

**DATED \_\_\_\_\_ 2020**

**(1) COMPANY**

**- and -**

**(2) SOUTHERN WATER SERVICES LIMITED**

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**BULK SUPPLY AGREEMENT 4.1**

**SITE NAME**

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**THIS AGREEMENT** is made the                    day of                    2019

**BETWEEN:**

- (1) **COMPANY LIMITED** whose registered office is at Address ("COMPANY");  
and
- (2) **SOUTHERN WATER SERVICES LIMITED** whose registered office is at  
Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX ("SWS Ltd")

**WHEREAS:**

- A SWS Ltd is appointed as a water undertaker under what is now Section 6 of the  
Water Industry Act 1991.
- B COMPANY has applied or will apply pursuant to Section 7 of the Act to be the  
inset appointee for the Premises that are within the area of appointment of SWS  
Ltd as a water undertaker.
- C COMPANY and SWS Ltd have agreed the terms and conditions as hereinafter set  
out for a Bulk Supply of water and provision of other services.

**NOW IT IS HEREBY AGREED** as follows:

## **1 DEFINITIONS**

1.1 In this Agreement:

**“the Act”** means the Water Industry Act 1991 and any re-enactment or amendment of the same whether made before or after the date of this Agreement and any regulations, orders, directives, requirements or delegated or secondary legislation made under it

**“Additional Services”** means the services set out in Schedule 5 to this Agreement.

**“Authority”** means the Water Services Regulation Authority appointed under the provisions of the Act

**“Back-Up Supply”** means the supply of back-up water supplies by SWS Ltd to COMPANY at the Back-Up Supply Point in circumstances where

- a) SWS Ltd can not for any reason make the Bulk Supply available (including damage to distribution assets or a material breach of the Water Regulations making the Bulk Supply unsuitable for use by COMPANY for domestic supply purposes) but is able to supply water at the Back-Up Supply Point that meets the requirements of the Water Regulations;
- b) COMPANY request a supply of water from SWS Ltd where there is an operational incident on COMPANY’s water distribution system preventing the use of the Bulk Supply or after taking the Bulk Supply causing water to be in material breach of the Water Regulations

and unsuitable for use by COMPANY for domestic supply purposes

**“Back-Up Supply Point”** means the point agreed between the parties in the position marked as BUSP on the schematic in Schedule 1

**“Back-Up Water Volume”** means the supply of such surplus water as is available at whatever pressure may at the time exist in the SWS Ltd distribution system off which the Back-Up Supply is to be taken as may be provided by SWS Ltd which in its reasonable opinion may be provided exercising Good Industrial Practice and will not cause SWS Ltd to be in breach of any statutory obligation under the Act or the Service Regulations or any Enhanced Service Standard

**“Best Industry Practice”** means the best and most up to date technical specification within the water industry for the design, laying and construction of water mains and associated infrastructure and complying with UK Water Industry Research (UKWIR) WRc Code of Practice for the Self-Laying of Water Mains and Services – England and Wales: Edition 3.1, May 2017 and any later revision.

**“Bulk Supply”** means the supply of water in bulk within the meaning of the Act, made by SWS Ltd to COMPANY at the Points of Supply

**“Business Day”** means Monday to Friday, 09:00-17:00, excluding bank holidays

- “Charges”** means the charges payable by COMPANY to SWS Ltd for the Bulk Supply and Back-Up Supply in accordance with (i) Clause 6 and (ii) Schedule 3 of this Agreement
- “Charges Scheme”** means the Charges Scheme made by SWS Ltd and approved by the Authority under the provisions of the Act
- “Charging Year”** means the period between 1 April and 31 March in any year of this Agreement
- “Enhanced Service Standard”** means any customer service standard generally made available to its customers by SWS Ltd that exceeds the requirements of the Act or the Service Regulations
- “Force Majeure”** means events or circumstances beyond the control of a party, including but not limited to acts of God, acts or regulations of any governmental or supra-national authority, war or national emergency, accident, fire, riot, strikes, lock-outs, industrial disputes, epidemics, severe weather conditions including but not limited to a severe shortage of rain, drought, burst or broken water main which affects SWS Ltd’s ability to provide the Bulk Supply to the extent that such event or circumstance could not have been prevented by Good Industrial Practice
- “Good Industrial Practice”** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances

<b>“Meter”</b>	means the water meter, chamber and associated instrumentation supplied by SWS Ltd through which the Bulk Supply shall pass, the position of which is shown on the schematic and Meters shall be construed accordingly
<b>Non-Contestable work</b>	Connection to Southern Water Services Limited’s existing water mains networks that only Southern Water Services Limited or an Agent acting on its behalf can provide.
<b>Points of Supply”</b>	means the points of supply as defined in Schedule 1 of this Agreement
<b>“Plan”</b>	means the Plan appearing in Schedule 4
<b>“Premises”</b>	means the premises at SITE NAME as shown on the Plan
<b>“Service Regulations”</b>	means the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 as amended and any later enactment thereof.
<b>“Water Regulations”</b>	Water Supply (Water Quality) Regulations 2016 as amended and the Water Supply (Water Fittings) Regulations 1999. All materials and products shall comply with Regulation 31 of the Water Supply (Water Quality) Regulations 2016 as amended



1.2 In this Agreement:

1.2.1 unless the context otherwise requires, reference to the singular shall be deemed to include the plural and vice versa;

1.2.2 reference to a statute or statutory provision includes a reference to any modification or re-enactment (with or without modification) for the time being in force; and

1.2.3 headings are for convenience only and shall not affect the interpretation of this Agreement.

**2 DURATION**

2.1 This Agreement shall commence on the date that COMPANY is appointed as a water undertaker for the Premises and shall continue thereafter until terminated in accordance with Clause 9 hereof.

**3 SUPPLY OF WATER AND QUANTITY**

3.1 SWS Ltd shall:

3.3.1 subject to the terms of this Agreement make available to COMPANY and COMPANY agrees to take at the Points of Supply the Bulk Supply as set out in Schedule 1 of this Agreement; and

3.3.2 subject to the terms of this Agreement provide the Back-Up Supply.

3.2 Arrangements for the measurement of water supplied shall be as follows:

3.2.1 All water supplied by SWS Ltd under this Agreement shall pass through and be measured by a Meter or Meters on a monthly basis.

3.2.2 Such Meter or Meters and all pipes, valves and other apparatus connecting the said Meters to the Points of Supply and the Back-Up Supply Point shall (i) be owned, installed, maintained, repaired and

replaced as necessary by SWS Ltd when found to be defective or failing to register within the prescribed limits of error in the Measuring Instruments Regulations 2016 and (ii) have installed on each such Meter suitable telemetry apparatus or automatic meter reading technology as the parties may reasonably agree to enable both parties to carry out remote meter reads.

3.2.3 Subject to the provisions of this clause the amount of water supplied by SWS Ltd shall be taken to be that shown on the register of such Meter or Meters as read each month by SWS or, if SWS has failed in any month to secure a meter read, then the amount of water supplied shall be taken to be that shown on the register of such Meter or Meters as read by COMPANY.

3.2.4 If COMPANY is of the opinion that the amount shown on the register of such Meter or Meters is inaccurate it may give SWS Ltd notice requiring such equipment or any part thereof to be tested by SWS Ltd. COMPANY shall be entitled to be present at such test by an official or agent nominated in writing.

The expenses of and incidental to any such test shall be met by SWS Ltd if the equipment is found not to be within the said prescribed limits of error and by COMPANY if the equipment is found to be within the said prescribed limits of error.

3.2.5 If the equipment fails or is found not to be within the said prescribed limits of error in accordance with a test carried out under sub-clause 3.2.4 the quantity of water supplied by SWS Ltd shall be taken to be that calculated on the basis of the average daily quantity supplied during the equivalent period of the previous calendar year (if any) or any other

relevant data available or such other basis as SWS Ltd and COMPANY shall agree or in default of such agreement as the Authority shall determine.

3.3 Nothing in this Agreement shall require SWS Ltd to reserve or maintain in its water distribution system any quantity of water to provide the Back-Up Supply. COMPANY recognises that it has decided not to make any payment to SWS Ltd to reserve a supply of water for emergency use and that availability of the Back-Up Supply will depend on whether any surplus water happens to be available at the time required or requested.

3.4 Nothing in this Agreement shall require SWS Ltd to make the Back-Up Supply where it reasonably considers that any problem with COMPANY's distribution system may put at risk security of supply and water quality in SWS Ltd's distribution system. SWS Ltd shall own and operate the valve controlling the input of the Back-Up Supply into COMPANY's distribution system at the Back-Up Supply Point and the valve shall not be operated by COMPANY without SWS Ltd's consent.

#### **4 POINTS OF SUPPLY**

4.1 The permanent Point of Supply and if applicable any Back-Up Point of Supply and location of the Meter or Meters for the Bulk Supply and Back-Up Supply are those shown on the schematic attached at Schedule 1, Part 1 of this Agreement.

4.2 The temporary Point of Supply and if applicable any Back-Up Point of Supply and location of the Meter or Meters for the Bulk Supply and Back-Up Supply are those shown on the schematic attached at Schedule 1, Part 2 of this Agreement.

#### **5 ADDITIONAL SERVICES**

5.1 SWS Ltd shall also provide to COMPANY in respect of the Premises the Additional Services details of which are set out in Schedule 5 of this Agreement.

## **6 CREDIT LIMIT & SECURITY, INVOICING, PAYMENT & DISPUTE**

6.1 COMPANY shall pay the Charges to SWS Ltd set out in and in accordance with Schedule 3.

6.2 The provisions covering credit limit and security are set out in Schedule 2.

6.3 The provisions covering invoicing, payment and disputes are set out in Schedule 3.

6.4 All sums payable under this Agreement unless otherwise stated are exclusive of Value Added Tax which, where applicable shall be added and payable in addition to such sums.

## **7 OBLIGATIONS OF COMPANY**

7.1 COMPANY shall enforce the Water Supply (Water Fittings) Regulations 1999 as appropriate insofar as the Regulations apply in relation to the Points of Supply or the Premises.

7.2 COMPANY shall construct all water mains and associated apparatus used for supplying water to its customers in accordance with Best Industry Practice.

7.3 COMPANY shall use reasonable endeavours to promptly rectify or procure the prompt rectification of leaks.

7.4 COMPANY shall apply its policy relating to the aforesaid Water Supply (Water Quality) Regulations 2016 as amended and the Water Supply (Water Fittings) Regulations 1999 to ensure the distribution system on the Premises does not give rise to any risk of contamination that could give rise to water quality failures. At the Point of Supply and the Backup Supply with Southern Water Services Limited existing mains network a non-return valve shall be installed to protect the existing

Southern Water Services Limited mains network notwithstanding however if any risk of contamination to Southern Water Limited's existing mains network occurs as a result of and water quality failure on the Premises such that there is a real risk of contamination that could give rise to a water quality failure on the existing Southern Water Services Ltd mains network it shall have the right to temporarily suspend supply without prior notice.

- 7.5 COMPANY shall notify SWS Ltd of the existence and cause (if known) of any contamination or risk of contamination of the water in the distribution system on the Premises immediately after the same has come to COMPANY's attention and keep SWS Ltd notified of the steps being taken to remedy the contamination.
- 7.6 COMPANY shall procure that SWS Ltd shall be allowed, at all reasonable times and for all reasonable purposes, access to such Meter(s) as are referred to in Clause 3 (including, without limitation, for the purpose of carrying out such maintenance, repair and replacement).
- 7.7 COMPANY undertakes to use the water supplied by SWS Ltd hereunder only for the purposes of fulfilling its statutory duty to maintain an efficient and economical system of water supply within the area for which it holds an appointment as a water undertaker under the Act for the Premises on the date this Agreement commences and for no other purpose save where it is under a statutory duty or obligation to make water available in the SWS Ltd area of appointment as a water undertaker.
- 7.8 COMPANY shall take all steps necessary to impose upon its customers any temporary restrictions on the use of water as may from time to time be applied to SWS Ltd's customers in the area surrounding COMPANY's area of appointment as a water undertaker whether under S76 of the Act or any other power now or in the future within the power of SWS Ltd to apply (save for ordinary and emergency drought orders which are dealt with below). SWS Ltd shall give such notice to

COMPANY as is reasonable in the circumstances (but in any event no less than 5 days) where it proposes to introduce such restrictions.

7.9 Where SWS Ltd is proposing to apply for an ordinary or emergency Drought Order under Part II Chapter 111 of the Water Resources Act that will restrict the use of water in the area surrounding COMPANY's area of appointment as a water undertaker it shall notify COMPANY of its intention. COMPANY shall take all necessary steps to apply for an ordinary or emergency Drought Order in equivalent or at its option more stringent terms to that applied for by SWS Ltd and impose restrictions on the use of water by its customers no less than those applied by SWS Ltd to its customers. SWS Ltd shall give such notice to COMPANY as is reasonable in the circumstances where it proposes to apply for an ordinary or emergency Drought Order and the terms sought.

7.10 COMPANY shall furnish SWS Ltd free of charge within a reasonable time of request its projected demands for water consumption on the Premises to enable SWS Ltd to undertake asset management and water resource planning in accordance with SWS Ltd's regulatory obligations.

7.11 COMPANY shall wherever appropriate implement the contact procedures set out in Schedule 5 relating to Operational Incidents and Schedule 6 relating to Water Quality Incidents hereto.

## **8 OBLIGATIONS OF SWS LTD**

8.1 SWS Ltd shall have no obligation to provide the Bulk Supply or the Back-Up Supply other than at the Points of Supply and Back-Up Supply Point respectively.

8.2 SWS Ltd shall have no obligation to provide the Bulk Supply in excess of any of the limits as to quantity and quality and rate specified in this Agreement.

- 8.3 SWS Ltd shall apply its policy relating to the Water Regulations to ensure the treatment works or distribution system does not give rise to any risk of contamination that could give rise to water quality failures in COMPANY's system. SWS Ltd may, acting reasonably and in good faith, temporarily suspend supply if it is satisfied that there is a real risk of contamination that could give rise to material water quality failures.
- 8.4 SWS Ltd shall notify COMPANY of the existence and cause (if known) of any contamination or risk of contamination of the water in the distribution system to the Premises immediately after the same has come to SWS Ltd's attention and keep COMPANY notified of the steps being taken to remedy the contamination.
- 8.5 Subject to the proviso in sub-clause 8.6 below SWS Ltd shall have no obligation or liability in respect of or arising in consequence of a reasonable need exercising Good Industrial Practice to shut down or curtail, for whatever reasonable period, the provision of the Bulk Supply during any maintenance, repair, improvement, replacement or renewal of any plant or other equipment (including without prejudice to the generality of the foregoing, all pipes, tanks, meters, treatment works, fittings, conduits and apparatus) on which the Bulk Supply is dependent. Except in cases of emergency, SWS Ltd shall give five days prior notice to COMPANY before shutting down or curtailing the provision of the Bulk Supply for such a purpose.
- 8.6 SWS Ltd shall use all reasonable endeavours to carry out any works referred to in sub-clause 8.5 above exercising Good Industrial Practice so as to restore the Bulk Supply as soon as is reasonably practicable.
- 8.7 SWS Ltd shall wherever appropriate implement the contact procedures set out in Schedule 5 hereto relating to Operational Incidents and Schedule 6 relating to Water Quality Incidents hereto.

8.8 SWS Ltd shall provide to COMPANY water quality details of water supplied under the Bulk Supply or Back-Up Supply covering matters referred to in Schedule 3 of the Water Regulations

8.8.1 annually and

8.8.2 as soon as reasonably practicable on SWS Ltd becoming aware that any water supplied or to be supplied under the Bulk Supply or Back-Up Supply does not conform to the requirements of the Water Regulations.

8.9 SWS Ltd shall furnish COMPANY free of charge within a reasonable time of request any information reasonably required by COMPANY regarding SWS Ltd's water quality (including data identifying radioactivity and pesticide concentrations in the bulk supplies) and water resources management programme relevant to the bulk supply to enable COMPANY to undertake asset management and water resource planning in accordance with COMPANY's regulatory obligations.

## **9 TERMINATION**

9.1 This Agreement shall terminate, by mutual agreement or if either party elects to terminate it, forthwith under the following circumstances:

9.1.1 on expiry or termination of COMPANY's appointment for the Premises;  
or

9.1.2 upon notice given by one party to the other party if that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order; or

9.1.3 subject to the restrictions imposed under Sections 23, 24, 25 and 26 of the Act upon notice given by one party to the other party if that other party becomes insolvent or compounds with its creditors or convenes a meeting to consider a resolution that it be placed in liquidation (other than a



solvent liquidation for the purposes of amalgamation or reconstruction) or suffers a petition to be presented that it be placed in liquidation or has an administrative receiver, receiver or manager appointed in respect of all or any of its assets or is adjudicated bankrupt, makes an assignment for the benefit of, or any composition with, its creditors or takes advantage of any insolvency act; or

- 9.1.4 by an order made by the Authority under Section 40A of the Act;
- 9.1.5 Either party (the “non-defaulting” party) may terminate this Agreement with immediate effect by giving written notice to the other party (the “defaulting party”) if the defaulting party has committed a material breach of this Agreement (and, if such breach is capable of remedy, has failed to remedy the breach within twenty (20) Business Days after receiving notice from the non-defaulting party specifying the breach and requiring the breach to be remedied, provided that if the nature of the breach is such that more than twenty (20) Business Days are reasonably required for its remedy then this Agreement may not be so terminated if the defaulting party commences to remedy such breach within that 20 Business Day period and then diligently pursues such remedy to the reasonable satisfaction of the non-defaulting party;
- 9.1.6 The non-defaulting party may terminate this Agreement on giving the defaulting party thirty (30) Business Days written notice on becoming aware that any of the following events have occurred
  - 9.1.6.1 if there are a series of breaches of this Agreement which (a) are of a substantially similar nature; (b) occur within a rolling period of thirty (30) Business Days; and (c) taken together amount to a material breach which is incapable of remedy or which, in the

case of a series of breaches capable of remedy, are not entirely remedied by the defaulting party within twenty (20) Business Days of receipt of written notice from the non-defaulting party specifying the breaches and requiring them to be remedied; or

9.1.6.2 the defaulting party has committed a persistent breach (for the purposes of this clause a persistent breach shall be where the defaulting party commits a breach of any of the terms or conditions of this Agreement more than 5 times).

9.1.7 Provided that a period of twenty years has elapsed from the date that this Agreement came into effect, and subject to paragraph 9.1.8, either party may terminate this Agreement on giving the other Party at least two years' written notice.

9.1.8 If, following receipt of a termination notice under clause 9.1.7, the recipient refers the matter to the Authority under section 40A of the Act, the Agreement will continue in force unless varied or terminated by the Authority: provided such referral to the Authority is made within 6 months of the date of receipt of the termination notice. If the Authority fails to determine the issue within two years of the date of such referral then the Agreement will terminate at the end of the two year period

## **10 CONSEQUENCES OF TERMINATION**

10.1 Upon termination of this Agreement:

10.1.1 COMPANY shall cease to receive the Bulk Supply of water and the Additional Services from SWS Ltd; and

10.1.2 COMPANY shall settle all outstanding payments that are due and owing to SWS Ltd under Clause 6.

10.2 Subject as otherwise provided herein and to any rights remedies or obligations which have accrued prior to termination neither party shall have any further obligation to the other under this Agreement.

## **10A REVIEW**

10A.1 At any time following a change to the statutory provisions or any relevant guidance or policies issued by the Authority or other government department pertinent to the terms of this Agreement or annually on the 1st September (in either case a “Review Date”) either party may require a review of all or any of its terms with a view to establishing that the same remain reasonable and appropriate in the light of:

10A.1.1 the statutory obligations and powers of the parties;

10A.1.2 the statutory provisions and Authority or other government department guidance or policies; and

10A.1.3 any other relevant circumstances applying at the Review Date.

If agreement cannot be reached on any variation sought by a party the matter shall be resolved in accordance with Clause 20.

## **11 LIABILITY**

11.1 Neither party shall in any circumstances have any liability whatsoever for any indirect or consequential loss (including, but without limitation):

11.1 (a) loss of profit, revenue or goodwill resulting from negligence or any breach or non-performance of this Agreement;

11.1 (b) any misrepresentation (excluding fraudulent misrepresentation) or any other tort on the part of that party or its servants or agents;

11.1 (c) and all conditions, warranties or other terms, whether express or implied, statutory or otherwise, inconsistent with the provisions of this sub-clause

11.1 are hereby expressly excluded (subject always to sub-clauses 11.4 and 11.5 ).

- 11.2 Either party's liability in respect of the direct consequences and, in the event that it is not entitled (for any reason) to rely upon the provisions of sub-clause 11.1, the indirect consequences (including, but without limitation, loss of profit, revenue or goodwill) resulting from negligence or any breach or non-performance of this Agreement or any misrepresentation or any other tort on the part of that party or its servants or agents shall be limited to one million pounds (£1,000,000) in any one calendar year for any one or more incidents or series of incidents whether related or unrelated in that calendar year and all conditions, warranties or other terms, whether express or implied, statutory or otherwise, inconsistent with the provisions of this sub-clause 11.2 are hereby expressly excluded (subject always to sub-clauses 11.4 and 11.5).
- 11.3 Where a party becomes aware of any claim, difference, dispute or proceedings (actual or threatened) which it reasonably expects may lead to a liability to the other party under this Agreement, that party shall provide such information as the other party may reasonably require and shall consult with the other party as to the conduct of such claim, difference, dispute or proceedings (whether actual or threatened).
- 11.4 Nothing in this Agreement shall exclude or limit the liability of either party for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.
- 11.5 Save as otherwise expressly provided in this Agreement, this Clause 11 (insofar as it excludes or limits liability) shall override any other provision in this Agreement provided that nothing in this Clause 11 shall exclude or restrict or otherwise prejudice or affect any of the rights, powers, duties and obligations of either party

hereto which are conferred or created by the Act, any licence granted pursuant to the Act or any subordinate legislation made under it.

11.6 For the avoidance of doubt the parties expressly agree that SWS Ltd shall only be liable to compensate COMPANY for any payments COMPANY may be required to make under the Service Regulations where the breach of the Service Regulations was caused by SWS Ltd negligence in failing to operate its water undertaking in accordance with Good Industrial Practice In no circumstances shall SWS Ltd be required to compensate COMPANY for any poor service payments it chooses to make to its customers as enhanced rights and benefits above the requirements of the Service Regulations.

11.7 This Clause 11 shall survive the termination of this Agreement for whatever cause.

11.8 Each party hereby acknowledges and agrees that the provisions of this Clause 11 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

## **12 FORCE MAJEURE**

12.1 If either party (the “Affected party”) is unable to carry out any of its obligations under this Agreement due to circumstances of Force Majeure this Agreement shall remain in effect but, save as otherwise provided in this Agreement, both parties’ obligations shall be suspended without liability for the period during which the circumstance of Force Majeure prevails provided that:

- (a) the Affected party gives the other party prompt notice describing the circumstance of Force Majeure, including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure;

- (b) the suspension of performance is of no greater scope and of no longer duration than is strictly required by the circumstance of Force Majeure; and
- (c) the Affected party uses all reasonable efforts to mitigate the impact of the circumstances of Force Majeure and to remedy its inability to perform as quickly as possible.

Immediately after the end of the circumstance of Force Majeure, the affected party notifies the other party in writing of the same and each party resumes performance of its obligations under this Agreement.

### **13 MISCELLANEOUS**

- 13.1 COMPANY shall not assign or otherwise part with its obligations or the benefits under this Agreement except to another appointed water undertaker and with the prior written consent of SWS Ltd (such consent not to be unreasonably withheld, delayed or granted on unreasonable terms).
- 13.2 If any provision of this Agreement shall be held to be invalid or unenforceable in whole or in part or to any extent by a judgement or decision of any court of competent jurisdiction or any authority whose decisions shall have the force of law binding on the parties to this Agreement, the remainder of this Agreement and, where that provision is invalid or unenforceable in part or to any extent, the remaining part or extent of that provision, shall remain valid and enforceable to the fullest extent permitted by law.

### **14 VARIATION**

- 14.1 This Agreement may only be varied following a review pursuant to Clause 10A and such variation shall be recorded in writing signed by each of the parties.

- 14.2 If it becomes apparent on a review pursuant to Clause 10A that a variation or variations to this Agreement have become necessary by virtue of changes to the statutory obligations of either of the parties or otherwise to give effect to changes to applicable law or to such guidance or policies issued by the Authority or other government department, the parties shall agree such variation as is necessary to give effect to any such changes but only to the extent that such variation would not alter the substantive purpose embodied in this Agreement. If such changes cannot be so made, any variation shall be dealt with in accordance with sub-clause 14.3.
- 14.3 If the parties cannot agree upon a proposed variation, such disagreement will be regarded as a dispute and settled under the provisions of Clause 20.

## **15 CONFIDENTIALITY**

15.1 Each party shall treat as confidential all information (including but not limited to all documents, materials and other information, whether technical or commercial, supplied to it by or on behalf of the other party to this Agreement under or pursuant to or in connection with this Agreement) obtained as a result of entering into or performing this Agreement which relates to:

- (A) the provisions of this Agreement;
- (B) the negotiations relating to this Agreement;
- (C) the subject matter of this Agreement; or
- (D) the other party.

In particular, each party shall keep secure any information which it holds (whether electronically stored or otherwise) in relation to the other party or the other party's operations.

15.2 Notwithstanding the other provisions of this paragraph, either party may disclose confidential information:

- (A) if and to the extent required by law or for the purpose of any judicial proceedings or for dispute resolution as provided for in this Agreement;
- (B) if and to the extent required by any regulatory or governmental body to which that party is subject wherever situated, whether or not the requirement for information has the force of law;
- (C) to such of its agents, contractors, professional advisers, auditors, insurers and bankers (including lenders, security trustees and other financial institutions) who need to know it upon obtaining from such persons an undertaking as to confidentiality substantially equivalent to that contained in this sub-clause 15.2;
- (D) if and to the extent the information has come into the public domain through no fault of that party; or
- (E) if and to the extent the other party has given prior written consent to the disclosure.

Any information to be disclosed pursuant to sub-paragraphs (A), (B) or (C), shall be disclosed only after consultation with the other party, where reasonably practicable.

- 15.3 The restrictions contained in this paragraph shall apply without limit in time and shall survive the termination of this Agreement for whatever reason.

## **16 NOTICES**

- 16.1 Except where otherwise stated, any notice, request or other communication to be made by one party to the other under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by recorded delivery, special delivery, courier or email to that party to the address and for the attention of the relevant person set out in sub-clause 16.2.



16.2 Notices under this Agreement shall be sent to a party at its address or number and for the attention of the individual set out below:

<u>Party, title of contact</u>	<u>Address</u>	<u>Email</u>
SWS Ltd Services Limited Attention: Head of Business Channels	Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX	<a href="mailto:wholesaleservices@southernwater.co.uk">wholesaleservices@southernwater.co.uk</a>
COMPANY Limited Attention: COMPANY Director	Address	email address

or to any such other persons, addresses or email address as may from time to time be notified by one party to the other in accordance with this paragraph (provided such notification shall only be effective five (5) Business Days from receipt).

16.3 Any notice given under this Agreement shall, in the absence of earlier receipt, be deemed to have been duly given as follows:

- (A) if delivered personally, on delivery;
- (B) if sent by recorded delivery or special delivery, two (2) Business Days after the date of posting;
- (C) if sent by electronic mail, it shall not be deemed to have been sent until a confirmation of delivery is received by the sender, and even if such confirmation is received, shall not be deemed to have been sent if the sender also receives notification of the recipient being out of the office, provided that if deemed receipt occurs before 9am, on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.

- 17.1 This Agreement shall supersede all arrangements or agreements relating to all matters which are referred to and which were previously entered into or made between the parties hereto and all such arrangements or agreements are hereby terminated.
- 17.2 This Agreement represents the entire agreement between the parties and no modification or alteration hereto shall have effect unless the same is agreed in writing between the parties.
- 17.3 In the event that any provision of this Agreement shall be void or unenforceable by reason of any provision or applicable law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and, if necessary, be so amended as shall be necessary to give effect to the spirit of this Agreement so far as reasonably practicable.

## **18 EXERCISE OF RIGHTS**

- 18.1 No delay or omission by any party to this Agreement in exercising any right, power or remedy provided by law or under this Agreement or any other documents referred to in it shall:
- (A) affect that right, power or remedy; or
  - (B) operate as a waiver thereof.
- 18.2 The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 18.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

## **19 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

19.1 The parties to this Agreement do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement.

## **20 SETTLEMENT OF DISPUTES**

20.1 Any dispute, other than a dispute relating to the charges set out in Schedule 3, shall be dealt with in accordance with the provisions of this clause. Where a dispute exists between the Parties under or in relation to the Agreement, either Party may serve upon the other a notice setting out the nature of the dispute, following deemed receipt of which in accordance with Clause 16 (Notices) the Parties shall, each exercising Good Industrial Practice, attempt in good faith to negotiate a settlement to such dispute.

20.2 If the dispute notified in accordance with Clause 20.1 remains unresolved twenty (20) Business Days after such notification, an appropriate representative of each Party's senior management shall meet to discuss and attempt to resolve the disputed matter.

20.3 If the dispute notified in accordance with Clause 20.1 remains unresolved for a further ten (10) Business Days following the period mentioned in Clause 20.2, either Party may notify the other that the provisions of this Clause 20.3 apply, whereupon the Parties shall comply with the following provisions:

20.3.1 The notifying Party shall apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator;

20.3.2 The Parties shall meet with the Mediator within ten (10) Business Days of his appointment (or such period as may be determined by CEDR) in order to agree a programme for the exchange of all relevant information and the structure to be adopted for the mediation (if considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure);

20.3.3 If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties

once it is signed by both Parties and shall take effect as an amendment to the Agreement notwithstanding the provisions of Clause 14 (Variation);

20.3.4 If the Parties fail to reach agreement on the resolution of the dispute within 1 month of the Mediator being appointed (or such longer period as may be agreed in writing between the Parties) the dispute may be referred to the Courts;

20.3.5 Unless agreed otherwise, the mediation and all other correspondence and documentation connected with it, including any settlement or agreement relating to it, shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

20.4 For the avoidance of doubt, nothing in the Agreement limits or prevents either Party from seeking a determination from or from applying to the Authority or another competent regulatory authority for the enforcement of any rights or obligations of Party, or the taking by the Parties or the Authority or such competent regulatory authority of any interim or procedural steps under any Relevant Legislation at any time.

## **21 GOVERNING LAW**

21.1 This Agreement shall be governed by and construed in all respects in accordance with English Law

## **22. MEETINGS**

22.1 Representatives of each party shall meet not less than once every year to discuss any matters arising out of this Agreement and the operation and management of each party's obligations under it.

22.2 Without prejudice to clause 22.1, either party may request a meeting at any time upon reasonable notice in writing to the other to discuss any particular matter or

concern arising out of or in relation to this Agreement, and the parties shall use their best endeavours to agree a date, time and venue for such meeting and to attend the same.



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

**Signed by**.....

for and on behalf of .....

Southern Water Services Limited

Director/Authorised Signatory

Date: .....2020

in the presence of:

Witness

Signature:.....

Print Name: .....

Address: Southern House, Yeoman Road,

Worthing, West Sussex, BN13 3NX

Date: .....2020

**Signed by** .....

for and on behalf of .....

COMPANY

Director/Authorised Signatory

Date:.....2020

in the presence of:

Witness Signature:.....

Print Name: .....

Address: .....

Date: .....





## **SCHEDULE 1**

### **Part 1 – Bulk Supply Permanent Arrangement Conditions**

1. The permanent connection shall be subject to the following conditions:
  - 1.1 The permanent Point of Connection shall service [NUMBER] properties.
  - 1.2 The maximum daily volume of water supplied to COMPANY at the Premises shall not exceed XX.XX cubic metres.
  - 1.3 The rate of water supplied to COMPANY at the Premises shall not exceed X.X litres per second.
  - 1.4 At the permanent Point of Connection the minimum static head of xx.xx AOD shall apply.
  - 1.5 The water supply shall be adequate for domestic purposes as defined by Section 218 of the Act.
  - 1.6 Water will be treated to comply at the Points of Supply with the Water Regulations (save where compliance with the Water Regulations is subject to any undertakings, relaxations, agreements or authorised departures agreed or granted by the Secretary of State).

2. Schematic showing permanent Point of Supply

## **Part 2 – Water Supply Temporary Arrangement Conditions**

1. In the period between the date of this Agreement and the permanent arrangements as described in Schedule 1, Part 1 being available, the following conditions shall apply:

- 1.1 [TEMPORARY LIMITED SUPPLY CAPACITY]

- 1.1.1 The temporary point of connection shall be the same as the permanent Point of Connection as shown in Schedule 1, Part 1, Clause 2.

- 1.1.2 The temporary Point of Connection shall service [NUMBER] properties.

- 1.1.3 The rate of water supplied to COMPANY at the Premises shall not exceed X.X litres per second.

- 1.1.4 At the temporary Point of Connection the minimum static head of xx.xx AOD shall apply.

- 1.1.5 The water supply shall be adequate for domestic purposes as defined by Section 218 of the Act.

- 1.1.6 Water will be treated to comply at the Points of Supply with the Water Regulations (save where compliance with the Water Regulations is subject to any undertakings, relaxations, agreements or authorised departures agreed or granted by the Secretary of State).

[AND/OR]

- 1.2 [TEMPORARY POINT OF SUPPLY]

- 1.2.1 The temporary point of connection shall be as shown in Schedule 1, Part 2, Clause 2.

1.2.2 The temporary Point of Connection shall service [NUMBER] properties.

1.2.3 The rate of water supplied to COMPANY at the Premises shall not exceed X.X litres per second.

1.2.4 At the temporary Point of Connection the minimum static head of xx.xx AOD shall apply.

1.2.5 The water supply shall be adequate for domestic purposes as defined by Section 218 of the Act.

1.2.6 Water will be treated to comply at the Points of Supply with the Water Regulations (save where compliance with the Water Regulations is subject to any undertakings, relaxations, agreements or authorised departures agreed or granted by the Secretary of State).

2 Schematic showing temporary Point of Connection

*[insert wording describing exact location of PoC]*



## **SCHEDULE 2**

### **Credit Limit and Security**

If COMPANY breaches the provisions of Schedule 3 or has been caused to remedy such breach after receiving notice from SWS Ltd specifying the breach and requiring the breach to be rectified more than twice in any rolling period of 12 months, without prejudice to any other rights or remedies which SWS Ltd may possess, COMPANY shall promptly provide a security instrument which satisfies the security and credit rating requirements set out in this Schedule.

COMPANY shall provide a guarantee from its ultimate holding company to guarantee the performance of COMPANY's obligations under this Agreement. The guarantee shall be in the form and on terms to be approved by SWS Ltd.

If at any time the long term debt obligations of its ultimate holding company is reduced to a lower credit rating than all three of the ratings shown against their respective agencies being: BBB- from S&P, Baa2 from Moody or BBB- from Fitch COMPANY shall obtain and provide to SWS Ltd a letter of credit or deposit agreement at COMPANY's cost. Such security instruments shall be:

- i) provided through a reputable financial institution with a credit rating of not less than each of; A- from S&P, A2 from Moody or A- from Fitch, it being the case that failure to meet this credit rating shall be assessed against the lowest rating;
- ii) in aggregate an amount representing 45 calendar days of the Charges, which amount shall be calculated to be equal to  $45/365^{\text{th}}$  (rounded to the nearest £1,000) of the sum of the Charges payable in the most recent year of the Agreement;
- iii) provided within ten (10) Business Days of the date of the request by SWS Ltd;

- iv) with an expiry date being no earlier than the date falling six years from the date that COMPANY is appointed as a water undertaker;
- v) in a form acceptable to SWS Ltd.

If COMPANY shall fail to procure the security instruments as aforesaid then, without prejudice to any other rights or remedies which SWS Ltd may possess, SWS Ltd may treat the failure as a material breach of contract. Without prejudice to the foregoing, if at any time the credit rating of the financial institution providing such security cover falls below the rating specified of not less than each of; A- from S&P, A2 from Moody or A- from Fitch, it being the case that failure to meet this credit rating shall be assessed against the lowest rating above, COMPANY shall within ten (10) Business Days promptly provide replacement security instruments which satisfy the aforementioned credit rating requirements.

In the event of:

- i) a resolution has been passed authorising the issue of a notice (or a notice has been issued) convening a meeting of shareholders to consider a resolution for, or a petition has been presented (and not set aside within five (5) Business Days of its presentation) for, the winding up of the COMPANY or COMPANY goes into liquidation (other than a winding up for the purposes of a solvent amalgamation or reconstruction the terms of which have previously been approved in writing by the other party and in such manner that the entity resulting from the amalgamation or reconstruction effectively agrees to be bound by or assume the obligations imposed on COMPANY under this Agreement);
- ii) the giving of a notice of appointment of an administrator (or of the intention to appoint an administrator or liquidator) in respect of COMPANY;



- iii) a petition has been presented, or an application has been made for the appointment of, or any of the following has been appointed in respect of COMPANY or any of its assets: a receiver, judicially appointed manager, administrative receiver, assignee, trustee, sequestrator or similar person or official;
- iv) an encumbrancer has sold or taken possession of any of COMPANY's property or assets;
- v) COMPANY has been dissolved;

all accrued and invoiced charges and all unpaid interest shall become immediately payable and thereupon COMPANY, shall pay to SWS Ltd every sum outstanding.

### **SCHEDULE 3**

#### **Invoicing, Payment and Dispute**

##### **(1) Charges**

The volumetric charge will be in accordance with the Charges Scheme approved for that Charging Year.

The Charges may be amended to the extent necessary to satisfy the requirements of any changes to relevant legislation or regulatory guidance (including, for the avoidance of doubt, any order, decision, guidance, determination or direction of the Authority or any other Regulatory Authority) by mutual agreement or following an application made to the Authority or such other Regulatory Authority by either Party with a request for an order, decision, guidance, determination or direction to be made in respect of the Charges and such amendment shall be deemed to be a valid variation of this Agreement in accordance with sub-clause 14.1 to be effective from the date of the said order, decision, guidance, direction or determination .

##### **(a) Meter Readings**

SWS shall read the Meter on a regular monthly basis and shall submit to COMPANY each meter read so taken no later than the date on which SWS submits its invoice pertaining to that meter read.

##### **(b) Invoicing of Charges**

Within ten (10) Business Days of the receipt of the meter reading, SWS Ltd will invoice COMPANY for the Charges.

COMPANY shall pay the amount invoiced to SWS in full and without deduction within fifteen (15) Business Days of the date of the invoice.

## **(2) Infrastructure Charges**

A charge payable that equates to the water infrastructure charge that would be payable to SWS Ltd under s146 of the Act and Condition C of SWS Ltd's Instrument of appointment and the Water Charges Scheme for each premises connected to COMPANY's water mains if SWS Ltd was the appointed water undertaker for the Premises in place of COMPANY.

COMPANY shall keep records of the date upon which premises are first connected to its water mains and shall notify SWS Ltd on 1 April, 1 July, 1 October and 1 January in each Charging Year of the premises and date of connection. Such information shall be provided to SWS Ltd. in the format as appended to Schedule 8 and which may from time to time be amended by SWS Ltd.

### **(a) Invoicing of Infrastructure Charges**

Within ten (10) Business Days of the receipt of the notification, SWS Ltd will invoice COMPANY for the Infrastructure Charges. COMPANY shall pay the amount invoiced to SWS in full and without deduction within fifteen (15) Business Days of the date of the invoice.

## **(3) Back-Up Supply Charge**

Subject to paragraph, below the Back-Up Supply shall be charged at the standard measured volumetric charge appearing in the Water Charges Scheme.

Where SWS Ltd provides the Back-Up Supply in circumstances where problems with providing the Bulk Supply have arisen on SWS Ltd's side of the Point of Connection due to reasons that could have been prevented by SWS Ltd exercising Good Industrial Practice the supply shall deemed to be provided at the unit rate applying for the Bulk Supply.

#### **(4) Interest**

Interest shall accrue and be payable daily on all overdue amounts owing pursuant to this Agreement at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998 from time to time in force. Such interest to accrue before as well as after any judgement.

#### **(5) Payment Disputes**

Disputes over the amount of an invoice shall be resolved according to the following procedure:

- i) No later than five (5) Business Days before the due date for payment COMPANY may give SWS Ltd notice that it disagrees with the amount charged in that invoice, and shall state the amount that it considers is correct together with any supporting calculations and other relevant supporting information.
- ii) Within ten (10) Business Days of receipt of the notice from COMPANY, SWS Ltd shall give notice to COMPANY of whether or not it accepts COMPANY's revised amount.
- iii) If SWS Ltd accepts COMPANY's revised amount, COMPANY shall pay the amount in full and free of deductions within fifteen (15) Business Days of receipt of SWS Ltd's Notice. If the matter cannot be resolved by negotiation the parties may by agreement refer it to mediation in accordance with the procedures of the Centre for Dispute Resolution (CEDR) or some other similar body.
- iv) Where a matter has been referred to mediation, no legal proceedings shall be commenced by either party in relation to such matter while the mediation is in progress. If the parties fail to reach agreement within twenty-eight (28) days of the commencement of the mediation procedures the mediation may be treated by either party as being at an end unless agreed otherwise.

- v) The Party that originally asserted an amount for the invoice that is furthest away from the amount determined pursuant to the dispute resolution procedure shall:
  - pay for the costs of the procedure; and
  - pay the reasonable costs of the other Party in those proceedings to a maximum of £2,500.
  
- vi) If the matter is not referred to mediation or the mediation is at an end either party shall be entitled to refer the dispute to settlement by legal proceedings and the parties agree to submit to the exclusive jurisdiction of the English courts.



**SCHEDULE 4**

**Plan of Premises showing Variation of Appointment boundary**





**SCHEDULE 5**

**Additional Services**

Not Used



## SCHEDULE 6

### Contact Procedures for Operational Incidents

#### Water supply problem reported by SWS Ltd

- (1) SWS Ltd contacts COMPANY Emergency Service Centre, identifies the site in question and advises COMPANY of the problem.
- (2) COMPANY contacts its customers.

#### Water supply problem reported by COMPANY

- (1) COMPANY contacts SWS Ltd Customer Response and Resolution Centre (CRRC) and advises SWS Ltd of the problem.
- (2) SWS Ltd investigates and provides updates.

### Contact Details

Southern Water Services Limited			
Contact	Contact Type	Available	Contact Details
Business Address	Formal contract notices and communications	Business Day	Head of Business Channels SWS Ltd Southern House Yeoman Road Worthing West Sussex BN13 3NX
CRRC	Emergency & Incident assistance 24 hours	24 hours	0330 303 0368
Duty Manager	Operational point of contact	Business Day	0330 303 1272 wholesaleservices @southernwater.co.uk
Billing	Routine billing queries	Business Day	0330 303 1260 miscinc@southernwater.co.uk

COMPANY Limited

Contact	Contact Type	Available	Contact Details
Business Address	Formal contract notices and communications	Business Day	Company Address
Emergency contact	Emergency & Incident assistance 24 hours	24 hours	Phone number and email
Water Operations Manager	Operational point of contact	Business Day	Phone number and email
Billing/Customer services contact	Routine queries and issues relating to billing and payment	Business Day	Contact Details

**PRO-FORMA FOR NOTIFICATION OF AN EVENT AFFECTING A BULK SUPPLY (to be completed ASAP and within 24 hours of event commencing)**

**Name of event:**

**Name of person notifying:**

**Date of notification:**

**Date of event:**

**Description of the event:**

**Location of the event:**

**Likely cause of event:**

**Effect on water quality:**

**Any breaches of chemical or microbiological standard:**

**Specify:**

**Is there any risk to public health:**

**Advice sought on public health matters:**

**Actions being taken to protect customers:**

**Actions being taken to rectify the situation:**

**Sampling being carried out:**

**Local authorities and health authorities notified:**

**Other organisation notified:**

**Other water companies:**

**Consumer Council for Water:**

**Media interest:**

**Details:**



## **SCHEDULE 7**

### **Liaison regarding Water Quality Incidents**

#### **Chemical & Trace Organic Parameters**

Liaison will take place the same day following any PCV exceedance where it is believed that the exceedance may impact on the Bulk Supply, this includes pesticides and hydrocarbons.

#### **Microbial Parameters**

Liaison will take place the same day following detection of any of the microbial parameters shown below where it is believed that this may impact on the Bulk Supply.

- Presumptive Coliform  
taken from WTW (final), reservoir or tower
- Confirmed Coliform  
taken from a customer tap; unless there is sufficient evidence the failure is attributable to the customer fitting and will not impact on the bulk supply
- Presumptive E.coli  
unless there is sufficient evidence that the failure is attributable to a customer fitting and will not impact on the bulk supply
- Confirmed E.coli  
unless there is sufficient evidence the failure is attributable to a customer fitting and will not impact on the bulk supply
- Presumptive Enterococci  
taken from WTW (final), reservoir or tower
- Confirmed Enterococci  
taken from a customer tap; unless there is sufficient evidence the failure is attributable to the customer fitting and will not impact on the bulk supply
- Presumptive Clostridium *Perfringens*  
taken from WTW (final), reservoir or tower
- Confirmed Enterococci  
taken from a customer tap; unless there is sufficient evidence the failure is attributable to the customer fitting and will not impact on the bulk supply
- Cryptosporidium Oocyst  
detection in final water or distribution

#### **Biological Parameters**

Liaison will take place where the detection of aquatic organisms are found in significant numbers such that customers have or are likely to become aware of these organisms and may impact on a bulk supply:

- Algae
- Fly larvae (chironomids, etc.)
- Crustacea (gammarus, Cyclops, etc.)

### **Water Quality Events**

Liaison will take place for any of the water quality events listed below where it is believed that it may impact on the bulk supply:

- Potential for or actual widespread discolouration
- Widespread taste and odour issues
- Failure of disinfection
- Any risk to public health
- Widespread air in water after a planned or unplanned event
- The provision of advice to refrain from using water
- Significant increase in cases of cryptosporidium in the community related to water supply

In addition:

- Widespread loss of supply
- Breach of security where there is suspected or actual access to treated water. Planned work or control measures on SWS Ltd's distribution system which may have an impact on customers and as such customers have been card warned or received letters in advance. Examples include planned flushing work, changes to source, chlorine levels.

### **Drinking Water Safety Plan**

Information and data from DWSP will be shared between each company, highlighting areas of high risk.



**SCHEDULE 8 (New Connections Template)**

<b>Site ID</b>	<b>Site Name</b>	<b>Date Connected</b>	<b>Plot No.</b>	<b>House No.</b>	<b>Street Name</b>	<b>Town</b>	<b>Post Code</b>	<b>Household/NHH</b>	<b>Meter No.</b>

Please provide cumulative/historic property connections for the site (not only those for the quarterly period)