

DATED

2007

SOUTHERN WATER SERVICES LIMITED

and

DRAFT Master Wholesale Supply Agreement

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NOW IT IS HEREBY AGREED AS FOLLOWS

1. DEFINITIONS

1.1 In this Agreement the following terms shall have the following meanings:-

Term	Definition
the Act	The Water Industry Act 1991
Access Code Application	Any application for the transfer from SWS to LWS made in accordance with guidance issued by WRSA as amended from time to time
Business Day	a Day other than a Saturday or a Sunday or a public or bank holiday in England
Charges	The Charges levied by SWS for access to the Supply System as set out in Schedule 2
Charges Scheme	SWS's published Charges Scheme under the provisions of the Act detailing the charges it shall make for providing its services
Combined Licence	Shall have the meaning as set out in Section 17A (6) of the Act
Competent Authority	The WRSA 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 SWS or an LWS or the subject of this Agreement

Term	Definition
Confidential Information	Shall have the meaning given in clause 18.
Connection Charge	The charge payable to SWS to cover the direct cost of works and materials required to connect a premises to its main
Customer Annex	A completed document signed by the LWS and the SWS in the form of the pro forma set out in Schedule 1 relating to each and every LWS Customer in the SWS area of appointment for which LWS requires a wholesale supply of water.
Customer Transfer Protocol	The customer transfer protocol published by Ofwat in November 2005 as amended from time to time
Day	One calendar day
Termination	Shall have the meaning given in clause 15.1
Discontinuance Notice	Shall have the meaning given in clause 15.2
Dispute	Disagreement between the Parties
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

Term	Definition
	falling within a EIR Exemption
Exit Point	The controlling stop valve being the point in the Supply System where the LWS is permitted to draw off an agreed supply to service its customer(s)
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
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

Term	Definition
LWS Customer(s)	Person(s) being provided with water services by the LWS via a Wholesale Supply Agreement
LWS Default	Shall have the meaning given in clause 15.3
LWS Equipment	The telemetry or flow management equipment installed by the LWS in accordance with Schedule 1
Metering	Measurement of flow
Modification	Shall have the meaning given in clause 23
a Party	By reference to this Agreement shall mean SWS or the LWS and “the Parties” shall mean SWS 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 SWS
Plant	Mechanical and electrical equipment forming part of SWS’s assets
Read Window	A 5-working day period during a Month which shall comprise the first working day of the month together with the 2 previous working days, and the 2 subsequent working days.
Regulator	Any of those bodies with jurisdiction to determine regulatory issues, including but not limited to the WSRA, the Secretary of State and the Chief Inspector of the Drinking Water

Term	Definition
	Inspectorate
Relevant Customers	Shall mean customers as defined by Section 17A(3)(a) and (b) of the Act
Retail Licence	Shall have the meaning as set out in Section 17A (4) of the Act
Supply System	Shall mean the supply system of SWS by reference to the meaning given to the supply system of a water undertaker in Section 17 B (5) of the Act
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
Water Meter	A device installed at an Exit Point to measure the quantity of water delivered to a 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 2000 and all amendments
Water Services	The collection, treatment and distribution of water for domestic and non-domestic purposes

Term	Definition
	as defined by the Act
Water Services Regulation Authority (WSRA)	A government body which serves as the economic regulator for the water industry in England and Wales
Water Supply Licence	Shall have the meaning as set out in Section 17A of the Act
The SWS Licence	The Instrument of Appointment held by SWS 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 date first mentioned above and shall remain in force for a period of 25 years
- 2.2 In the interests of maintaining an efficient, equitable and sustainable use of the Supply System in accordance with guidance issued by a Competent Authority, three months before each five year anniversary of the commencement of this Agreement or on the notice of a Competent Authority of the coming into force of a change in Legislation affecting this Agreement the Parties shall enter into discussions regarding the operation of the Agreement since the commencement of the last review (as appropriate) and its possible amendment for the next five year period
- 2.3 In particular the parties shall take into account:

- 2.3.1 The experience of the Parties in operating this Agreement for the previous period;
- 2.3.2 Any changes since the last review of changes in Legislation;
- 2.3.3 Any changes in non statutory guidance issued by a Competent Authority;
- 2.3.4. Current practice in the water industry in the United Kingdom regarding the operation of a Wholesale Supply Agreement
- 2.4. The Parties shall use their best endeavours to come to an agreement regarding the amendments (if any) requested by a Party pursuant to clause 2.3 above, and any such agreement shall be recorded in writing and signed on behalf of both parties and shall have the effect of amending this Agreement from the beginning of the next review period. If amendments to the Agreement are requested by one Party and an agreement is not reached at least 6 (six) weeks prior to the relevant anniversary then the matter shall be submitted to the dispute resolution mechanism set out in Clause 11

3. ACCESS CONDITIONS

- 3.1 The LWS confirms and warrants that it holds a [Combined] Licence

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

- 4.1 SWS shall supply Water Services to the 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

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 5.3),

subject to receipt of invoices from SWS and compliance by SWS with the terms of this Agreement, shall pay to SWS the Charges as described, varied and set out in Schedule 2 and the Customer Annexes and which shall be subject to the review mechanism set out in Clause 2

- 5.2 The Charges specified in Schedule 2 shall be further adjusted throughout the period of this agreement to take into account any additional expense to which SWS 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 a review carried out in accordance with Clause 2. SWS shall give at least 2 months' notice to the LWS of any adjustment to the Charges in accordance with this clause
- 5.3 Invoices for the Charges shall be raised for periods of one calendar month and shall be paid within thirty days of the invoice date. All Charges shall be payable without any deduction unless the LWS shall notify SWS that it has a bona fide complaint in respect of the provision of access provided by SWS for which SWS 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 Clause 11
- 5.4 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 Charges at the rate from time to time in force against delivery of a valid VAT invoice
- 5.5 If any Charges are not paid on the due date for payment (save as contemplated by clause 5.3) then the LWS shall pay interest on the amount outstanding at the rate of 2% per annum over the published base lending rate from time to time of National Westminster Bank plc or such London clearing bank as SWS may nominate for this purpose

such interest to be calculated from the date on which such sum became due until actual payment thereof

6. ENTITLEMENTS UNDER THE ACT

6.1 Nothing in this Agreement shall prevent SWS from exercising any entitlement or discharging any duty under the Act or pursuant to the SWS 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 SWS Licence SWS 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, SWS shall not be in breach of its obligations under this Agreement

6.3 SWS 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 SWS'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 SWS 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 For the avoidance of doubt any LWS Equipment installed at Exit Points shall not be part of the Supply System.

7.4 Nothing in this Agreement shall prevent or restrict SWS 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

9. INSURANCE

- 9.1 Both parties shall maintain in force for the duration of this Agreement, at their own cost, such insurance policies as are reasonable and adequate having regard to its obligations and liabilities under this Agreement but including without limitation:
- 9.1.1 public liability insurance for a minimum amount of cover of five million pounds (£5,000,000).

9.1.2 employers liability insurance for a minimum amount of cover of five million pounds (£5,000,000).

9.2 Such policies where required shall be unlimited in terms of the number of claims during the period of cover.

10. LIABILITY

10.1 Subject to clause 10.3 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;

10.1.1 physical damage to the property of the other Party; its officers, employees or agents; and / or

10.1.2 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 £10,000 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.

10.2 Where:

- (a) LWS has requested SWS 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 SWS 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 SWS 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 SWS (other than pursuant to a contract between SWS and such LWS Customer or supplier)

the LWS shall indemnify SWS 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

10.3 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.

10.4 Provided always that:-

10.4.1 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

- 10.4.2 if by virtue of its statutory obligations or if it shall desire to do so SWS may have the conduct of any such claim in which event if liability is accepted or agreed by SWS to an extent or in an amount that the LWS would not have accepted or agreed then SWS shall pay the difference;
- 10.4.3 the Party having the conduct of a claim shall consult with and keep the other informed of the progress of such claim to the extent that the Party having the conduct of a claim shall have regard to clause 10.5 below, in particular where SWS is contemplating the acceptance or agreement to liability in the manner described in proviso 10.4.2 above the LWS shall state its position in writing when requested to do so by SWS within a reasonable period having regard to the nature and status of the claim in question
- 10.5 No Party shall in any circumstances be liable in respect of any breach of this Agreement to any other Party for:-
- 10.5.1 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 10.1 or 16; or
- 10.5.2 any indirect or consequential loss save as provided in clauses 10.1 or 16; or
- 10.5.3 except as provided in clauses 10.1, 10.2 and 10.3 loss resulting from the liability of any Party to any other person howsoever and whensoever arising
- 10.6 Save as otherwise expressly provided in this Agreement, this clause 10 insofar as it excludes or limits liability shall override any other provision in this Agreement provided that nothing in this clause 10 shall exclude or restrict or otherwise prejudice or affect any of;
- 10.6.1 the rights, powers, duties and obligations of either Party which are conferred or created by the Act or by any Licence or Instrument of Appointment granted pursuant to the Act or any subordinate legislation made under the Act; or

- 10.6.2 the rights, powers, duties and obligations of any Competent Authority in respect of any such licence or otherwise howsoever.
- 10.7 For the avoidance of doubt, nothing in this clause 10 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
- 10.8 Nothing in this clause 10 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
- 10.9 Each Party acknowledges and agrees that the provisions of this clause 10 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
- 10.10 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
- 10.11 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
- 10.12 Nothing in this Agreement shall be construed as imposing upon SWS 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 SWS
- 10.13 Nothing in this Agreement shall prevent SWS 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
- 10.14 Each of the sub-clauses of this clause 10 shall be construed 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.

- 10.15 Each Party hereby acknowledges and agrees that the other Party holds the benefit of clause 10.1 above for itself and as trustee and agent for its officers, employees and agents.

11. DISPUTE RESOLUTION

- 11.1 If any Dispute concerning this Agreement shall arise between the Parties such Dispute shall be resolved only in accordance with this clause 11
- 11.2 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
- 11.3 Any Dispute that cannot be resolved by the Parties within ten (10) Business Days of the written request referred to in sub clause 11.2 shall within a further five (5) Business Days be referred by either Party to a LWS Senior Manager and a SWS 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 SWS Senior Manager with all such information as they reasonably require to enable them to determine the Dispute or difference.
- 11.4 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 11.3 above the Parties may individually or collectively refer the dispute to one of the Regulators for determination
- 11.5 If the Dispute is not referred to a Regulator within 20 (twenty) Business Days of the right of referral arising under clause 11.4, or if a Regulator declines to resolve the Dispute, the matter shall be referred for resolution in accordance with Schedule 3

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 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 SWS
- 12.2 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
- 12.3 All Intellectual Property (and any appropriate Know How) in the LWS Equipment shall belong to and vest in the LWS or shall remain the property of the LWS Licensor
- 12.4 Subject to clause 12.5 data, including metering data, which is processed by or recorded or maintained by SWS (including all intellectual property rights in such data) shall belong to SWS; and subject to clauses 12.5 and 18 SWS may, but without prejudice to any other requirement of this Agreement, use and deal with such data as it thinks fit
- 12.5 Where pursuant to this Agreement the LWS provides or arranges for the provision of data to SWS:
- 12.5.1 such data (as provided to SWS by the LWS) shall belong to the LWS;
- 12.5.2 the LWS hereby grants to SWS 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;
- 12.5.3 clause 12.5.1 shall apply in respect of data derived (pursuant to any process) by SWS from such data and in all compilations created by or on behalf of SWS of such data

13. EFFECT OF THIS AGREEMENT

- 13.1 This Agreement creates no contractual rights or liabilities between Users inter se except where this Agreement expressly provides otherwise or disappplies this clause 13
- 13.2 The LWS and SWS agree that the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement
- 13.3 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

14. COMPLIANCE WITH LEGAL REQUIREMENTS

- 14.1 Each Party shall be responsible for ensuring that all operations or activities carried out by it 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 notified by SWS to the LWS or issued by any other relevant Competent Authority
- 14.2 Each Party 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
- 14.3 Notwithstanding any other provision of this Agreement SWS may take such action as it considers necessary in order to prevent, mitigate or eliminate an immediate and serious risk to health, safety or the environment or of contamination to ensure the proper discharge of its statutory functions where such functions may be jeopardised by the LWS

14.4 The LWS shall co-operate fully with whatever action SWS deems it appropriate to take for the purposes of 14.3 and shall provide all reasonable assistance to SWS for that purpose

15. TERMINATION

15.1 This Agreement may terminate early pursuant to clause 15.2 or 15.3 and for the purposes of this Agreement the “Termination Date” is the date with effect from which (in accordance with clause 15.2 or 15.3 of by effluxion of time) this Agreement terminates

15.2 The LWS may at any time by giving notice (“Discontinuance Notice”) to SWS apply to terminate this Agreement

15.2.1 This Agreement shall not be allowed to terminate under this clause 15.2 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 15.2.1 is satisfied) which may become payable by the LWS to SWS 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 SWS has given notice to the LWS by the LWS of any provision of this Agreement shall have been remedied

15.2.2 Where the LWS has given notice under this clause 15.2 the LWS and SWS shall remain bound by this Agreement to which the LWS is party until the requirements of clause 15.2.1 are satisfied;

15.2.3 Where the LWS has given notice under this clause 15.2, after the satisfaction of the last of the requirements of clause 15.2.1 to be satisfied this Agreement LWS shall terminate with effect from the 5th Business Day following such satisfaction;

15.3 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:

15.3.1 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 5.3 have not become due for payment);

- (a) the LWS has not paid the amount in full by the 10th Business Day after the due date for payment, and
- (b) on or after the 10th Business Day after the due date for payment SWS has given notice to the LWS requiring payment of such amount, and
- (c) the LWS has not paid such amount in full by the 10th Business Day after the date of SWS’s notice under clause (b); or

15.3.2 where:-

- (a) the LWS is in material breach, other than such a breach as is referred to in clause 15.9, of any material provision (other than a payment obligation) of this Agreement or of a Customer Annex; and
- (b) the breach is capable of remedy by the LWS; and
- (c) SWS has given notice (making reference to this clause 15.3) of such breach to the LWS; and
- (d) within 14 Days after SWS’s notice under clause 15.3.2 (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 SWS 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 15.3.2 (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 15.3.2(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 SWS 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 SWS to the LWS to the effect that the LWS has not complied with clause (d) or (e) or

15.3.3 where:

- (a) the LWS is in material breach, other than such a breach as is referred to in clause 15.9, of any relevant provision (other than a payment obligation) of this Agreement or of a Customer Annex; and
- (b) the breach is not capable of remedy; and
- (c) SWS has given notice (making reference to this clause 15.3) of the breach to the LWS; and
- (d) At any time within the period of 12 months following SWS's notice under clause 15.3.3 (c), there occurs a further material breach by the LWS of the same provision of this Agreement or Customer Annex; and
- (e) SWS has given a notice of such further breach to the LWS and a period of 7 Days has expired following such notice; or

15.3.4 where:

- (a) the LWS unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986, but subject to clause 15.4), 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 or the Parent Company becomes subject to an order by the High Court for winding-up; or

15.3.5 where any of the provisions set out in Schedule 1 provides that SWS shall have the right to terminate this Agreement such circumstances as set out have been fulfilled and SWS exercises such right

15.3.6 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;

15.3.7 the continuation of a Force Majeure event affecting the LWS for a period of time which in the reasonable opinion of SWS materially prejudices compliance by the LWS of its obligations to SWS;

15.3.8 where a final and binding determination has been given by an expert in accordance with the dispute resolution procedures set out in clause 11

and Schedule 3 and LWS fails within 14 days of the determination being given, or such other period in excess of 14 days as deemed appropriate by the expert, to abide by the determination and/or to implement any instructions given by the expert in the determination

- 15.4 For the purposes of clause 15.3.4(a), Section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted “£10,000”; 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
- 15.5 Upon the occurrence of an LWS Default, and at any time after such occurrence at which the LWS Default is continuing, SWS may give notice (“Termination Notice”) to the LWS to the effect that the LWS shall cease to be allowed access to 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
- 15.6 Where SWS gives a Termination Notice to the LWS, with effect from the date specified in the notice, this Agreement shall terminate
- 15.7 The giving of a Termination Notice and the application of clause 15.6 shall not affect the rights and obligations of SWS and the LWS under this Agreement accrued up to the date referred to in clause 15.6., which shall continue to be enforceable notwithstanding that clause
- 15.8 Where SWS 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 from whom SWS believe the LWS to have purchased water for delivery to the Supply System
- 15.9 For the purposes of clause 15.3.2(a) and 15.3.3(a) the following breaches are excluded:
- 15.9.1 a breach which results from a breach by SWS of this Agreement,
- 15.9.2 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

15.10 For the purposes of clause 15.3 a breach is a material breach of a relevant provision of this Agreement where and only where:

15.10.1 in the case of a material provision, the breach is wilful or reckless, or

15.10.2 in the case of any provision, as a result of the breach SWS 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

16. CONSEQUENCES OF TERMINATION

16.1 If this Agreement is terminated pursuant to Clause 15, the LWS shall be liable to SWS in respect of all direct loss or damage and reasonable fees costs and expenses incurred or suffered by SWS from such termination

16.2 SWS shall arrange for final meter readings to be taken and final invoices to be rendered

16.3 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, 10, 12, 16 or 18 of this Agreement and any other provisions of this Agreement which are capable of operating or expressed to operate after Termination

17. INTERIM SUPPLIER

17.1 Subject to the provisions of section 63AC of the Act SWS will become the interim supplier to the LWS Customer(s) where the LWS ceases to supply water to any eligible premises of the LWS customer other than

where this is as a result of the transfer of the eligible premises under the CTP.

18. INFORMATION AND CONFIDENTIALITY

- 18.1 The confidentiality obligations contained herein shall supersede the terms of the Confidentiality Agreement between the Parties dated 29 November 2005
- 18.2 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
- 18.3 The LWS and SWS 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:-
- 18.3.1 not be used for any purpose other than the performance of this Agreement and the carrying on of a water and sewerage undertaking business, the operation, administration, maintenance and development of the Supply System
- 18.3.2 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
- 18.3.3 not after Termination be used for any purpose whatever or disclosed to any third party

- 18.4 The SWS shall take reasonable steps to ensure that all Confidential Information relating to LWS is disclosed only to those SWS employees then engaged in managing commercial arrangements between the SWS, the LWS and other Licensed Water Suppliers except to the extent that LWS has given prior written consent to any other disclosure and subject to any other overriding statutory and/or legal obligations.
- 18.5 The SWS shall take all reasonable steps to ensure that those of its employees and/or other retained personnel that are engaged in managing relationships between the SWS, the LWS and other Licensed Water Suppliers shall not be concurrently involved directly in any way with relationships with other Relevant Customers of SWS.
- 18.6 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
- 18.7 Each Party shall take such steps as the other Party may from time to time reasonably require:-
- 18.7.1 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;
- 18.7.2 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
- 18.7.3 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

- 18.8 For the purposes of clause 18.3:
- 18.8.1 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 18.2) 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 SWS pursuant to or for the purposes of this Agreement;
- (ii) (without prejudice to clause 18.3) information provided by the LWS to SWS pursuant to Schedule 1 and details of the LWS's record of payment of charges under this Agreement
- 18.8.2 the following information shall (without prejudice to the generality of clause 18.3) be treated as relating to the affairs of SWS:
- (a) information provided by SWS to the LWS to SWS in relation to its assets, operations and performance pursuant to or for the purposes of this Agreement
- 18.9 The terms of this Agreement are not Confidential Information
- 18.10 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
- 18.11 Where Confidential Information is disclosed by either Party as permitted under clause 18.3 the receiving Party shall (without prejudice to its obligations under this clause 18) take all reasonable steps to secure that the person to whom the information is disclosed:-

- 18.11.1 is aware of the receiving Party's obligations under this clause 18 in relation thereto, and
- 18.11.2 does not use or disclose the information other than as is permitted of such Party in accordance with this clause 18
- 18.12 Nothing in clause 18.3 shall apply:
- 18.12.1 to the disclosure or use by the receiving Party of Confidential Information to which the other Party has consented in writing;
- 18.12.2 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 18;
- 18.12.3 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 SWS Licence or (as the case may be) the Instrument of Appointment held by the LWS or any document referred to in such Licence with which the receiving Party is required by virtue of the Act or such licence 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; or

- 18.12.4 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;
- 18.12.5 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;
- 18.12.6 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;
- 18.12.7 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;
- 18.12.8 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 SWS'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 SWS which prohibits use or disclosure of such Confidential Information in terms no less onerous than those contained in this Clause 18

- 18.13 Nothing in this clause 18 shall apply to the disclosure by SWS of Confidential Information to the WSRA where such information is accessible by the WSRA
- 18.14 The provisions of clauses 18.3 to 18.13 shall continue, for a period of 3 years after the Discontinuance Date, to bind the LWS and SWS, notwithstanding that the LWS has ceased to be a User and irrespective of the reason for such cessation
- 18.15 Nothing in this Agreement shall be construed as requiring SWS to disclose or use any information in breach of any requirement of the SWS Licence

19. EIR

- 19.1 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.
- 19.2 The Parties recognise that each request for information must be considered individually.
- 19.3 Notwithstanding anything in this Agreement to the contrary including, but without limitation, the general obligation of confidentiality imposed on the Parties pursuant to clause 18, 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:

- 19.3.1 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;
- 19.3.2 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;
- 19.4 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.

20. NOTICES

- 20.1 References in this clause 20 to a notice are to a notice or communication to be given by one Party to the other under this Agreement
- 20.2 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 20 to the other giving the notice

- 20.3 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
- 20.4 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)
- 20.5 Any notice shall be deemed to have been received:
 - 20.5.1 in the case of delivery by hand, when delivered; or
 - 20.5.2 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
 - 20.5.3 in the case of e-mail or facsimile, on acknowledgement by the recipient Party's e-mail or facsimile receiving equipment
- 20.6 Where a notice is sent by e-mail or facsimile:
 - 20.6.1 the Party giving the notice shall (but without prejudice to clause 20.5.3) if requested by the recipient Party, re-send as soon as reasonably practicable the notice by post; and
 - 20.6.2 in the case of a Termination Notice, SWS 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)
- 20.7 A Party may specify different addresses, e-mail addresses or facsimile numbers and representatives pursuant to clause 20.2 for the purposes of notices of different kinds or relating to different matters
- 20.8 For the purposes of enabling Supply System communications to be given (where required or permitted to be so given) by telephone:

- 20.8.1 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;
- 20.8.2 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;
- 20.8.3 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
- 20.9 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 20.5.3
- 20.10 Unless otherwise agreed between the Parties a telephone notice may not be given as a message recorded on a telephone answering device
- 20.11 Where a Supply System communication is given by telephone:
- 20.12 SWS 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;
- 20.12.1 this Supply System communication shall be treated as given at the time at which the telephone communication is completed

20.13 A Party may specify different telephone numbers and representatives pursuant to clause 20.8 for the purposes of receiving by telephone Supply System communications of different kinds or relating to different matters

21. ASSIGNMENT

21.1 Subject to clause 21.3, a Party may assign its rights under this Agreement:-

21.1.1 provided that the assigning Party shall continue to be bound by and liable under this Agreement;

21.1.2 subject to clause 21.4, with the prior agreement in writing of the other Party, which shall not unreasonably be withheld, to any person.

21.2 Except as provided in this clause 21, a Party shall not assign or transfer and shall not purport to assign or transfer any of its rights or obligations under this Agreement.

21.3 No assignment shall be made to a person unless:-

21.3.1 where the assigning Party is SWS, that person holds an Instrument of Appointment as an Undertaker under the Act;

21.3.2 where the assigning Party is the LWS, that person 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 0 to comply with

21.4 Where a Party assigns its rights under this Agreement pursuant to clause 21.1.2 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

22. SWS PERFORMANCE

22.1 In relation to exercising its discretions and performing obligations under this Agreement SWS shall at all times:-

22.1.1 act in a reasonable and prudent manner in relation to the management and operation of the Supply System;

22.1.2 act reasonably and in good faith in its dealings with the LWS and third party Users;

save that the foregoing shall not apply to the extent that:-

(a) there is any standard of performance already provided for by any statute, regulation or licence condition to which SWS is subject;
or

(b) SWS would thereby be required to act in a manner which would conflict with any Legal Requirement

22.2 For the avoidance of doubt the operation of this clause 22 shall not prevent SWS from performing any obligation under this Agreement

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

23. MODIFICATION

23.1.1 No modification to Schedule 1 or the provisions of any Customer Annex (“Modification”) may be made by the LWS or SWS otherwise than in accordance with the provisions of this clause 23

23.1.2 If either Party wishes to make a Modification it shall complete and submit to the other Party an application in writing (a “Modification Application”)

23.1.3 The Party receiving a Modification Application shall make an offer in response (a “Modification Offer”) as soon as practicable and in any

event not more than 1 month after receipt of the Modification Application. Any Modification Offer made by SWS shall include details of any variations proposed to be made to the Supply Charges as a result of the Modification and SW and the LWS shall discuss in good faith all of the implications of the proposed Modification

- 23.1.4 The Modification Offer shall remain open for acceptance for 1 month from the date of its receipt unless either party makes an application for determination to the WSRSA, in which event the Modification Offer shall remain open for acceptance until 14 Days after any determination by the WSRSA pursuant to such application
- 23.1.5 If the WSRSA declines to make a determination following an application by either party in accordance with clause 23.1.4, any dispute arising from or relating to a Modification Application or a Modification Offer shall, at the option of either party, be dealt with in accordance with the dispute resolution procedure set out in clause 11
- 23.1.6 If the Modification Offer is accepted Schedule 1 or any Customer Annex shall be varied to reflect the terms of the Modification Offer and the Modification shall proceed according to the terms of Schedule 1 or Customer Annex as so varied
- 23.1.7 If SWS wishes to make a Modification to the Supply System that affects Schedule 1 or any Customer Annex SWS shall advise the LWS in writing of any works which SWS reasonably believes that the LWS may have to carry out as a result
- 23.1.8 If the LWS considers that it shall be required to make a Modification Application as a result of the advice received from SWS in accordance with clause 23.1.7 it shall within 3 months of the receipt of that advice (or such longer period negotiated with SWS) make a Modification Application in accordance with clauses 23.1.1 to 23.1.6 above.
- 23.2 Subject to the payment of its reasonable costs, if any, as provided for in this clause SWS 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 LWS or LWS's Customer(s) (whether such Modification is to be made at the request of SWS or of the LWS). If the proposed Modification affecting the LWS is or may be required as a result of a Modification proposed by SWS then SWS shall provide such advice and assistance free of charge. If the proposed Modification is or may be proposed by the LWS then SWS 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 SWS and the LWS

- 23.3 When giving such advice and assistance SWS shall comply with good industry practice provided always SWS 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 SWS Modification under clauses 23.1.1 and 23.1.8 where SWS confirms in writing to the LWS that such Modification is essential.

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 or 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
- 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
- 24.12 This Agreement may be entered into in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original but shall not be effective until each party has executed at least one counterpart, but all the counterparts shall together constitute one and the same instrument. Counterparts may be exchanged by transmission by facsimile.

THIS AGREEMENT has been executed by or on behalf of the parties on the date stated at the beginning of this Agreement

Signed by _____
for and on behalf of SOUTHERN WATER **Director**
SERVICES LIMITED

Signed by _____
for and on behalf of **Director**

SCHEDULE 1

Exit Point Information

Contact details

1.1 For the purposes of clause 20 the initial contact shall be

1.1.1 Nominated contact for LWS

Name

Address

Telephone no

Fax no

E-mail address

1.1.2 Nominated contact for SWS

Name

Address

Southern Water

Southern House

Yeoman Road

Worthing

BN13 3NX

Telephone no

Fax no

E-mail address

1.2 In respect of each Customer Annex attached to this Agreement SWS and LWS shall exchange the names and contact details of nominated persons for the giving and receipt of communications in accordance with the Agreement. Each change in the contact details for a Party shall be notified to the other Party within 5 days of the change coming into effect. The matters for which each

nominated contact shall give or receive a notice shall be included in the details exchanged between the Parties.

Customer Transfer and Management

Customer Transfers

- 2.1 The LWS may transfer customers from SWS 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 SWS 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, SWS 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 SWS or another supplier and no action or ongoing communication has taken place for a period of 6 months, SWS will assume that the transfer will not be going ahead. Where the LWS and SWS has signed a Customer Annex and the CTP process has not commenced within a period of 3 months the relevant Customer Annex will be revoked. If the LWS subsequently wishes to progress the application transfer, on request SWS will offer a revised Customer Annex within 15 days 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 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 SWS that it wishes to add a customer to the Schedule, it will notify SWS at the earliest opportunity. SWS will provide the LWS with a draft Annex in respect of each new Customer on completion of the application.
- 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 23 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 SWS appointed area in the future, the Agreement may remain in place for the term set out in clause 2 although SWS reserves the right to terminate it after a period of 2 years inactivity by following the process set out in clause 15. For the avoidance of doubt the LWS will not be deemed to be inactive if at the end of the relevant 2 year period the LWS has obtained in writing from a customer an expression of interest in switching supplier.
- 2.11 For the avoidance of doubt, in the event of a conflict between any terms and conditions as set out in the Agreement and the terms and conditions in a Customer Annex, the terms and conditions in the Customer Annex will take precedence.

Customer Management

- 2.12 SWS shall ensure that the LWS Customers receive the same level of service, relating to the supply system as that received by SWS existing customers.
- 2.13 Unless detailed in this Agreement the LWS shall be responsible for all other services received by LWS Customers.
- 2.14 SWS and LWS shall liaise on issues where the actions of each other may pose a threat to service standards provided by either Party.
- 2.15 The LWS shall be the first point of contact for all enquires from LWS Customers, including emergencies, general enquiries and complaints.
- 2.16 SWS shall investigate any complaints regarding the Supply System and its operation and will report any findings to the LWS and its LWS Customer(s). SWS aim to make a full response within 5 Business Days.
- 2.17 Communication with the LWS Customer shall remain the responsibility of the LWS, unless direct contact by SWS 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 to SWS.
- 2.19 The LWS shall supply LWS Customers with the correct contact details and procedures, along with an explanation of SWS's responsibilities with regard to problems with the Supply System.
- 2.20 In the event of LWS Customer(s) contacting SWS 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 SWS for its water supply services, it shall be the responsibility of SWS to notify the LWS, along with the transfer date, within 5 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 SWS, along with relevant contact details for SWS. The LWS shall also notify SWS 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 SWS 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 SWS of LWS Customers' names, and addresses and other details, and of any changes in the LWS Customer base using the Network, reflecting SWS's Supply System management role. The LWS shall inform SWS 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 SWS.
- 2.25 SWS shall immediately advise LWS of any material changes to details relating to LWS customer, including, address, premise changes, new supply connections, metering details or customer details other than those changes notified to SWS by LWS.
- 2.26 The LWS shall be responsible for supplying SWS with such details as SWS 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 SWS's appointment.
- 2.27 Billing and LWS Customer information shall be supplied to SWS to enable it to charge 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.

Network Management

- 2.28 A Party shall immediately notify the other Party of any material adverse changes in the flow rate or pressure of water supplied to LWS customers from the Network of which the notifying Party becomes aware.
- 2.29 A Party shall immediately notify the other Party of any material adverse changes in the quality of water supplied to LWS customers from the Network of which the notifying Party becomes aware.
- 2.30 Each Party shall notify the other Party as soon as reasonably practical in advance about the nature and timing of planned system maintenance that is likely to have a material effect on the quality, pressure or flow of water supplied to LWS customers.
- 2.31 Where there is to be a planned interruption of supply for a period exceeding four hours SWS shall give LWS not less than 48 hours notice of the planned interruption and advise of the expected duration of the interruption and the LWS shall inform LWS customers. For planned interruptions exceeding 6 hours PU shall give LWS not less than 10 days notice of the planned interruption. SWS may include LWS Customers in the list of customers to be directly notified of a planned interruption of supply.
- 2.32 Where there is an unplanned interruption of supply resulting in emergency action being taken then SWS will contact LWS and advise of the expected duration of the interruption and if alternative supplies of water are available. SWS may contact the LWS Customers directly during the management of an emergency.
- 2.33 SWS shall remain solely responsible for drought and water resource planning. LWS shall comply with all reasonable requests for

information by SWS that are necessary for SWS to fulfil its statutory duty, including those relating to drought plans and resource planning.

- 2.34 SWS shall not show preference to or discrimination against the LWS and LWS Customers in limiting water use due to drought or shortage of water. LWS customers shall be subject to the same restrictions as are applied to all similar classes of customers within the area for which restrictions are enforced.

Metering and Meter Reading

- 3.1 Except where there are existing meters in place, SWS will install and maintain the Customer Meter and any associated apparatus at or as close as reasonably practicable to each Exit Point. All metering equipment will comply with the Measuring Equipment (Cold-water Meters) Regulations 1988 or any subsequent legislation. Where the Customer 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 Customer Meter(s) and any associated apparatus remain the property of SWS. If the LWS wishes to fit telemetry or other flow management devices to the Customer Meter(s), it will obtain permission from SWS first.
- 3.3 Where the Customer Meter in place is unable to support the format of telemetry or flow management that the LWS requires, the LWS may request SWS to exchange the Customer Meters for one that will support its device. In carrying out such an exchange SWS will charge the LWS for the cost of the meter(s) and associated work and apparatus.
- 3.4 SWS shall conduct and be responsible for all routine maintenance of SWS Meters and shall inform LWS within three (3) days of any changes to the details of metering equipment used. Such details are to be supplied in a format agreed by the parties, and will include meter serial number, size, initial and final readings of the exchanged meters.

- 3.5 SWS shall have the right of access at all times and for all purposes connected with this Agreement without charge to SWS Meters and any telemetry or other flow management devices on premises of LWS Customers. LWS shall ensure any such access and shall further ensure that access may be obtained safely at all times.
- 3.6 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.
- 3.7 The LWS shall take all reasonable steps to ensure that upon each visit to the Exit Point meter by any representative of the LWS or by any person (or by SWS where it is engaged as a meter reader) engaged by the LWS to obtain an on-site Meter-Read, there is promptly reported to SWS 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.
- 3.8 LWS shall notify SWS within three (3) Days of LWS becoming aware of problems or potential problems, including maintenance, with any SWS Meters which may affect their accurate operation.
- 3.9 Within five (5) additional Days of being so notified, SWS shall perform an initial assessment of SWS Meter. Any necessary repairs or maintenance shall be conducted within a further ten (10) Working Days.
- 3.10 SWS may inspect any SWS Meters to confirm the accuracy of their measurement, provided SWS provides reasonable notice to LWS of any proposed inspection.
- 3.11 Subject to clause 3.12.1 of this schedule the register of any SWS Meter shall be prima facie evidence of the volume of water supplied through that SWS Meter in accordance with this Agreement.
- 3.12 Where a SWS Meter is examined and found inaccurate to a degree exceeding the limits of error prescribed by the Measuring Equipment (Cold-water Meters) Regulations 1988 or any subsequent legislation then:-.

- 3.12.1 SWS Meter shall be assumed to have registered inaccurately to the degree so found since the penultimate date on which (otherwise than in connection with the examination) SWS Meter was read except in a case where it is proved to have begun to register inaccurately as described on some later date; and
- 3.12.2 the Consumption affected by such inaccurate registering shall be recalculated on a fair basis, as agreed between the parties, as if SWS Meter had been registering accurately.
- 3.13 Where any SWS Meter is removed for the purpose of being examined in accordance with this clause 3 of this schedule the expenses incurred in removing, examining and replacing SWS Meter and fixing any substituted SWS Meter shall, if the examination is made at the request of LWS and SWS Meter is found to register accurately or to register inaccurately to a degree not exceeding the limits of error prescribed by the Measuring Equipment (Cold Water Meters) Regulations 1988 or any subsequent legislation be paid by LWS otherwise such expenses shall be paid by SWS.
- 3.14 The examination of any SWS Meter under the provisions of this clause 3 of this schedule shall be conducted by a suitably qualified person as agreed by the parties.

Meter Reading

- 3.15 In respect of each Premises Specific Contract Schedule, meter reads for all SWS Meters detailed on the Premises Specific Contract Schedule shall be obtained by LWS, as far as practicable, on the same day (a "Reading Day").
- 3.16 LWS shall also record the following information relating to each SWS Meter if applicable:
- 3.16.1 whether SWS Meter is stopped;
- 3.16.2 any damage to SWS Meter;

- 3.16.3 any inability by LWS to read a SWS Meter together with an explanation for such inability; and
- 3.17 Reading Days shall comprise a Day within the Read Window in each Month, commencing with the Month following that in which the Transfer Date falls and each subsequent Month up to and including the Month in which the supply of water under a Premises Specific Contract Schedule is terminated. Provided that if the Withdrawal Day occurs prior to SWS Meters being read in the Month in which the Premises Specific Contract Schedule is terminated in accordance with clause 16 then there shall be no Reading Day in such Month.
- 3.18 Meter reads and other information recorded in accordance with clause 3.16 of this schedule shall be communicated to SWS by email no later than three (3) working days following the Day on which SWS Meters were read and in the following format:

Meter Serial Number	Reading	Date of reading	Previous reading	Reading status* (A, C, U, LE, CE, UE,)

Reading Status is as follows

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

The reading will be sent by e-mail in a excel file format to the nominated contact address.

3.19 SWS may apply Validation Procedures to meter reads made in accordance with clause 3.15 of this schedule and where a potentially erroneous meter read is identified SWS may notify LWS. If LWS is unable to satisfy SWS about the validity of the meter read, then LWS will arrange to obtain a check reading and communicate this to SWS in accordance with clause 3.18 of this schedule.

3.20 Where in respect of a Premises Specific Contract Schedule some or all the meter reads are not made in accordance with clause 3.15 of this schedule or are not communicated to SWS in accordance with clause 3.18 of this schedule then SWS may:

3.20.1 deem a Reading Day within the Read Window; and

3.20.2 make estimated reads for any or all of such SWS Meters in accordance with clause 3.21 of this schedule.

- 3.21 Where the terms of this Agreement provide for SWS to estimate a meter read it shall make an Estimated Read using the information available to it including:
- 3.21.1 the average daily quantity of water supplied through the relevant meter:
- (i) during the same Month in the previous year;
 - (ii) during the period from the most recent 1st April to the date of the most recent validated meter read;
- 3.22 Subject to clause 3.23 of this schedule Monthly Billing Period means, for any Premises Specific Contract Schedule and for any Month a period of Days commencing at the end of the Reading Day in such Month and ending at the end of the Reading Day in the following Month.
- 3.23 Subject to clause 3.24 of this schedule:
- 3.23.1 the first Monthly Billing Period shall be the period commencing at the start of the Transfer Date and ending at the end of the next following Meter Reading Day; and
- 3.23.2 the final Monthly Billing Period shall be the period commencing at the end of the Reading Day immediately preceding the Withdrawal Date and ending at the end of the Withdrawal Date.
- 3.24 Where there is no Reading Day between the Transfer Date and the Withdrawal Date the Monthly Billing Period shall be the period commencing at the start of the Transfer Date and ending at the end of the Withdrawal Date.
- 3.25 The Opening Read for any SWS Meter under a Premises Specific Contract Schedule and for any Monthly Billing Period means the meter read made on the Reading Day at the end of which the Monthly Billing Period starts (or if applicable the Estimated Read for such Day). Provided that the Opening Read for the first Monthly Billing Period shall be the Transfer Read.
- 3.26 The Closing Read for any SWS Meter under a Premises Specific Contract Schedule and for any Monthly Billing Period means the meter

read made on the Reading Day at the end of which the Monthly Billing Period ends (or if applicable the Estimated Read for such Day). Provided that the Closing Read for the final Monthly Billing Period shall be the Withdrawal Read.

Disconnection of the LWS Customer[s]

- 4.1 SWS 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 SWS 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 SWS 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 SWS 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 SWS 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 SWS 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 SWS in the event that the LWS wishes to disconnect an LWS Customer and has power to do so and shall pay SWS's costs of disconnection where this can be carried out by SWS.

Exit Information

5.1 Unmeasured Water Taken

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.

5.2 Fire Fighting

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

Customer Annex Proforma

[This is a proforma version of a Customer Annex. It is to be used as a template. The content may be subject to change depending on the specific circumstances of each customer, and each premises.]

1. General Information

LWS confirms that the premises are eligible and complies with the Ofwat Eligibility Guidance November 2005	Yes/No
LWS confirms that the Customer has given consent to the switch of supplier	Yes/No

2. Premises Details

Premises Ref Number:	
Total Number of meters at premises	
Customer Contact Name	
Job Title	
Telephone Number	
Fax Number	
E-mail address	
Site Address	

3. Customer Details

LWS Customer's Name	
Customer's Address if different from above. (include post code)	

4. Meter Details

Meter Details	Serial No.	Size (mm)	Location Description	Main Meter, Combined Meter or Bypass Meter
1				
2				
3				
4				
5				
6				

5. Expected Demand

Demand requirements:-	Year 1	Year 2	Year 3	Year 4	Year 5
Estimated annual consumption: M ³					

6. Transfer Details

Transfer Date:	Duration (Months) :				
Wholesale Discount					
Year	Year 1	Year 2	Year 3	Year 4	Year 5
£/m ³					
Standing Charge					
Other					

7. Customer Specific Services

Special Needs on site	<ul style="list-style-type: none"> • • •
Additional Services requested from SWS	<ul style="list-style-type: none"> • • •

8. Customer/Premise Specific Terms and Conditions

Details:

[NB: This section will contain any terms and conditions specific to the particular Customer and/or premises. This may include terms relating to the supply of water, customer management, and premise-specific requirements (e.g. alternative metering arrangements), etc. For the avoidance of doubt, in the event of a conflict between the Agreement and a Customer Annex, the Customer Annex will take precedence over the Agreement .]

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THIS AGREEMENT has been executed by or on behalf of the parties

For and on behalf of Southern Water
Services Limited

Signed by:

Date:

Name:

Position:

For and on Behalf of

Signed by:

Date:

Name:

Position:

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 is payable in respect of the cost of any Works incurred by SWS 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. The LWS may wish to perform part of these works directly. Arrangements to accommodate this shall be the subject of negotiation and agreement between SWS and the LWS.

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 SWS 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 SWS standard or large user retail tariffs as appropriate.

1.2 Billing and Debt

1.2.1 SWS 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

Introduction

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

Dispute resolution

- 2.1 In the event that a dispute is referred for resolution in accordance with this Schedule 3 the parties may:
 - 2.1.1 refer any dispute for Expert Determination; or
 - 2.1.2 agree to refer any dispute to mediation in accordance with section 5; and
 - 2.1.3 in the event that any mediation does not successfully resolve the dispute to the satisfaction of either or both parties, the dispute may be referred by either party for Expert Determination
- 2.2 For the purposes of this Agreement “Expert Determination” means the determination of an expert pursuant to section 3
- 2.3 Where this Agreement provides or the parties have agreed that a dispute is to be referred to or resolved by Expert Determination
 - 2.3.1 section 3 shall apply; and
 - 2.3.2 subject to section 2.4, no party shall commence proceedings in any court in respect of or otherwise in connection with such dispute
- 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 User shall be in writing

- 2.6 SWS 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 SWS shall keep the LWS informed of the identity of the disputes secretary for the time being
- 2.8 The disputes secretary shall not represent SWS in any dispute under this Schedule

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:
 - 3.5.1 provide brief details of the issues to be resolved; and
 - 3.5.2 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), 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;

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:

3.13.1 the names of the parties and a summary of the disputes;

3.13.2 a request that the expert provide the confirmation required under section 3.3.1;

3.13.3 a request for confirmation of the expert’s scale of fees;

3.13.4 a statement that the expert’s fees and expenses shall be paid as provided in section 3.34 to 3.37;

3.13.5 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;

3.13.6 a copy of this Schedule; and

- 3.13.7 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:
- 3.15.1 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;
- 3.15.2 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 3.15.1, 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 not 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:
- 3.35.1 his fees;
- 3.35.2 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 advice 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:
- 5.17.1 set out the terms accepted by the parties or on which the dispute was resolved; and
- 5.17.2 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