

Section 185 Application for a water main diversion Terms and Conditions

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Version 2

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Introduction

This document sets out the SWS Services Limited (“SWS”) terms and conditions relative to SWS’s Offer of Terms (“Offer”) in relation to a response to an application under Section 185 of the Water Industry Act for a water main diversion or alteration of an existing SWS asset.

The Offer is subject to the following general and specific terms and conditions:

Part One – General Terms

1. The applicant (developer) may apply for work to be programmed comprising a diversion or alteration of an existing SWS asset once the criteria under has been satisfied.
 - 1.1 A completed Section 185 application form (available on SWS’s website) and all information required by SWS to proceed with a response (referenced within said form) has been received by SWS.
 - 1.2 Receipt by SWS of a signed Easement Agreement (when applicable).

For payment see under, however additional charges apply as further detailed on the SWS website.

The Offer letter shall identify the mains or apparatus that are specific to the request for a diversion or alteration and where applicable shall additionally provide guidance on the strategic nature of such mains or apparatus where in particular SWS has concerns relative to the impact on the existing water supply distribution network of the proposed requisition for a diversion / alteration of an existing asset.

2. **Payment:**

Payments for a diversion or asset alteration shall be at the full and final cost incurred by SWS in completing the work and payment shall be made by the applicant in advance, as set out in the SWS Offer, subject to a final measure of incurred actual cost – in accordance with the Water Act.

SWS may require payment or an on demand bond be provided by the applicant prior to commencement of any agreed diversionary or alteration works to an existing SWS asset.

3. **Network Reinforcement:**

The cost of network reinforcement work is met by the published Infrastructure charge that SWS applies to all new developments within its region of supply.

When SWS elects to increase the size (diameter) of the main to be diverted and/or to install additional apparatus other than that which is necessary to satisfy the requisition work the additional cost is borne by SWS as Network Reinforcement.

4. **Abandonment and disposal of redundant pipework and/or apparatus**

Once the diversionary or alteration works to SWS’s existing apparatus has been completed and commissioned the redundant pipework shall be left in-situ by SWS.

In the event that the applicant requires such abandoned pipework, and the like, to be disposed of off-site then such shall be the applicant’s responsibility. However, this must be agreed with SWS so that an assessment can be made as to any effect on the completed diversionary / alteration work.

In the event that the applicant accepts that redundant pipework be left in-situ then SWS recommends that the applicant at its own cost fills the pipe line with foam concrete.

5. **Self-lay option: Not available as this work is Non-contestable work**

SWS considers that diversions and alterations of existing assets is defined as Non-contestable (work which shall only be carried out by SWS) due to the risks associated with maintaining supply to its existing customers and the risk to water quality.

6. **Excavation and work by SWS:**



An Offer based on excavation, backfill, and reinstatement by SWS shall be made on the basis of the existing ground conditions in which the existing asset is installed in response to a requisition request for a diversion or alteration of an existing asset.

7. Change from SWS excavation to excavation by Applicant:

If the applicant elects for whatever reason to assume responsibility for excavation and backfill once the Offer has been accepted or once work has commenced then no contemporaneous adjustment to the terms of the Offer shall be considered by SWS. However, subject to SWS agreeing the extent of the change the final measurement shall be amended at that time to reflect any change in SWS final incurred actual costs.

8. Design and site readiness:

- a) It is the applicant's responsibility to notify SWS if the site layout / design are amended and/or any circumstances or conditions on site change subsequent to an accepted Offer.
- b) SWS shall issue a detailed design proposal on detailed drawings provided by the applicant and the Offer shall be based on the final accepted drawing, title and number/version issued to SWS.
- c) The applicant shall provide suitable drawings to SWS's satisfaction that clearly describe proposed work relative to the request to SWS for a diversion / alteration of existing assets.
- d) SWS reserve the right to amend an accepted Offer in light of any changes that have a material impact on the Offer.

9. Thrust and anchor blocks:

If a thrust or anchor block is required to be installed the applicant is not to interfere with completed work or to excavate or backfill around or above any thrust or anchor block without ensuring that the concrete and structure of such is sufficiently and fully set to SWS's satisfaction.

Details of the required positioning of any thrust and/or anchor blocks are to be agreed between the applicant and SWS to ensure that minimal disturbance to the existing ground can be managed.

10. Contaminated ground:

In the event that an applicant has informed SWS of contaminated or polluted ground conditions within its requisition and has provided SWS with satisfactory information such that SWS can design its work to suit, SWS shall base its Offer on work in such ground using appropriate materials and the associated additional cost of such will be incorporated into SWS's Offer and the eventual final measure.

Should contaminated ground be found in the course of excavation resulting in a design change or alternative working practices the extent of the change and associated costs shall be captured by the final measure of the work and in SWS's final incurred actual costs.

11. Backfill, bed and surround material and supply:

These materials shall be provided in accordance with SWS's current specification and standards.

- a) **Bedding and surround:** material shall be provided by SWS when the Offer is made subject to SWS being responsible for excavation unless otherwise agreed with SWS.
- b) **Backfilling:** material shall be provided by SWS when the Offer is made subject to SWS being responsible for excavation using suitable materials appropriate to the surface in which the work is to be delivered.

In the event that selected excavated materials are unsuitable the applicant shall be required to remove and dispose of such materials and to provide at the point of backfill an alternative suitable and like material for backfilling unless otherwise agreed with SWS and/or allowed for in the Offer.

- c) All surplus excavated materials are the responsibility of the applicant to dispose of unless otherwise agreed with SWS and/or allowed for in the Offer.

12. Trench support:

The Offer includes for trench supports, shoring appropriate to the work to be delivered unless otherwise agreed between the applicant and SWS to be the responsibility of the applicant to provide, adjust, remove, and manage.

13. Programme and start date:

- a) Any work carried out by the applicant to facilitate programming or execution of the works is not reclaimable from SWS against the Offer made unless it was agreed with SWS prior to and included within the Offer.
- b) Subject to Clauses c) to g) under, a diversion of an existing SWS water main where the diversion is driven by a developer is subject to the Water UK levels of service which stipulate that the construction and commissioning of the water main(s) will be completed either (i) within a period of 90 days commencing on the relevant day, or (ii) no later than the date agreed with the developer. SWS shall confirm the agreed date with the developer in writing, by email.

The “relevant day” for the purposes of the above Clause shall be when an undertaking under Section 42 of the Water Industry Act 1991 has been signed by the applicant/developer and SWS has been satisfied that the requirements of Clauses 1 and 2 of this document have been met.
- c) Works will not be programmed until any revised Offer has been accepted and the relevant sums paid and/or deposited with SWS.
- d) Following a request from the applicant to SWS for a programme start date, SWS shall contact the applicant to discuss and agree a date. SWS’s start date shall not be at the behest of the applicant’s programme. Indicative programme dates may be affected by whether SWS has completed all necessary design and risk analysis work associated with the applicant’s activities. The consequence is that SWS shall have to reaffirm all final programme start and completion dates. Constraints on working that may affect SWS’s work, programme start, or duration of work shall require to be considered by SWS and as such SWS shall have no liability financial or otherwise for the effects of same which shall rest solely with the applicant.
- e) Furthermore SWS shall not be bound to accommodate any subsequent applicant changes to its proposed works or programme albeit that SWS will attempt to accommodate such. SWS will expect the applicant to maintain regular contact with any details that may affect SWS’s proposed work or any proposed start or completion date.
- f) In the event that SWS is delayed from commencing the works in accordance with the agreed programme commencement date, for whatever reason, SWS reserves the right to withdraw its resources and re-programme an alternative date. SWS reserves the right to withdraw and re-programme where work, once commenced, has been delayed, disrupted or halted by the applicant being in breach of any of these Conditions. SWS shall not commence any re-programming of the works until any such delay or breach has been remedied to the satisfaction of SWS.
- g) In the instances of a site for any reason not being available on the agreed commencement date or the withdrawal of SWS’s resources being caused by the applicant’s subsequent request or by his default the costs for all of same will be recoverable by making a charge for SWS’s costs so occasioned, in respect of each instance of aborted work (by reference to the SWS published charges). 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.

Any such additional charges must be received by SWS prior to commencement of work.

14. Welfare:

No allowance has been made in the Offer for any costs associated with the provision of welfare facilities (including, but not limited to toilet or mess room facilities etc.) for SWS employees and/or its Contractors. Such welfare facilities will be provided on site free of charge by the applicant. If SWS is required to provide these facilities the applicant shall incur an extra charge from SWS for their provision.

15. Installation by SWS - assumptions relevant to the Offer:

The Offer is based on the following specific assumptions and conditions relevant to the work:

- a) The use of a suitable hydraulically operated mechanical excavator for all excavation and backfilling.
- b) The excavator being able to operate on level ground. Such that, if ground conditions do not permit operation in a safe working manner SWS reserves the right to reconsider the Offer.
- c) The excavator being used in conjunction with a suitable mechanical compactor.
- d) The type of equipment to be used will be entirely at SWS's and/or its approved Contractor's discretion.
- e) Water used for the purposes of testing any new installation of mains will be disposed of either into a suitable drain on site, or else by discharging over a suitable area of ground within the boundaries of the site. The applicant shall confirm the above locations as to disposal or discharging adjacent to the new mains. Water to be discharged over ground will be de-chlorinated after testing has been satisfactorily completed. The applicant is responsible for all any licences and/or authorisations necessary for the disposal of water on site.

16. Offer Validity Period:

- a) SWS's Offer is based on an assessment of current costs and as such will remain valid for a period of three months from the date of the 'Offer' letter. Works will not be programmed until SWS's relevant Offer has been accepted
- b) When an Offer has been accepted but a work date has not been accepted by SWS as being within the same financial year of the Offer and subsequent acceptance (1st April to 31st March) SWS reserves the right to adjust the final sum due.
- c) When an Offer has been accepted but work has not commenced within 4 months of such acceptance SWS reserves the right to adjust the final sum used in the calculation of the Offer if during that 4 month period any change is made to the applicant's proposals or if SWS's charges to deliver its proposed work have changed in the intervening period.
- d) The Offer includes for commissioning and the provision of water for testing purposes.

17. Noticing and lead-in times:

- a) Any work in the highway will require compliance with the Notice requirements of the New Roads & Street works Act 1991 and the Traffic Management Act 2008 and any subsequent legislation to follow thereon. Any associated programme commencement date will depend upon satisfaction of the previous sentence.
- b) So that materials may be ordered, the necessary Statutory Undertaker enquiries may be made, and the environmental obligations and the Statutory Notices may be issued, the commencement date of work shall be subject to the relative time constraints.

Therefore, subject to a) above, Clause 1 of this document, and any site specific constraints of a special engineering nature or the like SWS's maximum lead time for commencement of work shall be 90 days following receipt by SWS of all required documentation and related payments unless otherwise agreed with SWS.

Note: SWS will endeavour to work with the applicant to agree a lead in time that satisfies both parties.

- c) Should it be necessary to serve notice for entry on to private land to provide a supply to any development SWS works will not commence until all required notifications required by the Water Industry Act 1991 (section 159) have been completed and associated easements/ agreements etc. have likewise been completed.

18. Damage to drains or sewers when on a development site:

When SWS is responsible for excavation it will only accept responsibility for any drains or sewers damaged during main(s) installations when such drains or sewers have been clearly marked on site by the applicant beforehand, SWS has been notified in writing, and the applicant has highlighted these to SWS's approved Contractor prior to works commencing.

19. Supply to existing customers:

- a) SWS is required to maintain a supply to its customers with minimum interference and is constrained on how long such supplies are able to be isolated when undertaking any works that affect its mains and services supply and distribution network. In order to eliminate or reduce interruptions to its customers supplies SWS will endeavour to utilise special engineering techniques and to limit the times at which works can take place and restrict the length of time that any supplies can be shut-off in respect of any connections to its existing apparatus.
- b) SWS's design will consider any applicable constraints based on information provided by any applicant and on available records and other matters reasonably foreseeable.
- c) SWS, as a Statutory Undertaker, is required to minimise any shut-down of its water distribution network and consequently its work to repair and/or divert an existing asset and/or network reinforcement work will be undertaken appropriate to the conditions and constraints encountered.

20. Constraints on design and/or work:

In the event that SWS encounters any constraint on its proposed design and/or installation of works including but not limited to;

- a) unforeseeable obstruction or impact on the existing water supply distribution network,
- b) unable to make a planned connection as part of a proposed mains diversion,
- c) ground conditions.

SWS reserve the right to reconsider, redesign, and re-estimate its proposals and to adjust its Offer as appropriate. Any delays to any programmes or work that are incurred as a consequence will not be accepted by SWS and they shall be the responsibility of the applicant.

No changes to the final approved design layout shall be undertaken without the express approval of SWS. Such changes may impact on the design and installation works, the associated delivery programme and the final actual cost to be charged to the applicant.

21. Liability for escape of water:

SWS accepts no liability whatsoever for any damage or loss howsoever caused to any third party construction works or programme in the event of any escape of water from SWS's apparatus.

22. Protection of SWS assets:

SWS may require the applicant to enter into an Agreement to protect SWS existing mains and associated apparatus or new work within an easement. Details of SWS requirements for this agreement shall be obtained from SWS.

23. Following mains installation work on a development site:

- a) Following the completion of all work the applicant is responsible for protecting the integrity of such; particularly in the event that such apparatus has not been installed within any final permanent surface finish and/or that development works on site are still continuing.
- b) Following SWS's completion of the main(s) installation the applicant will notify SWS when the permanent reinstatement surfaces have been finished; and on an agreed date meet with an SWS representative for a survey of all SWS completed work relative to the final finished surface levels. In the event that any SWS has been damaged or access to same has been compromised in any way SWS reserves the right to seek from the applicant redress for any costs it may incur in rectifying any such damage and access
- c) SWS reserve the right to routinely check on the integrity of SWS's apparatus and in the event that such is found to have been compromised to arrange for immediate rectification work and to charge the applicant in accordance with SWS's Third Party damage recharge process.
- d) Any reconciliation of measurement and charges on which the Offer was made will be effected by SWS on completion of all works and the agreement with the applicant will be amended accordingly.

Part Two – Terms specific to diversion and alteration works on existing assets

1. The applicant shall construct any permanent surface over the line of SWS's apparatus such that the final depth shall not exceed the stipulated depths for mains and services by the following unless otherwise agreed by SWS;
 - a) Unless otherwise agreed with SWS particular to the diversion or alteration of an existing asset new mains installed as part of any diversion works shall be installed with a cover depth of 750mm from the final permanent surface to crown of pipe in accordance with NJUG Guidelines on the Positioning and colour coding of Underground Utilities apparatus – issue 8: 29th Oct 2013" and any subsequent amendment thereof.
 - b) The above NJUG document is to be considered as providing minimum guidance in terms of relative positioning of new water mains to other Undertakers' apparatus. Therefore, the Applicant shall ensure that access to such a main be considered in any development design to allow SWS unrestricted access to effect future connections and/or repairs or alterations to the main, unhindered by the proximity of other Undertakers' apparatus. Failure to satisfy this requirement, such that SWS incurs a consequential cost to access such a main shall result in SWS seeking recovery of these costs from the applicant.
 - c) Mains designs and installations shall comply with NJUG publication, volume 4 'Guidelines for The Planning, Installation and Maintenance of Utility Services in Proximity to Trees' together with BS 5837:2012 Trees in Relation to Construction.

Planting often occurs after mains have been installed, but it is essential that only grass or ground cover plants with limited root systems are planted over the mains. If trees or shrubs are to be planted they are to be positioned to avoid both root damage to the main and with a consideration to mitigate problems arising from subsequent repair and maintenance excavation.
2. In the event that SWS is delayed from commencing the works in accordance with the agreed programme commencement date, for whatever reason, SWS reserves the right to withdraw its resources and re-programme an alternative date. SWS reserves to itself the same right to withdraw and re-programme where work, once commenced, has been delayed, disrupted or halted by the contractor (or the applicant) being in breach of any of these Conditions. SWS shall not commence any re-programming of the works until any such delay or breach has been remedied to the satisfaction of SWS.
3. The cost of withdrawing SWS's resources caused by the applicant's subsequent request or by his default will be recovered by making a charge for SWS'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.
4. If for any reason the site is not available on the agreed commencement date SWS reserves the right to charge for any additional costs incurred. Any such additional charges must be received by SWS prior to commencement of the work.
5. SWS reserves the right to levy any additional charges in the event of any breach of these Conditions
6. No allowance has been made in the Offer for any costs associated with the provision of welfare facilities (including, but not limited to toilet or mess room facilities etc.) for SWS employees and/or its Contractors. Such welfare facilities will be provided on site free of charge by the applicant. If SWS is required to provide these facilities the applicant shall incur an extra charge from SWS for their provision.
7. **Installation sequence and considerations on a development site:**
 - 7.1 If other Statutory Undertakers apparatus is installed prior to water mains it may be necessary to revise the Offer to accommodate additional costs of working below and/or in proximity to other Utilities.

Before SWS commences work the applicant will be responsible for the following:

- a) Sole liability for the line and level details provided by him and used by SWS relative to the required works. SWS shall have no liability in this respect relative to its interpretation and use of the line and level details supplied by the applicant.
 - b) Ensuring SWS, SWS Agents or Contractors, correctly interpret the setting out details and/or instructions provided and that the mains are laid in their correct positions and depths.
 - c) Ensuring that the line of any proposed mains route design shall be free from all building materials and/or any other above or below ground obstructions. (This includes scaffolding, bricks, machinery etc.).
- 7.2 Any works necessary to provide any network reinforcement work relative to or associated with the diversion or alteration of an existing SWS asset must be installed and commissioned prior to the commencement of any specific diversionary/alteration work dependant on such.
- 7.3 When deemed necessary by SWS a suitable lockable compound for the storage of its materials (including pipes, bends tees, valves and the like) is to be provided by the Applicant for use by SWS free of charge. Advance notice will be provided in accordance with SWS requirements and any such compound will require to be placed at a location acceptable to SWS.
- 7.4 On no occasion will Southern Water be held liable for any liabilities or costs arising from a third party contractors (or applicant's) default under legislation governing Work in Highways
- 7.5 The Offer is conditional upon the applicant confirming in writing that whenever the line of any proposed main passes within 2m to 4m of any proposed construction that either the affected construction foundations will be lowered to a depth necessary to avoid the risk of a mains burst at this location affecting the foundations, or that, alternatively, the foundations will be re-sited to avoid the risk of any mains burst at this location affecting the foundations.
- 7.6 SWS shall not install mains within 2m of any foundations. In the event that any mains do finish up within 2m of any proposed and/or existing construction on any plane SWS reserves the right to seek redress from the applicant for all costs associated with relocating or protecting its apparatus and for any damage caused by a main(s) burst. This right of redress in favour of SWS shall remain and be actionable for 12 years after the date of completion of construction.
8. The applicant shall contact SWS prior to the proposed commencement date in confirmation that the site conforms to the above Conditions and that works can proceed as planned.
9. SWS reserve the right to levy any additional charges in the event of any breach of these Conditions.