment, unless the parties agree otherwise.
- 5.11 The mediator may at his discretion meet each party on his own whether during a meeting attended by the other parties or otherwise, but he shall not disclose to any other party matters disclosed to him in such circumstances without the consent of the disclosing party.
- 5.12 At any meeting attended by the parties, the mediator may require each party to make a brief presentation of its case and he may also require the other parties to reply to another party's presentation.
- 5.13 The mediator shall not act as an arbitrator (and accordingly the provisions of the Arbitration Acts shall not apply).
- 5.14 The mediator shall encourage the parties to resolve the dispute by agreement and may also discuss informally with any party his own views as to the merits of the dispute.
- 5.15 If the dispute remains unresolved 45 Business Days after the mediator's appointment the mediator shall, if so requested by any party, advise the parties of his views and may, at his discretion, also inform them of what he considers to be a fair settlement of the dispute.
- 5.16 No party shall be bound to adopt the views or advice expressed or provided by the mediator.

- 5.17 If the dispute is resolved or the parties accept the views and advise of the mediator under section 5.15, the parties shall use all reasonable endeavours, within 5 Business Days after such resolution or acceptance, to enter into a settlement which shall:
- (i) set out the terms accepted by the parties or on which the dispute was resolved; and
 - (ii) contain provisions of confidentiality similar to those set out in sections 5.19 and 5.20.
- 5.18 Such settlement agreement shall be made pursuant to English law and courts in England shall be given exclusive jurisdiction over any dispute arising from the settlement agreement.
- 5.19 The mediator and the parties, their representatives and advisers and any person connected in any way with the mediation shall keep confidential the fact that the mediation is taking place, and its outcome, and all documents, submissions, statements, information and data including anything revealed orally or otherwise during the mediation and any settlement agreement except as may be necessary for implementation or enforcement of the settlement agreement.
- 5.20 All documents and information prepared by a party for and disclosed in the mediation, and all discussions which take place with a party during the course of the mediation, shall be afforded the same protection from discovery as “Without Prejudice” negotiations in proceedings in court; provided that this shall not preclude any document, which may have been disclosed during the mediation but was not prepared solely for use in the mediation, from being discoverable in any proceedings.
- 5.21 The parties shall unless they agree otherwise bear their own costs and expenses of whatsoever nature of the mediation.
- 5.22 The parties shall bear the fees and expenses of the mediator and all administrative costs arising from the mediation equally.
- 5.23 The mediator shall not act in any subsequent legal or similar proceedings in respect of the dispute in which he acted as mediator.
- 5.24 The mediator shall not be held liable for any act or omission unless it shall be shown that he has acted fraudulently or in bad faith.

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

for and on behalf of **Bristol Water plc**)

for and on behalf of **WSL Limited**)

ANNEX 1– Feasibility Study

ANNEX 2 – Customer Annex

- 1 LWS Customer Name (including names of all of the parties in any consortium)

- 2 Premises Details
 - Address
 - Telephone no
 - Fax no
 - E-mail address

- 3 Exit Point 10-digit grid reference

- 4 Anticipated demand
 - [Average Day
 - Peak Day
 - Peak Hour
 - Average Week
 - Peak Week
 - Annual Volume]

- 5 Charging Terms and Conditions

[Connection and Supply System Extension/Reinforcement Charge]

By [] the LWS shall pay a sum, or provide equivalent third party security, equal to [£] being the agreed initial estimate of the Connection and Supply System Extension/Reinforcement Charge, from which sums shall be drawn down by WU to meet necessary payments as the construction continues. WU shall commence these works on [to be agreed]. The actual Connection and Supply System Extension/Reinforcement Charge shall be calculated on the completion of the works and either a further sum shall be paid by the LWS or be re-paid by WU (in either case within 30 Days of notification by WU of the costs of the works). [Notwithstanding these provisions, the LWS may wish to choose

who carries out the greater part of any necessary work on connections, in accordance with WU self lay policies.]

Wholesale Access Charge

The LWS shall pay to WU a charge in accordance with Table 1 below

[Table 1]

[Note - there shall be case specific charges presented in a format by reference to the indicative charges shown in the WU Network Access Code from time to time applying]

The meter readings for all meters specified will be provided monthly by LWS to Uuw. The meter reading data will specify the meter number, the date and time of the reading.

A meter reading will be taken on the last working day of the calendar month

Meter readings will be sent by e-mail to [] within 3 working days of the reading being taken

Where no meter reading has been provided within 4 working days of the calendar month end, WU will send an estimated invoice which will be payable in the normal way

In the event of a meter reading not being provided for to consecutive month, WU may read the meter, charge £[] for this service and invoice the LWS based on that reading

WU may undertake a check reading at its discretion.

6. Duration

7. Existing Special Customer requirements