Self-Lay Agreement
For new mains and services (SL-E1)

February 2018
Version 1
Relating to the self-lay installation of mains and services as detailed under:

Self-Lay Provider:  .................................................................
and
Developer:  ........................................................................
and
Other:  ...........................................................................

Development name:  ..............................................................
Address/location of development:  ...........................................

Southern Water Agreement Number/reference:  
......................................................................................

Date of agreement:  ..............................................................
THIS AGREEMENT is made the _______ day of _______ 20____

BETWEEN

(1) SOUTHERN WATER SERVICES LIMITED (Company Reg. No. 2366670) whose registered office is at Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX (“the Undertaker”), being the Undertaker in whom the Self-Lay Works will be vested;

(Email address to be used for all electronic correspondence ..............................................)

(2) (“The Developer”), (Company No: ..................) being the party intending to carry out the Development; whose registered office is at ........................................ and whose email address is ...........................................

(3) (“The SLP”), (Company No:.................) being the party undertaking the Self-Lay Works on behalf of the Developer; whose registered office is at ................................. and whose email address is ...........................................

(4) (“The Owner”), (Company No: ..................) being the owner of the Site (if not the Developer); whose registered office is at ................................. and whose email address is ...........................................

(5) (“The Adjoining Owner”), (Company No: ............... ) being the owner of land adjoining the Site, in which Self-Lay Works are also to be undertaken; whose registered office is at ................................. and whose email address is ..............................................

(6) (“The Surety”), being the party providing security for the Self-Lay Works and the payments to be paid to the Undertaker.

Each hereafter “the party” and more than one together hereafter “the parties”

(NOTE: IF A PARTY IS NOT APPLICABLE DO NOT DELETE BUT INSERT “NONE”)
IT IS AGREED as follows:-

1 Interpretation

1.1 The following terms, as defined below, are specific to this Agreement:

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Period</td>
<td>[ ] months from the Start Date</td>
</tr>
<tr>
<td>Defects Liability Retention Payment</td>
<td>£ [ ], being the security only required by the Undertaker where there is robust evidence to demonstrate the need for additional assurances.</td>
</tr>
<tr>
<td>Developer</td>
<td>The person or business which is responsible for the development.</td>
</tr>
<tr>
<td>Development</td>
<td>The development to be carried out by the Developer on the Site under planning permission reference no [ ] comprising [ ] premises</td>
</tr>
<tr>
<td>Drawing(s)</td>
<td>the Layout Plan and such other drawings and calculations relating to the Self-Lay Works numbered: [ ] (NB. to be annexed to this Agreement)</td>
</tr>
<tr>
<td>Estimated Gross Asset Value</td>
<td>£ [ ], being the gross amount payable to the Developer or SLP on adoption of the mains which takes account of any income offset due when the mains are adopted and is the amount calculated before any Non-Contestable Works costs are deducted.</td>
</tr>
<tr>
<td>Layout Plan</td>
<td>Plan number [ ], annexed hereto, showing the Site, the Adjoining Land and the layout of the Self-Lay Works.</td>
</tr>
<tr>
<td>Pre-commencement Payment</td>
<td>£ [ ], being the security required by the Undertaker, which shall be capped at the level of any advanced payment had the works been requisitioned, namely, £ [ ].</td>
</tr>
<tr>
<td>Service Pipe Deposit</td>
<td>The security required in respect of the proper construction of the Service Pipes.</td>
</tr>
<tr>
<td>Site</td>
<td>land at [ ] shown edged in red on the Layout Plan</td>
</tr>
<tr>
<td>Non-contestable Works</td>
<td>The items which are to be carried out by the Undertaker. These are listed in Schedule 2, which must be completed prior to signing.</td>
</tr>
<tr>
<td>Contestable Works by Undertaker</td>
<td>The Contestable items which the SLP instructs and are to be carried out by the Undertaker. These are listed in Schedule 2A, which must be completed prior to signing.</td>
</tr>
<tr>
<td>Water Mains Construction Programme</td>
<td>The programme, approved as part of the design of the Self-Lay Works, which is listed in Schedule 1.</td>
</tr>
</tbody>
</table>
1.2 The following general terms, as defined below, shall also apply throughout this Agreement:

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Act</td>
<td>Water Industry Act 1991</td>
</tr>
<tr>
<td>Adoption</td>
<td>The process by which Water Companies take over responsibility for infrastructure such as water mains and services.</td>
</tr>
<tr>
<td>Accredited</td>
<td>Means, with respect to Contestable Works:-</td>
</tr>
<tr>
<td></td>
<td>- Accredited under the Water Industry Registration Scheme (&quot;WIRS&quot;); or,</td>
</tr>
<tr>
<td></td>
<td>- Accredited by a water company the relevant Undertaker in relation to its own water distribution system, in respect of a specified activity.</td>
</tr>
<tr>
<td>Adjoining Land</td>
<td>Land adjoining the Site, shown edged brown on the Layout Plan, in the ownership of a person other than the Developer or the Owner where part of the Self-Lay Works are to be undertaken.</td>
</tr>
<tr>
<td>Application Deposits</td>
<td>Any advance deposit required by the Undertaker which will be refunded as part of the Net Asset Payment.</td>
</tr>
<tr>
<td>Associated Works</td>
<td>Any necessary works, typically to connect new mains or to provide a short connecting spur, which the Undertaker does to supply self-laid mains. (This is separate to Extensions and Network Reinforcement works).</td>
</tr>
<tr>
<td>Bond Amount</td>
<td>A sum equal to the Pre-commencement Payment.</td>
</tr>
<tr>
<td>Charges Scheme</td>
<td>The Charges Scheme made by the Undertaker.</td>
</tr>
<tr>
<td>Code of Practice</td>
<td>The Code of Practice for the Self-Laying of Water Mains and Services issued by Water UK in force and current at the time date of this Agreement being made.</td>
</tr>
<tr>
<td>Connection Charges</td>
<td>The connection charges, as published by the Undertaker, which are applicable at the time when a Service Pipe Connection is made as part of the Self-Lay Works and/or in respect of any Service Pipe Connections to be made by the Undertaker.</td>
</tr>
<tr>
<td>Contestable Work</td>
<td>works which is carried out by the SLP</td>
</tr>
<tr>
<td>Days</td>
<td>In calendar days unless explicitly stated otherwise.</td>
</tr>
<tr>
<td>Costs Schedule</td>
<td>The chargeable items payable by the SLP to the Undertaker in respect of the Non-contestable elements of the Self-Lay Works and/or in respect of Contestable Service Pipe Connections works and the related administration charge as set out in Schedule 3. Notwithstanding the fact that indicative (i.e. current at the date of the Agreement) charges are set out in Schedule 3, the charges shall be payable at the rate prevailing at the date of the Self-Lay Works as set out in the Charges Scheme or as otherwise published by the Undertaker.</td>
</tr>
<tr>
<td>Defects</td>
<td>A fault caused by poor workmanship or flaw in the installed materials.</td>
</tr>
<tr>
<td>Term</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Defects Liability Period</td>
<td>12 months from the date when the Water Main was satisfactorily commissioned and connected to the public water supply network or in the case of a Service Pipe 12 months from the date of the Service Pipe Connection or compliance with clause 9.2, whichever is the later.</td>
</tr>
<tr>
<td>Infrastructure Charge</td>
<td>The Infrastructure Charge payable to the Undertaker under section 146 of the Act in respect of any new connection to the Water Main or any other water main or public sewer vested in the Undertaker.</td>
</tr>
<tr>
<td>Net Asset Payment</td>
<td>The payment of the Net Asset Value made on adoption of the mains to the Developer or SLP which takes account of any income offset due when the mains are adopted payable after deduction of any costs and uplifted by any credits (such as Application Deposits and pre-commencement payments).</td>
</tr>
<tr>
<td>Protected Strip</td>
<td>A strip of land 3 metres measured horizontally on either side from the centreline of the Water Main (or any other water main or public sewer vested in the Undertaker) or such other distance or distances as may reasonably be specified by the Undertaker and are shown on the Drawing(s).</td>
</tr>
<tr>
<td>Protected Strip for Services</td>
<td>A strip of land which is a minimum of 1.5 metres from the back edge of the footpath within which the meter chamber is to be located or such other distance or distances as may reasonably be specified and as shown on the Drawing(s) and agreed with the Undertaker.</td>
</tr>
<tr>
<td>Permissible Materials</td>
<td>Materials used by the SLP in the installation of Self-Lay Works to be in accordance with the specified requirements of the Undertaker in its Self-Lay Policy.</td>
</tr>
<tr>
<td>Self-Lay Policy</td>
<td>The Undertaker’s supplementary policy document to the third Edition (3.1) of the Self-Lay Code of Practice defining the Undertaker’s requirements and local practices covering design practices and permissible materials and construction arrangements.</td>
</tr>
<tr>
<td>Self-Lay Works</td>
<td>The construction of the Water Main to serve the Development on the Site together with accessories as defined in the Act and all necessary works of reinstatement to the land or to any Street in which the Self-Lay Works are constructed and the laying of the Service Pipes and the Service Pipe Connections to be made by the SLP.</td>
</tr>
<tr>
<td>Service Pipe</td>
<td>Such part of any service pipe (up to and including 63mm diameter) supplying water to any house or building on the Site (including the meter, meter box, surface box, marker and other apparatus) which is to be vested in the Undertaker, shown as the Communication Pipe in Figure 1 of the Code of Practice and which is not that part of the service pipe which is not the communication pipe and is owned by the property owner whose premises are supplied by that pipe.</td>
</tr>
<tr>
<td>Service Pipe Connection</td>
<td>The laying of the Service Pipes and the Service Pipe Connections to be made by the SLP to the Water Main vested in the Undertaker or to any other water main.</td>
</tr>
<tr>
<td>Service Pipes Construction Programme</td>
<td>The programme to be provided under clause 3.2 and 3.3 including any subsequent variation agreed in writing pursuant to clause 11.</td>
</tr>
</tbody>
</table>
Self-Lay Provider ("SLP")

A Provider, other than the Undertaker who is appropriately Accredited to undertake Contestable Works in relation to the provision of new water connections (mains, services and associated works).

Specification

The Code of Practice, current at the time this Agreement is made, together with the Undertakers Self Lay Policy detailing the design practice guidelines and schedule of Permissible Materials and construction techniques issued by the Undertaker and together with the Drawing(s).

Start Date

The date agreed in writing that the Self-Lay Works shall commence pursuant to clause 3.2

Street Works Legislation

New Roads and Street Works Act 1991, Traffic Management Act 2004 and any other Act governing the carrying out of Street Works in a Street. (“Street”, “Street Authority” and “Street Works” shall be defined accordingly.)

Surety

Any financial security reasonably required, by means of a bond or cash deposit, by the Undertaker to fulfil any obligation within the legal agreement to provide Non-Contestable Works. (See also Pre-Commencement Payments).

Water Main

The water main (including accessories as defined in the Act) to be constructed by the SLP as part of the Self-Lay Works along the route shown approximately on the Drawings.

WIRS (Water Industry Registration Scheme)

The Registration Scheme operated by Lloyds Register EMEA on behalf of Water UK and its members, which certifies the competence of companies undertaking Self-Lay works.

1.3 This Agreement made in pursuance of Section 51A of the Act sets out the entire agreement and understanding between the parties in relation to the Self-Lay Works.

1.4 If no details are shown for any of the parties (other than the Undertaker and Developer who are mandatory) it shall be assumed there is no such party

1.5 This Agreement is personal to the parties save as provided for in clause 15 or:

1.5.1 On the solvent reconstruction or amalgamation of any of the parties; or

1.5.2 on the appointment under the Act of another person as the water undertaker for the area including the Site.

1.6 If more than one person is named as one of the parties then any covenants agreements liabilities or statements made by that party shall be deemed to be made by those persons jointly and severally.

1.7 References to gender shall include either gender or a corporate identity and the singular shall include the plural.
1.8 References to any term set out in clauses 1.1 and 1.2 shall, with the Undertaker’s written consent, include any part or parts thereof and any variation thereof agreed in accordance with clause 11.

1.9 References to an Act of Parliament include any statutory modification or re-enactment thereof for the time being in force and all regulations, orders and codes of practice made under that Act of Parliament and any modification or replacement thereof.

1.10 The Interpretation Act 1978 shall apply for the purposes of interpretation of this Agreement as it applies to the interpretation of an Act of Parliament.

1.11 In the event of any conflict or ambiguity, the Code of Practice shall prevail over individual clauses set out below and the Drawing(s) shall prevail over the Code of Practice.

2. Preliminary Requirements

2. Prior to this Agreement being completed or, if later, as soon as reasonably practicable thereafter and in any event before construction of the Self-Lay Works are commenced:

2.1 The Self-Lay Works shall have been designed either by an Accredited provider contracted to the SLP or the SLP itself (such design to have been approved in writing by the Undertaker) or by the Undertaker;

2.2 Irrespective of whether such design by the SLP or its Accredited provider has been approved in writing by the Undertaker, the SLP and its Accredited provider shall remain jointly responsible and liable both financial and otherwise for such design and its consequences in providing the Self-Lay Works and for the tests, testing and their consequences in bringing the Self-Lay Works up to the operational standard and uses acceptable to the Undertaker, and the SLP and its Accredited provider shall grant in favour of the Undertaker, as soon as requested, a perpetual, royalty-free, exclusive licence for the use of such design and its provisions;

2.3 It is the Developer’s responsibility to notify the Undertaker if the site layout is amended and/or any circumstances or conditions on site change subsequent to the offer issued by the Undertaker and/or its agents. Whether or not notified by the Developer as to any site, design, installation of works, or layout change the Undertaker reserves the right to withdraw an existing offer and to issue a revised offer in light of any changes in circumstances or conditions. Works will not be programmed until any revised offer has been accepted and the relevant sums paid and/or deposited with the Undertaker;

2.4 The Undertaker reserves the right to revoke, at any time, any offer and to re-estimate and issue a revised offer should it become aware subsequently that the proposed installation for any mains and/or services which materially differ from the basis upon which the offer was made.

2.5 All design queries shall be referred to the Undertaker and no changes to the design layout may be undertaken without the express approval of the Undertaker.

2.6 Any charges payable to the Undertaker in respect of the design of the Self-Lay Works or the approval of such design shall have been paid by the SLP to the Undertaker.

2.7 Any phasing of the Self-Lay Works (other than the Service Pipes Construction Programme) shall have been agreed between the SLP and the Undertaker;
2.8 If no party is expressly named in this Agreement as the SLP or if the party named as the SLP intends to sub-contract any of the Self-Lay Works to another person, the Developer or the SLP (as the case may be) shall have notified the Undertaker in writing of all contractors and sub-contractors, each of whom must be accredited either under the Water Industry Registration Scheme or by the Undertaker and must remain duly accredited for the duration of the Self-Lay Works and this Agreement, who is or will be appointed to undertake the Self-Lay Works provided that no more than one person acting as SLP may be named as a party to this Agreement, such person shall be the principal contractor or sub-contractor responsible for the management and supervision of the Self-Lay Works and such party shall not be entitled under any circumstances to sub-contract any aspect of the management and supervision of the Self-Lay Works.

The aforesaid principal contractor or sub-contractor responsible is the principal contractor under the Construction (Design and Management) Regulations 2015 (CDM Regulations) in respect of the works performed hereunder and shall perform all the functions and obligations required to be performed by the principal contractor under the CDM Regulations.

2.9 The Undertaker shall have notified the SLP in writing of the estimated cost of the Non-Contestable Works (Schedule 2) or, if nothing is specified in Schedule 2, that there are no Non-Contestable Works; and

2.10 The Undertaker shall have notified the Developer or SLP of the Estimated Net Asset Value.

3. **SLP obligations**

3.1 The SLP shall not commence any part of the Self-Lay Works until this Agreement has been completed and Pre-commencement Payments have been received by the Undertaker from either the SLP or the Developer.

3.2 Before Self-Lay Works commence the SLP shall arrange and ensure that a pre-start meeting is held with the Undertaker, the Developer, and the Owner and the Adjoining Owner (as necessary) giving a minimum of 5 days’ notice to all parties. The Undertaker’s requirements for pre-start meetings are set out in the Undertaker’s Self-Lay Policy document and are to be complied with. The Start Date for the construction works and/or for subsequent phases if the works are to be phased has to be confirmed in writing by all parties.

3.3 Before the Self-Lay Works commence, the SLP must issue the Undertaker with a works programme providing the Undertaker with all information required in terms of the Self-Lay Policy. This must be updated on a regular weekly basis.

3.4 Any works carried out by the Developer to facilitate programming or execution of the works is not reclaimable from the Undertaker against the offer made unless it was agreed with the Undertaker prior to and included within the Undertaker’s offer.

3.5 Following a request from the Developer to the Undertaker for a programme start date in respect of Non-contestable Works the Undertaker shall contact the Developer or the SLP to discuss and agree a date. The Undertaker’s start date shall not be at the behest of the Developer’s programme. Indicative programme dates may be affected by whether the Undertaker has completed all necessary design and risk analysis works associated with the Developer’s activities. The consequence is that the Undertaker shall have to reaffirm all final programme start and completion dates.
Constraints on working that are subsequently identified, that may affect the Undertaker’s work, programme start, or duration of works shall require to be considered by the Undertaker and as such the Undertaker shall not be liable for the effects of such on the Developer. Furthermore the Undertaker shall not be bound to accommodate any subsequent Developer changes to its proposed works or programme albeit that the Undertaker will attempt to accommodate such. The Undertaker will expect the Developer to maintain regular contact with any details that may the Undertaker’s proposed works or any proposed start or completion date.

3.6 In the event that the Undertaker is delayed from commencing the Work in accordance with the agreed programme commencement date, for whatever reason, the Undertaker reserves the right to withdraw its resources and re-programme an alternative date. The Undertaker reserves to itself the same right to withdraw and re-programme where work, once commenced, has been delayed, disrupted or halted by the Developer as being in breach of any of this Agreement. The Undertaker shall not commence any re-programming of the works until any such delay or breach has been remedied to the satisfaction of the Undertaker.

3.7 The SLP shall give written notification to the Undertaker of its intention to recommence when the Self-Lay Works have ceased for more than 14 Days.

3.8 The SLP shall not make any Water Main or Service Pipe Connections which the Undertaker has notified the SLP that it will undertake

3.9 The SLP shall not make any Water Main or Service Pipe Connections which have not been approved by the Undertaker, and set out in the Undertaker’s Self-Lay Policy, in writing prior to being undertaken by the SLP.

3.10 The SLP must notify the Undertaker giving a minimum of 7 days of the SLP’s readiness for a Water Regulation trench inspection of Water Main(s) and/or Service Pipe(s) installations.

3.11 The SLP shall be able to make a standard Service Pipe connection to a commissioned self-laid Water Main subject to a valid Water Regulation inspection having been done and the installation of Water Main and Service Pipe having passed said inspection.

3.12 Where appropriate, the SLP shall pay to the Undertaker the charges (including Infrastructure Charges) due in respect of the Self-Lay Works as set out in the Costs Schedule, which notwithstanding the fact that indicative (i.e. current at the date of the Agreement) charges are set out in Schedule 3, shall be payable at the rate (as set out in the Charges’ Scheme or as otherwise published by the Undertaker) prevailing at the date of the relevant part of the Self-Lay Works.

3.13 The cost of withdrawing the Undertaker’s resources caused by the Developer’s or the SLP’s subsequent request or by their default will be recovered by making a charge for the Undertaker’s costs so occasioned, in respect of each instance of demobilisation. Any revised start date will depend upon the programming or phasing of works and any other affecting constraints at that time including the payment of all outstanding charges in this respect.

3.14 The Undertaker reserves the right to levy any additional charges in the event of any breach of this Agreement.

3.15 When an offer has been accepted but a works date has not been accepted by the Undertaker as being within the same financial year of the offer and subsequent acceptance...
(1st April to 31st March) the Undertaker reserves the right to adjust the final sum used in the calculation of the Estimated Gross Asset Value by the effect of any applicable Consumer Prices Index adjustment and the effect of any price changes incurred by the Undertaker’s suppliers or delivery partners.

3.16 The SLP shall properly construct and complete the Self-Lay Works in accordance with the Undertaker’s Self-Lay Policy and this Agreement within the Construction Period and to the satisfaction of the Undertaker.

3.17 The SLP shall arrange for the Undertaker to have access to the Self-Lay Works and the Site at all reasonable times and in particular shall, at its own cost, provide all relevant plant, equipment (including safety equipment) signing, guarding, lighting and personnel necessary to enable the Undertaker to inspect the Self-Lay Works on the Site.

3.18 In accordance with the Undertaker’s Self-Lay Policy the SLP must notify the Undertaker, giving a minimum of 7 days’ notice of the planned date of any mains chlorination, pressure testing and/or swabbing activity.

3.19 The SLP shall apply to the Undertaker to connect the Water Main to the Undertaker’s public water supply system by giving not less than 10 Days written notice before such connection is required.

3.20 In carrying out the Self-Lay Works in a highway maintainable or a highway which has been declared to be maintainable at the public expense or in a private Street, the SLP shall:

3.20.1 Obtain a Street Works licence in its own name from the Street Authority for the Street;

3.20.2 Comply fully with the Street Works Legislation, including all payments and fines, permits or other sums due under the Street Works Legislation; and

3.20.3 In particular, comply fully with the requirements of the Street Works Legislation regarding the supervision of the Self Lay Works by a qualified supervisor and the presence on site of a trained operative to the extent that such provisions are for the time being in force

3.21 In carrying out the Self-Lay Works, the SLP shall ensure that all construction operations are carried out in such a way as to avoid danger to the public and minimise disturbance to the general public and to any access to any premises or use of any public highway or private road.

3.22 Subject to clauses 3.23 and 3.24, during the Defects Liability Period the Undertaker may carry out any maintenance of or repair any Defect in the Self-Lay Works or, at its discretion, may by written notice require the SLP to remedy any Defect (to a reasonable timescale determined by the Undertaker) or make good the Self-Lay Works.

3.23 Insofar as any part of the Self-Lay Works involve works in a Street, then notwithstanding any other term of this Agreement the SLP shall continue to be liable to execute any works which forms part of the temporary or permanent reinstatement for the duration of the permanent guarantee period (in accordance and compliant with the Specification for the Reinstatement of Openings in Highway – A Code of Practice – 3rd Edition, July 2010 and/or any later enactment there-of).
3.24 PROVIDED THAT after any part of the Self-Lay Works affected by any work detailed in clauses 3.22 and 3.23 has become vested in the Undertaker the Undertaker may by giving the SLP not less than 5 Days’ notice in writing require the SLP to carry out any such work within such time as may be specified. However, if the Undertaker determines and so notifies the SLP that work to correct a Defect constitutes an emergency including the possibility of impacting upon the Undertaker’s water quality or supply to its customers, the Undertaker shall be entitled to carry out such works after giving due notice to the SLP.

3.25 The SLP shall reimburse the Undertaker for all such proper and reasonable costs as may be incurred by the Undertaker under clauses 3.13, 3.14, 3.15, 3.23 and 3.24.

3.26 The SLP shall pay any payment payable to the Undertaker under this Agreement within 30 Days of the Undertaker issuing of an invoice for same.

3.27 The SLP shall not carry out any activities which may affect any of the Undertaker’s existing public water mains and/or services or the water therein unless such activities have been previously agreed in writing by the Undertaker.

4. Further Obligations on the part of the Developer, the Owner, and the Adjoining Owner

4.1 The Developer shall pay to the Undertaker the Non-contestable Works costs, the administration charges and the Infrastructure Charges in respect of the Self Lay Works as set out in the Costs Schedule when they become due, which notwithstanding the fact that indicative (i.e. current at the date of this Agreement) charges are set out in Schedule 3, shall be payable at the rate (as set out in the Charges Scheme or as otherwise published by the Undertaker) prevailing at the date of the relevant part of the Self Lay Works. The Infrastructure Charge for a property becomes due at the point when the Service Pipe supplying that property is connected to the Water Main. The undertaker will not give authorisation to proceed with a Service Connection until the administration charge relating to that Service Connection has been paid.

4.2 Throughout the term of this Agreement, the Developer warrants that it has and will retain sufficient rights in the Site and any Adjoining Land to enable the Self-Lay Works to be constructed and to permit their use repair and maintenance prior to the date when the Self-Lay Works are vested in the Undertaker and additionally thereafter, during the Defects Liability Period, also for any repair, maintenance, or flushing of pipework for protection of water quality purposes that may be required to be undertaken by the Undertaker.

4.3 Insofar as the Site is in the freehold ownership of a party named as the Owner or there is Adjoining Land, the Developer warrants that it has examined the title of such Owner or the Adjoining Owner, as the case maybe, and that such person has an unencumbered title to such part of the Site or the Adjoining Land, as the case maybe, where the Self-Lay Works are to be constructed.

4.4 The Developer and the Owner acknowledge that until vesting in respect of the Water Main pursuant to clause 8.2 or the vesting of any Service Pipe pursuant to clause 9.1, the Water Main or Service Pipes, as the case may be, shall belong to the SLP.

4.5 The Developer and the Owner shall not build or place, or permit to be built or placed, any building, structure, erection, plant, machinery or apparatus and shall not plant, or permit to be planted, any tree on, over the self-laid Water Main and/or within any Protected Strip or easement without the written consent of the Undertaker. The SLP shall furthermore be subject to the Undertaker’s Self-Lay Policy in this regard.
Provided that this condition shall not apply to anything shown on the Drawing(s) or the Layout Plan within a Protected Strip or to the apparatus of any electricity, gas, sewerage or telecommunications undertaker on condition that any such electricity, gas, sewerage or telecommunications apparatus does not obstruct future access to any part of the Self-Lay Works.

4.6 The SLP or Developer shall be liable to pay to the Undertaker the balance of the revised estimate of the Pre-commencement Payment made through an adjustment to the Gross and Net Asset Value provided a complete breakdown of the actual costs incurred and income offset calculation is given.

4.7 Before the Self-Lay Works are vested in the Undertaker, the Developer shall at the Undertaker’s request execute or secure the execution (at no cost to the Undertaker) of:

4.7.1 A Transfer to the Undertaker (if so required by the Undertaker) vesting in the Undertaker the title absolute, free from any covenant, easement, exception or reservation or other encumbrance of the land forming the sites of pumping stations that form part of the Self-Lay Works together with all rights necessary to gain access thereto both pedestrian and vehicular and the Transfer deed shall contain the following agreement and declaration:

“It is hereby agreed and declared that this Transfer of the Property shall not vest in Southern Water Services Limited any pumping station or accessories thereto on, over or under the Property provided however that the same may vest in Southern Water Services Limited as part of any vesting of water mains within the Site and until such time the obligations of the Transferor in any Agreement by virtue of Section 51A of the Water Industry Act 1991 shall remain unimpaired and fully enforceable.”

4.7.2 A Deed of Grant of Easement (if so required by the Undertaker) in the standard form of the Undertaker (a copy is attached as Appendix 3 to this Agreement) in relation to the Self-Lay Works excluding any part of the Self-Lay Works within a Street. In addition, in respect of any Service Pipes the Undertaker is to be afforded unhindered access at all times to its apparatus in a service strip and in the event that a service strip is not to form part of an adopted highway but is integrated into private land the Undertaker is to be provided with an easement that provides for reasonable access to its apparatus for the reading of any meter or for any required access to repair and/or renew its apparatus.

In the above case if an easement is not provided the Undertaker reserves the right to instruct the Developer and/or SLP to relocate the service pipe and apparatus within the highway boundary providing that the services have not already been connected to a water main and commissioned. If however the services have been connected and commissioned (regardless of whether a vesting certificate has been issued) the Undertaker will relocate, at a reasonable cost, the affected apparatus so as not to cause a risk to the Undertaker’s customers or water quality and invoice the SLP and/or Developer.

5. Adjoining Land

5.1 If the SLP is to construct any part of the Self-Lay Works in any Adjoining Land then the Adjoining Owner shall be a party to this Agreement for the sole purpose of acknowledging and consenting to the arrangements herein expressed between the SLP, Developer and the Undertaker and agreeing to the covenants set out in this clause. (For the avoidance of
doubt the Adjoining Owner shall have no liability under the provisions of this Agreement in relation to the construction and future maintenance or repair of the Self-Lay Works.)

5.2 The Adjoining Owner hereby consents and agrees to the arrangements contained within this Agreement as far as they relate to the Adjoining Land and to the adoption of the Self-Lay Works into the Undertaker’s public water supply system and acknowledges that the Undertaker shall be entitled to carry out its statutory rights under the Act in respect of the Adjoining Land following the vesting of the Self-Lay Works.

5.3 The Adjoining Owner acknowledges that the Self-Lay Works belong to the SLP until they become vested in the Undertaker and agrees to give the same covenant as set out in clauses 4.4 and 4.6 in respect of the Adjoining Land.

6 Inspection of Self-Lay Works

6.1 During the progress of the Self-Lay Works, the Defects Liability Period and the permanent guarantee period provided for in clause 3.23 of this Agreement, the SLP and the Developer shall give to the Undertaker and any person or persons duly authorised by him access to every part of the Self-Lay Works and, insofar as it is practicable to do so and necessary to confirm the construction of the works and the quality and specification of materials as being compliant Permissible Materials, which are to be used for the Self-Lay Works, and also to all workshops and places where works is being prepared or from which materials and machinery are being obtained for the Self-Lay Works and permit them to inspect the same, and all materials used or intended for use therein, and to take samples of materials used or proposed to be used in connection with the Self-Lay Works, and to carry out tests as he may deem necessary.

6.2 The Undertaker may by notice in writing require the removal or proper re-execution of any works which in respect of materials or workmanship is in its opinion faulty or not in accordance with the Specification or the Street Works Legislation and the SLP shall forthwith comply with any such requirement. Failure to comply with this request which as a consequence involves the Undertaker incurring a cost in order to audit compliance with the Specification, proper construction arrangements and use of Permissible Materials will be recovered as a charge by the Undertaker on the SLP.

6.3 The SLP shall, if so requested by the Undertaker, open up for inspection any part of the Self-Lay Works which may have been covered up and if the SLP fails to comply with any such requirement the Undertaker may itself open up the relevant part of the Self-Lay Works PROVIDED THAT:

6.3.1 In the event of any part of the Self-Lay Works being found to be defective, the cost of such opening up and of rectification of any defects and the reinstatement (including reasonable administrative costs and incidental expenses) shall be borne by the SLP; or

6.3.2 In the event that no part of the Self-Lay Works is found to be defective, the cost of such opening up and reinstatement shall be borne by the Undertaker unless the reason the Undertaker required the Self-Lay Works to be opened up was because that part of the Self-Lay Works had commenced before the Start Date, notice had not been given in accordance with clause 3.2 and clause 3.3, the Undertaker was not previously allowed access in accordance with clause 6.1, or the Undertaker is able to issue the SLP with evidence of works on the Site prior to this event that
demonstrates the Undertaker’s concern that construction and use of Permissible Materials have not been installed as per the Specification; in which case the relevant costs (including reasonable administrative costs and incidental expenses) shall be borne by the SLP.

7. Default by the SLP and/or the Developer

7.1 In the event of default (at the sole determination of the Undertaker) of any obligations under this Agreement by the SLP, the Developer (if a separate party to the SLP) shall become jointly and severally liable for the SLP’s obligations.

7.2 In the event of default (at the sole determination of the Undertaker) of any obligations under this Agreement by the Developer, the Owner (if a separate party to the Developer) shall become jointly and severally liable for the Developer’s (including, under clause 7.1, the SLP’s) obligations.

7.3 In the event of a failure by the SLP to carry out the installation of and maintenance of the Self-Lay Works or any part thereof in accordance with the provisions of this Agreement or (once having commenced the Self-Lay Works) diligently to proceed with the same within the Construction Period or in the event that the SLP shall fail to comply with any obligation of a utility executing Street Works under the Street Works Legislation or in the event of the SLP ceasing to be accredited before the Self-Lay Works have been adopted, the Undertaker may take over the construction of and/or remedy, reconstruct, maintain and complete such part or parts of the Self-Lay Works as the Undertaker deems appropriate by giving the Developer and the SLP at least 10 Days' notice in writing (or such notice (if any) as shall be reasonable in the case of an emergency of which the Undertaker shall be the sole judge) of its intention to do so and recover the costs and expenses incurred in carrying out any such work (including reasonable administrative costs and incidental expenses) from the SLP (or, in default, the Developer or the Bond Amount or the Surety) without prejudice to any other rights the Undertaker may have.

7.4 Furthermore, in the event of the Undertaker carrying out and/or maintaining the Self-Lay Works pursuant to clause 7.3, the Undertaker shall be entitled to enter upon and temporarily occupy with its contractors, agents or workmen so much of the Site as may be required for the purposes of carrying out such works and for that purpose may expel the SLP and/or any other party from that part of the Site where the Self-Lay Works are being undertaken.

7.5 Without prejudice to clause 7.3, in the event of the SLP failing to fulfil any obligation under this Agreement not mentioned in clause 3 or the Developer, Owner or Adjoining Owner failing to fulfil any of their obligations under this Agreement, the Undertaker may give 10 Days' notice in writing (or such notice (if any) as shall be reasonable in the case of emergency of which the Undertaker shall be the sole judge) to the SLP and the Developer specifying the default and the date by which such default is to be remedied and if not remedied by such date, the Undertaker may either:

7.5.1 call upon the Surety to pay on demand such amount or amounts (including reasonable administrative costs and incidental expenses) as may from time to time be certified by the Undertaker as necessary to fulfil such of the SLP’s, Developer’s, Owner’s or Adjoining Owner’s obligations, as the case may be PROVIDED THAT such liability shall not exceed the Bond Amount; or

7.5.2 use the Bond Amount to fulfil any such obligations.
7.6 The Surety shall not be released from its liability under this Agreement until either:

7.6.1 The expiration of the Defects Liability Period; or

7.6.2 Payment to the Undertaker of the full amount of the Bond Amount, whichever is the earlier;

PROVIDED THAT on the expiration of the Defects Liability Period in respect of the Water Main, the Undertaker shall (without prejudice to the Surety’s ongoing liability in respect of Service Pipes (limited to the Service Pipe Deposit)) release the Surety from its liability under this Agreement in respect of the Water Main; and

PROVIDED ALSO that the Undertaker may at any time prior to the end of the Defects Liability Period in respect of the Service Pipes at its sole discretion (after receipt of an application from the SLP) release part or all of the Service Pipe Deposit by giving written notice to the Surety, SLP and the Developer.

7.7 For the avoidance of doubt, the Surety shall not be discharged or released from its obligations by any determination or disclaimer of this Agreement or by any arrangement between the SLP and the Undertaker or by any alteration in the SLP’s obligations or by the execution of any variation to the Self-Lay Works authorised under this Agreement or by any forbearance whether as to payment, performance, time or otherwise whether made with or without the assent of the Surety.

7.8 If the amount demanded from the Surety under clause 7.3 or 7.5.1 exceeds the amount required by the Undertaker to fulfil the SLP’s, the Developer’s, the Owner’s or the Adjoining Owner’s obligations, as the case may be under this Agreement, the Undertaker shall repay to the Surety such excess amount at the end of the Defects Liability Period in respect of the Service Pipes.

7.9 Where the Developer has paid a Deposit and the Deposit is not required by the Undertaker or exceeds the amount required by the Undertaker to fulfil the SLP’s, the Developer’s, the Owner’s or the Adjoining Owner’s obligations, as the case may be, under this Agreement, the Undertaker shall, subject to clause 8.3, use the Deposit or the balance thereof in payment of the Developer’s Payment when calculating the Net Asset Payment.

7.10 This clause shall survive the termination or disclaimer of the Agreement

8. **Vesting of the Water Main and Payment of the Net Asset Value**

8.1 The Undertaker shall be under an obligation to connect and commission the Self-Lay Water Main to the Undertaker’s existing water distribution network and to pay the Net Asset Value due provided the works have been constructed in accordance with this Agreement unless:

8.1.1 The requirements of the Code of Practice and/or the Undertaker’s Self Lay Policy have not been fulfilled;

8.1.2 The Undertaker is reasonably satisfied Service Pipe Connections will not be made to the Water Main within a reasonable period after the satisfactory commissioning of the Water Main and its connection to the public water supply network to avoid the risk that the quality of the water in the Water Main or the public water supply network might become impaired; or
8.1.3 Connection of the Water Main to the Undertaker’s public water supply network is likely to compromise the integrity of that network and/or the quality of the water to be supplied by the Undertaker to any customer; or

8.1.4 The Developer has failed to secure the transfer of such land or the grant of such a Deed of Easement as is specified in clause 4.6.1 and 4.6.2; or

8.1.5 There is any dispute between the Developer, the SLP, the Owner or an Adjoining Owner (or any combination thereof) or with any third party concerning the Self-Lay Works.

8.2 Notwithstanding the satisfactory commissioning of the Water Main and its connection to the Undertaker’s public water supply network, the Water Main shall not be formally vested in the Undertaker unless the requirements of clause 8.1 have been met in full and any defects notified to the SLP have been rectified or a rectification programme agreed in accordance with the Specification whereupon the Undertaker shall supply to the SLP and the Developer a vesting declaration (in the form annexed hereto) providing written confirmation of the vesting and the date of commencement of the Defects Liability Period.

8.3 Thereupon, the Undertaker shall pay to the Developer or SLP (after deduction of any Defects Liability Retention Payment) the Net Asset Payment (or part thereof if it is a phased Development) within 35 Days of the receipt of an invoice from the SLP.

8.4 The SLP shall request the vesting of the Self-Lay Water Main from the Undertaker quoting the reference number of this Agreement, Site Address, Developer details, details of assets to be vested, SLP details; subject to satisfactory completion of all works to be vested in a compliant manner and provision of all associated drawings, certificates and the like handed over to the Undertaker in accordance with the Self-Lay Policy. The “Application for Vesting of Mains and Services” form is to be used for the purposes of requesting vesting. This form is an addendum document to the Undertaker’s Self-Lay Policy.

9. Vesting of Service Pipes

9.1 Subject to the SLP and Developer complying with their respective obligations in respect of the Service Pipes, including clauses 3, 4 and 9.2, all Service Pipes which are connected to the Water Main or any other water main vested in the Undertaker in accordance with the Service Pipe Construction Programme shall upon the making of such Service Pipe Connections vest immediately in the Undertaker PROVIDED THAT the Undertaker may refuse to vest any Service Pipes which the Undertaker considers have not been satisfactorily constructed in accordance with the Specification or if any Defects in connection therewith have not been made good to the satisfaction of the Undertaker.

9.2 Within 3 working days upon the making of any Service Pipe Connection, the SLP shall provide in writing to the Undertaker the meter serial number, meter size, meter location, and, if available, full postal address of the property served by the Service Pipe, the name and address of the owner and occupier of the property and the date that that person became (or will become) the owner and/or occupier, together with any other information specified by the Undertaker in respect of the Service Pipe in the Undertakers Self-Lay Policy

9.3 If the SLP has not already provided the name and address of the owner or occupier of the property, the Developer shall provide such information and the date that that person became (or will become) the owner and/or occupier in writing to the Undertaker as soon as
reasonably practicable and, in any event, within 5 Working Days of the commencement of their ownership and/or occupation. Pending receipt of such information, the Developer shall remain liable to the Undertaker for payment of the water and sewerage charges due in respect of the property.

9.4 Nothing herein shall affect the liability of any party or any other person to pay the Undertaker’s Infrastructure Charges in accordance with the Undertaker’s Charges Scheme.

Note: See Appendix One for a copy of the Vesting Certificate and Appendix Two for the Schedule of Vesting.

10 Indemnity

10.1 All actions charges claims costs demands and expenses properly payable or incurred which may be made against them jointly or separately in connection with or arising out of the construction and completion of the Self-Lay Works;

10.2 All sums, specified in the Net Asset Value calculation, payable to secure a transfer of land or grant of a Deed of Easement in the Undertaker’s standard form in relation to the Water Main (including, where applicable, valuation and legal fees);

10.3 Liability of every kind for breach of any Act, regulation, code of practice, byelaw or other requirement which applies to the Self-Lay Works.

10.4 Any acts performed by the Undertaker on behalf of the SLP pursuant to clause 7.

Note: See Appendix Three for a sample Easement document.

11 Variation

11.1 Before making any request for a major variation, the SLP shall give a minimum of 5 Days’ notice to the Developer and the Undertaker so that a meeting can be arranged to discuss the proposal.

11.2 In the event that the Self-Lay Works take longer to construct than the Construction Period the Undertaker shall have the right to review and vary the Specification, the phasing programmes set out in Schedule 1, the Developer’s Payment and the Undertaker’s Works;

11.3 Any variation (other than a variation required by the Undertaker to provide water supply services to any other site or premises) shall be undertaken at the SLP’s expense and any reasonable costs incurred by the Undertaker as a consequence will be charged to and met by the SLP.

11.3 The SLP shall not make any variation without the Undertaker’s prior consent in writing;

11.4 Nothing in this clause shall permit or authorise any breach of the Specification; and
11.6 Every variation shall be agreed in writing by all parties and shall be annexed to this Agreement.

12 Disputes

12.1 All questions, disputes, or differences (other than those that fall to be dealt with by the Water Services Regulation Authority under the Act or the Code of Practice) which may arise at any time in relation to this Agreement shall be referred in the first instance to a senior manager of those parties who will attempt in good faith to resolve any issue but failing resolution within 10 Days may be referred with the agreement of those parties to mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

12.2 If the parties in dispute do not agree upon mediation within 5 Days of such a reference or have not settled the dispute by mediation within 2 months of the initiation of the mediation, the dispute shall be referred to the decision of a single arbitrator mutually agreed upon or, failing such agreement within 10 Days, to be appointed by the President for the time being of the Chartered Institute of Arbitrators on the application of any of the parties in dispute and such arbitration shall be carried out in accordance with and subject to the applicable provisions of the Arbitration Act 1996.

13 VAT

13. In the event that the SLP, Developer or the Undertaker shall be liable to account to HMRC for Value Added Tax in respect of the performance of any of its obligations hereunder which shall constitute a taxable supply to the SLP, Developer or Undertaker then the SLP, Developer or the Undertaker (as the case maybe) shall be entitled to charge and forthwith be paid the amount of such tax upon production of a tax invoice.

14 Service

14.1 All documents specified under this Agreement shall be delivered either by first class pre-paid post, e-mail or by personal delivery to the address of the party for whom such document is intended as stated at the head of this Agreement or such other address as may be notified in writing for that purpose.

14.2 Any documents so delivered shall be deemed to be received in the case of a letter sent by first class pre-paid post 2 Days after posting and in the case of an e-mail on proof of receipt. The contact name, address, telephone number and E-mail address of any parties may be altered at any time during the term of the Agreement by written notification to the other parties.

15 Contracts (Rights of Third Parties) Act 1999

15. This Agreement does not confer any benefit upon, nor create any right enforceable by any third party, but shall be enforceable by an owner or occupier for the time being of any premises connected or to be connected with the Self-Lay Works.

16 Warranties

16. Nothing in this Agreement shall imply any obligation on the part of the Undertaker to any party to this Agreement to ensure that the Self-Lay Works or any part or parts of the same are properly constructed.
17 Termination

17.1 If notwithstanding the application of the provisions of clause 7 of this Agreement any outstanding Defects or maintenance issues in respect of the Self-Lay Works remain unresolved or the SLP or the Developer shall be adjudicated bankrupt or shall go into receivership, liquidation voluntarily or otherwise, or shall execute a deed of assignment or arrangement for the benefit of, or otherwise compound with, its creditors (except for the purpose of re-construction or amalgamation) the Undertaker may without prejudice to its other rights remedies and powers against the SLP and the Developer by notice in writing to the SLP, Developer and Surety terminate this Agreement and upon such notice being served this Agreement shall immediately terminate but such termination shall not affect any liabilities which have accrued prior to the date of termination and shall be without prejudice to the Surety’s obligations to the Undertaker.

17.2 Furthermore, in the event of termination, the Developer shall pay to the Undertaker the full cost of the Non-contestable Works incurred or committed prior to the date of termination.

18 Jurisdiction

18. The provisions of this Agreement shall be governed by the respective law of England and Wales and subject to the exclusive jurisdiction of the courts of England and Wales respectively.

19 Waiver of Rights

19. No failure or delay on the part of any party to exercise any of its rights under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any such rights preclude any other or further exercise thereof. Any waiver by any party of any breach by another of any of its obligations under this Agreement shall not affect the rights of the waiving party in the event of any further or additional breach of breaches.

20 Void Provisions

20. If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions hereof and the remainder of the affected provision. The parties agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

21 Insurance

21.1 Until such time as the Self-Lay Works have vested absolutely in the Undertaker there shall be no liability, responsibility or obligation, whether financial or otherwise, on the part of the Undertaker relative to any matter of insurance pertaining to the Self-Lay Works.

22 Force Majeure

22.1 If a party (the Affected Party) is prevented, hindered or delayed from or in performing any of its obligations under this Agreement (other than an obligation to make payment) by a Force Majeure Event:
22.1.1 The Affected Party's obligations under this Agreement shall be suspended while the Force Majeure Event continues to the extent that the Force Majeure Event prevents, hinders or delays the performance by the Affected Party of those obligations;

22.1.2 As soon as reasonably possible after the start of the Force Majeure Event and in any event within two Days starting on the day the Force Majeure Event starts, the Affected Party shall notify the other party of the Force Majeure Event, the date on which the Force Majeure Event started, the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement (to the extent then known to it) and the efforts being made or proposed by the Affected Party to remove or avoid such Force Majeure Event;

22.1.3 The Affected Party shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of all of its obligations under this Agreement; and

22.1.4 As soon as reasonably possible after the end of the Force Majeure Event, the Affected Party shall notify the other party in writing that the Force Majeure Event has ended and resume performance of its obligations under this Agreement.

22.2 In this Clause 22, Force Majeure Event means an event beyond the reasonable control of the Affected Party arising from the following (but not otherwise):

22.2.1 War, act of hostility, terrorism and acts of sabotage;

22.2.2 Natural disasters such as violent storms, earthquakes, tidal waves, floods, volcanic ash and/or lightning;

22.2.3 Explosions, fires and/or destruction of plant, machinery, and/or premises.

23 Audit

23.1 The SLP shall keep its own accurate and complete records detailing all action taken by the SLP in connection with the performance or non-performance of its obligations under this Agreement and in relation to the SLP’s liabilities under this Agreement, and in particular shall keep books and records of all contracts entered into for the purposes of the Bribery Act, 2010 and the Criminal Finances Act, 2017.

23.2 The SLP shall establish and maintain such records at all times during and for a minimum of six years after the termination or expiry of this Agreement.

23.3 To enable the Undertaker to audit the SLP’s compliance with the terms of this Agreement and the Charges, the SLP shall furnish the Undertaker, within ten Days, at no additional charge with:

23.3.1 reasonable access to and copies of the records referred to in Clauses 23.1 and 23.2; and

23.3.2 reasonable access to all relevant materials, including, without limitation, information, premises, data, employees, subcontractors, agents, consultants, software, systems and assets at all locations from which obligations of the SLP are being undertaken; and
23.3.3 all reasonable assistance and co-operation in undertaking the audit relating to this Agreement.

23.4 At the Undertaker’s request, the SLP shall make all reasonable changes required by, and take any other action necessitated by, any audit or inspection, within the timescales set by the auditor.

23.5 All internal and external reports and investigative actions, along with audit reports prepared by external auditors, shall be made available to the Undertaker for inspection within forty-eight hours of the request being made.

23.6 The SLP shall ensure that its employees, subcontractors, agents and consultants comply with this Clause 23.

23.7 Any inspection or audit, or failure to inspect or audit, shall not in any way relieve the SLP from its obligations under this Agreement.

24 Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

24.1 It is agreed by all parties hereto that this Agreement is a contract for the provision of services and is not a contract of employment nor an agreement for the transfer of an undertaking.

24.2 The Developer and the SLP shall indemnify the Undertaker against all costs, expenses and liabilities that might be incurred by the Undertaker arising from any claims by employees of the Developer and/or the SLP for breach of contract, unfair or wrongful dismissal, redundancy or the like including matters relative to pension by virtue of any application or alleged application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any subsequent or related legislation.

25 Intellectual Property Rights and Inventions (IPR)

25.1 Nothing in this Agreement nor any Schedule hereto shall operate to transfer to the Undertaker any form of title or ownership in and to the IPR of the Self-Lay Works which were already owned by another party prior to the Start Date of this Agreement. In such a case the other party or parties shall grant in favour of the Undertaker and its professional advisers a perpetual, irrevocable, royalty-free, non-exclusive licence for the use of such IPR by the Undertaker insofar as this is necessary for the operation and use by the Undertaker of the IPR created and delivered to the Undertaker in terms of this Agreement.

25.2 The IPR created under and in terms of this Agreement shall be held and owned by the Undertaker and the other relevant parties jointly in all time coming.

25.3 Each party shall execute and shall procure the execution by its subcontractors, agents and consultants of all required documents and shall perform and shall procure the performance by its subcontractors, agents and consultants of such acts, as might reasonably be required, to obtain and perfect respective titles in the IPR referred to in this Clause 25.

25.4 The SLP shall disclose to the Undertaker all Inventions which the SLP, its subcontractors, agents or consultants may make in performing their obligations under this Agreement.

25.5 If the SLP discloses a patentable invention to the Undertaker, the Undertaker may require the SLP its subcontractors, agents or consultants to assist the Undertaker with the preparation of documentation to file a patent application. Employee inventors of the SLP, its
subcontractors, agents or consultants shall be named on any patent application filed by the Undertaker under this Clause and compensation due to them under Section 40 of the Patents Act, 1977 or otherwise shall be payable to the SLP its subcontractors, agents or consultants or such employee inventors, as the case may be.

25.6 The SLP agrees and shall procure that its subcontractors, agents or consultants agree to waive the exercise against the Undertaker of all moral rights under the Copyright, Designs and Patents Act, 1988.

26 Confidentiality

26.1 In this Agreement confidential information includes:

26.1.1 All customer data, information, details and data of any kind in connection with the business or finances of the Undertaker information in respect of the management, financial, marketing, business and commercial systems, Intellectual Property Rights and other rights and arrangements or affairs of the Undertaker or its clients or customers or suppliers or other business partners;

26.1.2 The terms or subject matter of this Agreement;

26.1.3 The negotiations relating to this Agreement;

26.1.4 Any information, findings, data or analysis derived from confidential information;

26.1.5 Any other information that is identified as being of a confidential or proprietary nature; and

26.1.6 Trade Secrets in terms of the Trade Secrets Directive EU 2016/943 of 8 June 2016 on and from 9 June 2018 relative to the subject matter of this Agreement.

26.2 The Developer and the SLP shall during this Agreement and thereafter:

26.2.1 Keep all confidential information strictly confidential;

26.2.2 Not disclose any confidential information to a third party, other than to such of its employees and/or officers as will of necessity acquire it as a consequence of the performance of that party’s obligations under this Agreement, and only then provided that the relevant party shall ensure that each such employee and/or officer shall keep such confidential information confidential and shall not use any of it for any purpose or disclose it to any person, firm or company other than those for which or to whom that party may lawfully use or disclose it under this Agreement; and

26.2.3 Use confidential information only in connection with the proper performance of this Agreement.

26.3 Clause 26.2 shall not apply to any confidential information to the extent that it:

26.3.1 becomes generally available to the public (other than as a result of its disclosure by the receiving party or its representatives in breach of this Clause 26);

26.3.2 Is required or requested to be divulged by any court, tribunal, or governmental authority with competent jurisdiction to which either party is subject, wherever situated;
26.3.3 Is disclosed on a confidential basis for the purposes of obtaining professional advice to the benefit of the Undertaker;

26.3.4 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

26.3.5 Was known to the receiving party before the information was disclosed to it by the disclosing party;

26.3.6 was, is, or becomes, available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;

26.3.7 Is disclosed with the other party's prior written approval to the disclosure; or

26.3.8 The parties agree in writing it is not confidential or may be disclosed.

26.4 A party may disclose confidential information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, as far as it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.

26.5 Each party reserves all rights in its confidential information. No rights or obligations in respect of a party's confidential information, other than those expressly stated in this Agreement, are granted to the other party, or are to be implied from this Agreement.

26.6 This Clause 26 shall continue in full force and effect after and despite the expiry or termination of this Agreement, whatever the reason for termination.

27 Data

27.1 The following apply to data, material or information supplied by the Undertaker to the SLP or any data, materials or information generated by the SLP (“the Items”):

27.1.1 Ownership of the Items (including all Intellectual Property Rights in the Items) shall be vested in, and remain the property of, the Undertaker or its licensors. If the Item is data then the Undertaker shall own the Intellectual Property Rights in the data and any databases in which the data is held, whether the databases were created before or after commencement of the Agreement and irrespective of any change of format that may have occurred during the course of the Agreement;

27.1.2 The SLP may use the Items solely to the extent necessary for the provision of the Self-Lay Works;

27.1.3 the SLP may not modify the Items without the prior written consent of the Undertaker except to the extent reasonably necessary for the provision of the Self-Lay Works;

27.1.4 the SLP may not copy or disclose the Items to third parties except to the extent necessary for the provision of the Self-Lay Works and even then only when appropriate Confidentiality Agreements have been put in place;
27.1.5 the SLP shall comply with any reasonable directions made by the Undertaker from time to time relating to use of the Items;

27.1.6 the SLP shall grant the Undertaker access to and shall provide the Undertaker with copies of any Items; and

27.1.7 the SLP shall surrender the Items to the Undertaker at any time at the request of the Undertaker.
SIGNED on behalf of the parties the day and year first before written
Signed on behalf of Southern Water Services Ltd.
By: ................................................................. Authorised Person:
Print Name: ......................................................... Date: .............................................

Signed on behalf of [the Developer]
By: ................................................................. Authorised Person:
Print Name: ......................................................... Date: .............................................

Signed on behalf of [the SLP]
By: ................................................................. Authorised Person:
Print Name: ......................................................... Date: .............................................

Signed on behalf of [the Owner]
By: ................................................................. Authorised Person:
Print Name: ......................................................... Date: .............................................

Signed on behalf of [the Adjoining Owner]
By: ................................................................. Authorised Person:
Print Name: ......................................................... Date: .............................................

Signed on behalf of [the Surety]
By: ................................................................. Authorised Person:
Print Name: ......................................................... Date: .............................................

Note: The Agreement cannot be signed by an agent acting on behalf of any party. In signing, each signatory takes on authority for their party against the obligations in this agreement. If their role does not provide this authority another signatory needs to be used.

Please indicate which party is making payment for Infrastructure charges if: (tick □)

Infrastructure charges:  Developer □  SLP □  Other □
Meters (when provided by Undertaker):  Developer □  SLP □  Other □
Receiving the asset payment:  Developer □  SLP □  Other □

By reference to the above table if the Net Asset Payment is to be made to the SLP, the Developer is to confirm and instruct the Undertaker to make such payments using the sample letter in Appendix Four.
Schedule 1

Water main construction and phasing programme
(Previously approved as part of the design of the Self-Lay Works)

[Insert programme]

Schedule 2

(The Non-contestable Works to be done by the Undertaker)

1. Construction of any other water main and any associated infrastructure and accessories from ………………………………… to ………………………………… as shown on Drawing no. [ ]

2. Diversion of an existing water main only when assessed by the Undertaker that construction works do not pose a risk of damage or disruption to the Undertaker’s existing assets from ……………………… to ……………………… as shown on Drawing no [ ]

3. Mains Connection(s):

[This Schedule must be completed. If none entered then all works are assumed to be contestable.]

Schedule 2A

(Contestable Works to be done by the Undertaker)

1. Any works listed in this schedule are Contestable Works that the SLP is asking the Undertaker to deliver.

[This Schedule must be completed. If none entered then all contestable works is assumed to be done by the SLP.]
### Schedule 3

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Qty</th>
<th>Cost £</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Service Connection and related Administrative Charges in respect of Non-contestable Service Pipe Connection(s). The Undertaker supplies &amp; fits meter(s).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Service Connection related Administrative Charges only in respect of Contestable Service Pipe Connection(s). The SLP supplies &amp; fits meter(s).</td>
<td></td>
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<tr>
<td>2.</td>
<td>Water Infrastructure Charge for year</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Sewerage Infrastructure Charge for year</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Non-contestable Costs</td>
<td></td>
<td></td>
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<tr>
<td>5.</td>
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<td>9.</td>
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</table>
Appendix One

Vesting Certificate
Southern Water Services Limited

WATER INDUSTRY ACT 1991, as amended ("the Act"), SECTION 51A

VESTING OF WATER MAINS NOTICE AND DECLARATION

To [ ] of [ ]

(Hereinafter called “the Owner”)

Of [ ]

(Hereinafter called “the Developer”)

Of [ ]

(Hereinafter called “the Self-Lay Provider”)

Of [ ]

Agreement Number: [ ]

Whereas

1. The Water Main(s) at and as specifically listed in the Schedule under and additionally for the purposes of identification as detailed on the as-laid drawing(s), reference No. [ ] annexed hereto, are private Water Main(s) provided and vested in the Self-Lay Provider.

2. By the Agreement dated this [ ] day of [ ] between [ ], [ ], [ ] and Southern Water Services Limited, under Section 51A of the Water Industry Act 1991 regarding the Self-Lay of Water Main(s) and pursuant to clause 8.2 of the Agreement and the Self-Lay of services pursuant to clause 9.1; it was agreed inter alia that Southern Water Services Ltd would (subject to the Owner, Developer, and the Self-Lay Provider complying with the terms of the Agreement) by declaration vest in itself the Water Main(s) and services.

3. The Owner, Developer, and Self-Lay Provider have complied with the terms of the Agreement to the satisfaction of Southern Water Services Limited.

4. Southern Water Services Limited is the appointed Water Undertaker for the area in which the Water Main(s) are provided and situated.

Southern Water Services Limited hereby gives notice that it has vested the Water Main(s) listed below in the Schedule from [ ] of [ ] [20**].

Additionally, the commencement of the Defects Liability Period for the Water Main(s) as defined by this Agreement shall be from [ ] of [ ] [20**] as being the date of connection of the Self-Lay Water Main(s) and inter alia the date of the vesting certificate and/or for individual services (as set out in the Schedule under) the date of connection with the Self-Lay Water Main pursuant with clause 9.3 of the Agreement.

Signed on behalf of Southern Water Services Ltd.: ..........................................................

Print Name: .................................................. Date: ..................................................
**Appendix Two**

**Vesting schedule**

Site Address: ..................................................................................................................................................

Agreement Ref: ..............................................................................................................................................

<table>
<thead>
<tr>
<th>Water Main (&quot;WM&quot;) or service (&quot;S&quot;)</th>
<th>Phase</th>
<th>Date of connection</th>
<th>Net Asset Payment</th>
<th>Date Vesting Certificate issued</th>
<th>Location or plot ref.</th>
<th>Pipe Diameter</th>
<th>Pipe Material</th>
<th>Length (m)</th>
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</thead>
<tbody>
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</table>

Note: The above Vesting Schedule is completed on the vesting of the Asset. Expand as required.
Appendix Three

Southern Water Sample form of Easement

Dated [ ]

…………………. Limited

And

Southern Water Services Limited

Deed of Grant

Relating to

Land lying to the ………………….. 
and Land being …………………..

Southern Water Services Limited
Southern House
Yeoman Road
Worthing
West Sussex
BN13 3NX

Ref: …………………..
Doc No:

H M Land Registry
Land Registration Act 2002

Administrative area: ..............................................................
Title number: .................................................................
Property: .................................................................Land lying to the .............................................................

THIS DEED is made the.............day of........................................
BETWEEN .................................................................LIMITED of .................................................................

(hereinafter called "the Grantor") of the one part and SOUTHERN WATER SERVICES LIMITED
whose registered office is at Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX
(hereinafter called "the Undertaker") of the other part.

1. Definitions

1.1 “The Undertaker” means Southern Water Services Limited and its successors in title.

1.2 “The Apparatus” means the Water Main and/or Service pipes and any accessories thereto
as defined by Section 219 of the Water Industry Act 1991 as are within the Protected Strip
defined below.

1.3 “The Protected Strip” means that strip of land shown on the plan (being the plan annexed
hereto and numbered DX............................................) and thereon coloured blue.

1.4 “The Dominant” means the undertaking of the Undertaker within its Tenement area as
particularised in the Undertaker’s "Instrument of Appointment" as a Sewerage Undertaker
and taking effect under the Water Act 1989 and the properties and rights forming part
thereof so as to be enforceable by the Undertaker as provided by Section 37 of the

2. WHEREAS:

2.1 The Grantor is registered as Proprietor with absolute title under the above Title Numbers of
the freehold land described above (“the Grantor’s Land”) which includes the Protected Strip

2.2 The Undertaker proposes to adopt the Apparatus within the Protected Strip

2.3 The Grantor has agreed to grant to the Undertaker such perpetual easements rights
powers and privileges in respect of the Protected Strip

NOW THIS DEED WITNESSES:

3. Rights

Subject to the Undertaker making good any damage caused to the Grantor’s Land in the
exercise of the Rights so far as is reasonably practicable or paying proper compensation for
any such damage not made good and to the Undertaker indemnifying the Grantor from and
against all rates taxes impositions and outgoings of an annual or recurring nature claims
demands proceedings damages losses costs charges and expenses arising out of the
exercise of the Rights the Grantor hereby grants with full title guarantee the following
perpetual rights ("the Rights") to the Undertaker for the benefit of the Dominant Tenement and each and every part thereof:

3.1 The right of having retaining using inspecting the condition of reconstructing replacing relaying altering enlarging maintaining cleansing repairing conducting reading of any meter and managing the Apparatus in through under over or upon the Protected Strip (being the servient tenement) together with the right of having and enjoying the free flow and passage of water with or without other matter of any kind whatsoever through and by means of the Apparatus as existing from time to time in through under over or upon the Protected Strip and to discharge from the Apparatus into any canal pond lake or Watercourse (as defined in section 219(1) of the Water Industry Act 1991) within or adjacent to the Protected Strip in compliance with the terms of any statutory consent granted in relation thereto and to increase or decrease such discharge and for such discharge to flow along and within the said canal pond lake or Watercourse and the right at any time to take samples of such discharge.

3.2 For the purposes hereof and in particular for the purposes mentioned in preceding sub clause (and for similar purposes in relation to any connected length of pipes or works incidental thereto) the right at any time and at all times in the day or night-time with or without vehicles plant machinery servants contractors and others and all necessary materials to enter upon and pass and re-pass along the Protected Strip by a route within the same or by such (if any) other convenient route from a public highway as the Undertaker shall with the approval of the Grantor (which shall not be unreasonably withheld or delayed) from time to time require doing and occasioning no unreasonable damage thereto or to the Grantor’s adjoining land.

3.3 The right of erecting on or near the Protected Strip and maintaining any necessary markers indicating the Protected Strip or the position of the Apparatus provided the same are not erected in such a position as to unreasonably affect the beneficial use of the Protected Strip.

3.4 The right in exercising the Rights to make all necessary excavations and to tip soil on land immediately adjoining such excavations as shall be necessary or desirable in relation to the exercise of the Rights.

3.5 The right of fencing or severing off such part of the Protected Strip from the adjoining and adjacent land of the Grantor as shall be necessary and for so long as may be necessary during the exercise of the Rights.

3.6 The right of support for the Apparatus from the subjacent and adjacent land and soil including minerals of the Grantor.

3.7 The right to remove all or any trees and shrubs growing in the Protected Strip and any walls hedges and fences thereon.

4. Covenants

The Grantor to the intent that the burden of this covenant may run with the Protected Strip and so as to bind (so far as practicable) the same into whosoever hands the same may come and every part thereof and to benefit and protect the Apparatus and the Dominant Tenement and each and every part thereof capable of being so benefited or protected but not so as to render the Grantor personally liable for any breach of covenant committed after the Grantor has parted with all interest in the land in respect of which such breach shall
occur hereby covenants with the Undertaker to observe and perform the following covenants:

4.1 Not to use or permit or knowingly suffer to be used the Protected Strip or any adjoining or adjacent land of the Grantor for any purpose that may:

4.1.1 Endanger injure or damage the Apparatus or render access thereto more difficult or expensive

4.1.2 Adversely affect the quality of water or other matter therein or free flow and passage thereof or means of communication along or through the same

4.2 Without prejudice to the generality of the foregoing:

4.2.1 Not to erect construct or place any building wall or other structure or erection or any work of any kind whether permanent or temporary PROVIDED ALWAYS that this covenant shall not be deemed to prevent the erection of boundary or other fences which are of an easily-removable character.

4.2.2 Not to withdraw support from the Apparatus or from the Protected Strip

4.2.3 Not to undertake or cause or permit to be undertaken any piling or percussive Works within the Protected Strip

4.2.4 Not to alter the ground levels within the Protected Strip

4.2.5 Not to plant or cause or permit to be planted any trees or shrubs in the Protected Strip

4.2.6 Not to construct or lay or cause or permit construction or laying of any street road pipe duct or cable across the Apparatus at an angle of less than forty-five degrees formed by the Apparatus and the street road pipe duct or cable PROVIDED that this prohibition shall not apply to any existing street road pipe duct or cable

4.3 To advise any tenant for the time being of the Protected Strip of the existence of the Apparatus and of this deed and its contents insofar as the same relate to the tenant's occupancy and enjoyment of the Protected Strip

4.4 The Undertaker shall have the benefit of the right to enforce these Rights and Covenants pursuant to The Contracts (Rights of Third Parties) Act 1999

4.5 Notwithstanding the earlier exercise of the Rights or earlier enforcement of the Covenants the Apparatus shall not vest in the Undertaker until it has issued a Vesting Declaration vesting the Apparatus in itself pursuant to Section 102 of the Water Industry Act 1991
IN WITNESS of which the parties hereto have executed this Deed the day and year first above written

SIGNED as a Deed by ...................................................
LIMITED acting by a Director in the presence of:

| W | Signature ................................................... |
| I | Name .......................................................... |
| T | Address ................................................................ |
| N | ........................................................................ |
| E | ........................................................................ |
| S | ........................................................................ |
| S | Occupation ......................................................... |

Executed as a Deed by affixing the Common Seal of SOUTHERN WATER SERVICES LIMITED in the presence of:

Company Secretary
Appendix Four

Sample letter from SLP to Southern Water

Instruction to Southern Water to pay Asset Value

Re: Self-Lay Agreement. Address ……………………………………………………
    Agreement reference Number …………………………………………………

Dear ……………………………,

[…………………………..], being the Developer (whose details are in the Agreement), hereby confirms and instructs that all references in this Agreement to Asset Payments that are to be received by the Developer shall be interpreted to be Asset Payments that are to be received by the Self-Lay Provider […………………………] (who details are in the Agreement).

We also confirm that any fees, deposits, administration charges, cost recoverable or other charges (as may apply), and the cost of procuring and supplying to site of meters will be payable by […………………………].

All Southern Water Infrastructure charges will be paid by the Developer […………………………] direct to Southern Water Services Ltd. (whose details are in the Agreement) as detailed within the Self-Lay Provider’s quotation reference […………………………]; a copy of which is attached to this letter.

Yours sincerely

…………………………

Authorised Signatory ………………………