

DATED

2007

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**WATER UNDERTAKER LIMITED**

and

**[LICENSEE]**

**Wholesale Supply Agreement**

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| <b>Term</b>              | <b>Definition</b>   |
|--------------------------|---|
|                          | public or bank holiday in England   |
| Charges Scheme           | WU's published Charges Scheme under the provisions of the Act detailing the charges it shall make for providing its services  |
| Competent Authority      | The Director or any local, national or supra-national agency, authority, department, inspectorate, minister, official court, tribunal or public or statutory person of the United Kingdom or the European Union which has jurisdiction over WU or an LWS or the subject of this Agreement |
| Confidential Information | Shall have the meaning given in clause 17.3   |
| Connection Charge        | The charge payable to WU to cover the direct cost of works and materials required to connect a premises to its main [as set out in the Charges Scheme]  |
| Customer Annex           | Shall mean an annex to this Agreement containing case specific terms and conditions relating to an LWS Customer   |
| Day                      | One calendar day  |
| DG Standard              | A level of service in accordance with Condition J of the WU Licence   |
| the Director             | The Director General of Water Services, being a government office which serves as the economic regulator for the water industry in England and Wales (from 1 April 2006 this office is to be known as Water Services  |

| <b>Term</b>           | <b>Definition</b>  |
|-----------------------|--|
|                       | Regulation Authority (WSRA))   |
| Discontinuance Date   | Shall have the meaning given in clause 14.1  |
| Discontinuance Notice | Shall have the meaning given in clause 14.2  |
| Dispute               | Disagreement between the Parties   |
| Effective Date        | Shall have the meaning given in clause 4.1   |
| EIR                   | The Environmental Information Regulations 2004   |
| EIR Exemption         | Any applicable exemption to the EIR  |
| Exempted Information  | Any information or category of information, document, report, contract or other material containing information relevant to this Agreement that has been designated by the mutual agreement of the Parties as potentially falling within a EIR Exemption |
| Exit Point            | The controlling stop valve being the point on the Supply System where the LWS is permitted to draw off an agreed supply to service its customer(s)   |
| Feasibility Study     | The study carried out by or on behalf of WU in relation to the LWS's application for use of the Supply System a copy of which is annexed hereto at Annex 1 [amend/delete as applicable]  |

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

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

| <b>Term</b>                         | <b>Definition</b><br>of the Act   |
|-------------------------------------|---|
| Supply System Configuration Changes | Where applicable all of the works on the Supply System necessary to accommodate a supply to an LWS Customer such works as are described in any Customer Annex |
| Termination                         | Termination of this Agreement for whatever reason   |
| Undertaker                          | A company appointed to provide water and/or sewerage services to a defined geographical area, acting under an Instrument of Appointment under the Act         |
| Water Meter                         | A device installed at an Exit Point to measure the quantity of water delivered to an LWS Customer's premises  |
| Water Quality                       | Properties of water defined by reference to specific criteria specified by the Legal Requirements   |
| Water Quality Regulations           | The Water Supply (Water Quality) Regulations 1989 and 2000 and all amendments.  |
| Water Services                      | The collection, treatment and distribution of water for domestic and non-domestic purposes as defined by the Act  |
| Water Supply Licence                | Shall have the meaning as set out in Section 17A of the Act   |
| the WU Licence                      | The Instrument of Appointment held by WU as a statutory water undertaker under the terms of   |

| <b>Term</b> | <b>Definition</b>  |
|-------------|--|
|             | the Act  |
| 1.2         | References to any statute, or to any statutory provision, statutory instrument, order or regulation made thereunder, includes that statute, provision, instrument, order or regulation as amended, modified, consolidated, re-enacted, or replaced from time to time, whether before or after the date of this Agreement and also includes any previous statute, statutory provision, instrument, order or regulation, amended, modified, consolidated, re-enacted or replaced by such statute, provision, instrument, order or regulation but excludes any such thing having retrospective effect |
| 1.3         | All references to a statutory provision shall be construed as including references to all statutory instruments or orders, regulations or other subordinate legislation made pursuant to that statutory provision  |
| 1.4         | Unless the context otherwise requires, references to the singular include the plural, references to any gender include all other genders, and references to "persons" shall include bodies corporate, unincorporated associations and partnerships   |
| 1.5         | A reference in this Agreement to any party shall include a reference to that party's successors and assigns  |
| 1.6         | The Schedules and any Annexes to this Agreement shall form part of this Agreement  |
| 1.7         | Words importing persons shall include firms and corporations and vice versa  |
| 1.8         | Words importing the singular shall include the plural and vice versa   |
| 1.9         | Clause headings are for ease of reference only and shall not affect the interpretation of this Agreement or of the clause to which they relate   |

- 1.10 References to “include” or “including” shall be construed without limitation to the generality of the words
- 1.11 To the extent that there is a conflict between or ambiguity relating to any document referred to in or forming part of this Agreement the terms set out in this Agreement shall prevail
- 1.12 Words and expressions defined in the Companies Act 1985 (as amended) shall have the same meanings when used in this Agreement unless the context otherwise requires

## **2. COMMENCEMENT AND TERM**

- 2.1 This Agreement shall subject as provided below come into effect on the [ ]

## **3. USE CONDITIONS**

- 3.1 The LWS confirms and warrants that he holds a Retail Licence
- 3.2 The LWS confirms that he shall supply the [following services] to [ ]
- 3.3 The provisions of this Agreement are conditional upon each of the following matters being fulfilled to the reasonable satisfaction of WU;
- 3.3.1 [any condition precedents plus timescales with long stop date eg capital works, regulatory approvals, financial security, metering of LWS Customers, provision re outstanding charges – the LWS will be required to use reasonable endeavours to fulfil]
- 3.4 Each Party shall use all reasonable endeavours to procure attainment of the above conditions precedent to the extent that such attainment is within the power and authority of that Party
- 3.5 Each Party shall use all reasonable endeavours to procure that each of the above conditions precedent which it is responsible for securing, once satisfied, and save to the extent such condition precedent has been waived, remains satisfied at all times while this Agreement remains in force

- 3.6 Each Party shall notify the other in writing as soon as it reasonably considers that the conditions precedent which it is responsible for securing have been satisfied, which shall be substantiated by appropriate supporting documents
- 3.7 Subject to clause 3.10, if any of the above conditions precedent is not satisfied or waived by WU on or before the date which is [ ] months from the date of this Agreement, this Agreement shall terminate and clause 15 shall apply
- 3.8 The LWS undertakes to disclose in writing to WU, and WU undertakes to disclose in writing to the LWS, anything which will or may prevent any of the above conditions precedent from being satisfied within the period set out in clause 3.7 immediately it comes to the notice of either Party and in such circumstances the Parties shall meet to discuss methods and proposals for their satisfaction or waiver as soon as practicable thereafter
- 3.9 WU may waive in whole or in part all or any of the conditions precedent at clause 3.3
- 3.10 WU may extend the period in which the conditions precedent are to be satisfied with the consent of the LWS and the LWS may extend the period in which the conditions precedent are to be satisfied with the consent of WU provided that, in each case, the period in which the conditions precedent are to be satisfied shall not be extended beyond the date which is six months from the expiry of the period set out in clause 3.7
- 3.11 If no extension is agreed or if any of the above conditions precedent are not satisfied or waived at the end of the extended period, then this Agreement shall terminate and clause 15 shall apply

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

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

## 5. CHARGES

5.1 In consideration of the provision of Water Services in accordance with clause 4.1 above, the LWS, (subject to the provisions of clause 5.4), subject to receipt of invoices from WU and compliance by WU with the terms of this Agreement, shall pay to WU the Supply Charges as described, varied and set out in Schedule 2 and the Customer Annexes and which shall be subject to the Price Review mechanism so set out

5.2 The Supply Charges specified in Schedule 2 shall be further adjusted throughout the period of this agreement to take into account any additional expense to which WU has been put by compliance with any Legal Requirement coming into effect after the date of this Agreement provided that such adjustment shall not take place if the expense is otherwise included in the Price Review WU shall give at least 2 months’ notice to the LWS of any adjustment to the Supply Charges in accordance with this clause

5.3 Invoices for the Supply Charges shall be raised for periods of one calendar month commencing [ ] 200[ ] and shall be submitted to the LWS by the [15<sup>th</sup>] day of the following month

5.4 All Supply Charges shall be payable without any deduction or right of legal or equitable set-off unless the LWS shall notify WU that it has a bona fide complaint in respect of the provision of the use of the Supply System or Water Services provided by WU for which WU has made a charge in which event payment of the disputed element of the charge

shall be suspended until the complaint has been resolved in accordance with Schedule 3

- 5.5 All amounts expressed as payable by an LWS pursuant to this Agreement and whether the amount thereof is set out in this Agreement or determined elsewhere are exclusive of any applicable Value Added Tax (“VAT”) and accordingly VAT shall be payable in addition to the Supply Charges at the rate from time to time in force against delivery of a valid VAT invoice
- 5.6 If any Supply Charges are not paid on the due date for payment (save as contemplated by clause 5.4) then the LWS shall pay interest on the amount outstanding at the rate of [x]% per annum over the published base lending rate from time to time of [ ] Bank plc or such London clearing bank as WU may nominate for this purpose such interest to be calculated from the date on which such sum became due until payment thereof and to run from day to day to accrue after as well as before payment to the date of actual payment

[OR]

If any Supply Charges are not paid on the due date for payment (save as contemplated by clause 5.4) then the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 shall apply to the amount outstanding

## **6. ENTITLEMENTS UNDER THE ACT**

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

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

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

## **7. OWNERSHIP OF THE SUPPLY SYSTEM**

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

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

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

## **8. FORCE MAJEURE**

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

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

obligations of the affected Party's whose performance is affected thereby; and

8.6.2 from time to time thereafter provide to the other Party reasonable details of:-

- (a) developments in the matters notified under clause 8.6.1, and
- (b) the steps being taken by the affected Party to overcome the Force Majeure occurrence or its effects and to resume performance of its relevant obligations

8.7 For the avoidance of doubt a serious deficiency of supplies caused by an exceptional shortage of rain shall not constitute Force Majeure however the provisions of The Water Resources Act 1991 shall apply to the same

8.8 This clause shall not apply to the satisfaction of the conditions precedent set out in clause 3 above

## **9. LIABILITY**

9.1 The LWS warrants and undertakes to WU to perform its obligations hereunder with all due care and diligence and in any event in accordance with the requirements of each relevant Competent Authority, Legal Requirements and to those standards which constitute good industry practice in respect of the water industry

9.2 Subject to clause 9.3 below neither Party nor any of its officers, employees or agents shall be liable to the other Party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of;

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

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

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

- 9.3 Where:

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

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

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

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

9.5 Provided always that:-

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

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

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

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

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

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

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

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

## **10. DISPUTE RESOLUTION**

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

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

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

## **11. INTELLECTUAL PROPERTY RIGHTS**

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

## **12. EFFECT OF THIS AGREEMENT**

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

## **13. COMPLIANCE WITH LEGAL REQUIREMENTS**

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

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

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

#### **14. TERMINATION**

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

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

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

14.3.3 where:

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

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

14.3.4 where:

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

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

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

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

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

- 14.3.8 the continuation of a Force Majeure event affecting the LWS for a period of time which in the reasonable opinion of WU materially prejudices compliance by the LWS of its obligations to WU;
- 14.4 For the purposes of clause 14.3.4(a), Section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted [“£10,000”]; and the LWS shall not be deemed to be unable to pay its debts for the purposes of that Section if any such demand as is mentioned in the said Section is being contested in good faith by the LWS with recourse to all appropriate measures and procedures
- 14.5 Upon the occurrence of an LWS Default, and at any time after such occurrence at which the LWS Default is continuing, WU may give notice (“Termination Notice”) to the LWS to the effect that the LWS shall cease to be allowed use of the Supply System with effect from the date (which may be any date on or after the date on which the notice is given) specified in the notice
- 14.6 Where WU gives a Termination Notice to the LWS, with effect from the date specified in the notice, this Agreement shall terminate
- 14.7 The giving of a Termination Notice and the application of clause 14.6 shall not affect the rights and obligations of WU and the LWS under this Agreement accrued up to the date referred to in clause 14.6, which shall continue to be enforceable notwithstanding that clause
- 14.8 Where WU has given a Termination Notice it shall be entitled to inform such persons as it thinks fit that it has done so, including the Director, the LWS Customers and any person from whom WU believe the LWS to have purchased water for delivery to the Supply System
- 14.9 For the purposes of clause 14.3.2(a) and 14.3.3(a) the following breaches are excluded:
  - 14.9.1 a breach which results from a breach by WU of this Agreement,

- 14.9.2 a breach other than a wilful breach of a provision of this Agreement where this Agreement specifically provides some other remedy for such breach and such other remedy may reasonably be considered to be adequate in the circumstances
- 14.10 For the purposes of clause 14.3 a breach is a material breach of a relevant provision of this Agreement where and only where:
- 14.10.1 in the case of a material provision, the breach is wilful or reckless, or
- 14.10.2 in the case of any provision, as a result of the breach WU or the LWS is in material breach of any material provision of this Agreement or any Legal Requirement or incurs any material liability or expense
- 14.11 Every five years from the date of this Agreement a review shall take place of this Agreement by the Parties. Either Party may terminate this Agreement upon 3 months notice following the start of the review.

## **15. CONSEQUENCES OF TERMINATION**

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

## **16. INTERIM SUPPLIER**

- 16.1 The LWS shall serve a notice on WU upon the LWS ceasing to supply water to any premises of an LWS Customer informing WU to that

effect and providing WU with a final meter reading for such supply to those premises

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

## **17. INFORMATION AND CONFIDENTIALITY**

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

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

any legal proceedings or proposed legal proceedings) of whatever kind; and at the expense of the other Party to take such steps in connection with any legal proceedings or proposed legal proceedings as the other Party may from time to time reasonably and properly require and pursue such other remedies as the other Party may from time to time reasonably and properly require

17.6 For the purposes of clause 17.3:

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

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

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

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

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

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

17.7 The terms of this Agreement are not Confidential Information

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

- 17.9 Where Confidential Information is disclosed by either Party as permitted under clause 17.3 the receiving Party shall (without prejudice to its obligations under this clause 17) take all reasonable steps to secure that the person to whom the information is disclosed:-
- 17.9.1 is aware of the receiving Party's obligations under this clause 17 in relation thereto, and
- 17.9.2 does not use or disclose the information other than as is permitted of such Party in accordance with this clause 17
- 17.10 Nothing in clause 17.3 shall apply:
- 17.10.1 to the disclosure or use by the receiving Party of Confidential Information to which the other Party has consented in writing;
- 17.10.2 to any Confidential Information which:
- (a) before it is obtained by the receiving Party is in the public domain; or
  - (b) after it is obtained by the receiving Party enters the public domain, in either case otherwise than as a result of a breach by the receiving Party of its obligations under this clause 17;
- 17.10.3 to the disclosure of any Confidential Information to any person if and to the extent that the receiving Party is required to make such disclosure to such person or such disclosure relates to a Dispute if such disclosure is made in good faith:
- (a) in compliance with the duties of the receiving Party under the Act or any other requirement of a Competent Authority; or
  - (b) in compliance with the conditions of the WU Licence or (as the case may be) the Instrument of Appointment held by the LWS or any document referred to in such Instrument of Appointment with which the receiving Party is required by virtue of the Act or such Instrument of Appointment to comply; or
  - (c) in compliance with any other Legal Requirement; or

- (d) in response to a requirement of any stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or
- (e) pursuant to any judicial or other arbitral process or tribunal having jurisdiction in relation to the receiving Party; or

17.10.4 to any Confidential Information to the extent that the receiving Party is expressly permitted or required to disclose that information under the terms of any agreement or arrangement made with the other Party or to which the other Party is a party;

17.10.5 to the disclosure of Confidential Information to any lending or other financial institution proposing to provide or arrange the provision of finance to the receiving Party, where and to the extent that the disclosure of such information is reasonably required for the purposes of the provision or arrangement of such finance, and provided that the person to whom the information is disclosed undertakes in writing to and in terms reasonably satisfactory to the other Party to maintain the confidentiality of such information;

17.10.6 to the disclosure of Confidential Information to any insurer proposing to provide or arrange the provision of insurance to the receiving Party, where and to the extent that the disclosure of such information is reasonably required for the purposes of the provision or arrangement of such insurance, and provided that the person to whom the information is disclosed undertakes in writing to and in terms reasonably satisfactory to the other Party to maintain the confidentiality of such information;

17.10.7 to the disclosure of any Confidential Information to the Director, where the receiving Party considers in good faith that the other Party may be in breach of a condition of their Instrument of Appointment, to the extent reasonably necessary to draw such possible breach to the attention of the Director;

17.10.8 to the disclosure of any Confidential Information to any person proposing to make a connection directly or indirectly to the Supply System, where and to the extent that the disclosure of such information

is reasonably required for the purposes of supporting WU's charges or requirements to allow such proposed connection to the Supply System to be made and provided that the person to whom the information is to be disclosed is informed in writing of the confidentiality of such information and that prior to disclosure, such person has entered into a confidentiality agreement with WU which prohibits use or disclosure of such Confidential Information in terms no less onerous than those contained in this clause 17

- 17.11 Nothing in clause 17.3 shall apply to the disclosure by WU of Confidential Information to the Director where such information is accessible by the Director
- 17.12 The provisions of clauses 17.3 to 17.11 shall continue, for a period of 3 years after the Discontinuance Date, to bind the LWS and WU, notwithstanding that the LWS has ceased to be a user of the Supply System and irrespective of the reason for such cessation
- 17.13 Nothing in this Agreement shall be construed as requiring WU to disclose or use any information in breach of any requirement of the WU Licence
- 17.14 Subject to clause 17.15.1, the data, including metering data, which is processed by or recorded or maintained by WU (including all intellectual property rights in such data) shall belong to WU; and subject to clause 17.15.2 WU may, but without prejudice to clause 17.3 or any other requirement of this Agreement, use and deal with such data as it thinks fit
- 17.15 Where pursuant to this Agreement the LWS provides or arranges for the provision of data to WU:
  - 17.15.1 such data (as provided to WU by the LWS) shall belong to the LWS;
  - 17.15.2 the LWS hereby grants to WU a perpetual, non-exclusive, royalty-free licence (which shall survive the LWS Discontinuance Date) in respect of such data and all intellectual rights therein to use, copy, adapt and deal with such data for the purposes of performance and

implementation of this Agreement and its water undertaking and for other purposes contemplated by this Agreement, but not otherwise;

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

## **18. EIR**

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

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

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

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

18.3.2 shall not disclose any information that the Parties have agreed is Exempted Information and shall rely on the EIR Exemption, at the Other Party’s request and cost, and use reasonable endeavours to ensure that the Exempted Information remains withheld, including the

lodging of any appeal against a decision by the Information Commissioner in relation to the request;

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

## **19. NOTICES**

- 19.1 References in this clause 19 to a notice are to a notice or communication to be given by one Party to the other under this Agreement
- 19.2 Any notice shall be in writing and shall be addressed to the recipient Party at the recipient Party's address, designated e-mail address or facsimile number referred to in Schedule 1 and marked for the attention of the representative (identified by name or title) referred to in that Schedule, or to such other address or facsimile number and/or marked for such other attention as the recipient Party may from time to time specify by notice given in accordance with this clause 19 to the other giving the notice
- 19.3 The initial address, designated e-mail address or facsimile number of a Party, and representative for whose attention notices are to be marked, shall be as specified in Schedule 1
- 19.4 Any notice given by delivery shall be given by letter delivered by hand, and any notice given by post shall be sent by first class prepaid post (airmail if overseas)

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

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

## **20. ASSIGNMENT**

- 20.1 The LWS may only assign its rights and obligations under this Agreement to another company which is for the time being a member of the same group of companies as the LWS for the purposes of an internal reorganisation or group restructuring PROVIDED THAT:-
- 20.1.1 the assignee company is a Licensed Water Supplier and has complied with all other requirements which (if the person were the LWS) it would be required under clause 3 to comply with ; and
- 20.1.2 the provisions of clause 23 are complied with in relation to the assignee company
- 20.2 WU may only assign its rights and obligations under this Agreement to a person holds an Instrument of Appointment as an Undertaker under the Act
- 20.3 Except as provided in this clause 20, a Party shall not assign or transfer and shall not purport to assign or transfer any of its rights or obligations under this Agreement.
- 20.4 Where a Party assigns its rights and obligations under this Agreement pursuant to this clause 20 the assigning Party shall be released from obligations under this Agreement arising after the time at which the assignment is effective, but shall remain liable for any obligations accruing up to such time

## **21. WU PERFORMANCE**

- 21.1 In relation to exercising its discretions and performing obligations under this Agreement WU shall at all times:-
- 21.1.1 act in a reasonable and prudent manner in relation to the management and operation of the Supply System; and
- 21.1.2 act reasonably and in good faith in its dealings with the LWS and third party Licensed Water Suppliers;
- save that the foregoing shall not apply to the extent that:-

- (a) there is any standard of performance already provided for by any Legal Requirement to which WU is subject; or
  - (b) WU would thereby be required to act in a manner which would conflict with any Legal Requirement
- 21.2 For the avoidance of doubt the operation of this clause 21 shall not prevent WU from performing any obligation under this Agreement
- 21.3 For the avoidance of doubt the provisions of this Agreement shall not prevent or constrain WU in providing access to or use of the Supply System to a third party Licensed Water Supplier

## **22. MODIFICATION**

- 22.1 Subject to the provisions of clause 23.5 no modification to Schedule 1 or the provisions of any Customer Annex (“Modification”) may be made by the LWS or WU otherwise than in accordance with the provisions of this clause 22
- 22.1.1 If the LWS wishes to make a Modification it shall complete and submit to WU an application in writing
- 22.1.2 WU shall make a Modification Offer to the LWS as soon as practicable and in any event not more than 3 months after receipt by WU of the application The Modification Offer shall include details of any variations WU proposes to make to the Supply Charges During such period WU and the LWS shall discuss in good faith the implications of the proposed Modification
- 22.1.3 The Modification Offer shall remain open for acceptance for 3 months from the date of its receipt by the LWS unless either party makes an application to the Director, in which event the Modification Offer shall remain open for acceptance by the LWS until the date 14 Days after any determination by the Director pursuant to such application
- 22.1.4 If the Modification Offer is accepted by the LWS Schedule 1 or the provisions of any Customer Annex as appropriate shall be varied to

reflect the terms of the Modification Offer and the Modification shall proceed according to the terms of Schedule 1 or the provisions of any such Customer Annex as so varied

- 22.1.5 If WU wishes to make a Modification to the Supply System that affects Schedule 1 or the provisions of any Customer Annex WU shall advise the LWS in writing of any works which WU reasonably believes that the LWS may have to carry out as a result
- 22.1.6 If the LWS considers that it shall be required to make a Modification as a result of the Modification proposed by WU then the LWS may as soon as practicable after receipt of the notice referred to in clause 22.1.5 and (save where the Director consents to a longer period) within the period stated therein (which shall be sufficient to enable the LWS to assess the implications of the proposed Modification and in any event shall not be less than 3 months) make an application to WU in accordance with clauses 22.1.1 to 22.1.4
- 22.2 Subject to the payment of its reasonable costs, if any, as provided for in this clause WU undertakes to the LWS to provide all advice and assistance reasonably requested by the LWS to enable the LWS adequately to assess the implications (including the feasibility) of making a Modification affecting the Pipework, plant or other asset belonging to the LWS or LWS's Customer(s) (whether such Modification is to be made at the request of WU or of the LWS) If the proposed Modification affecting the LWS is or may be required as a result of a Modification proposed by WU then WU shall provide such advice and assistance free of charge If the proposed Modification is or may be proposed by the LWS then WU may charge the LWS its reasonable costs for such advice and assistance The provision of such advice and assistance shall be subject to any confidentiality obligations binding on WU and the LWS
- 22.3 When giving such advice and assistance WU shall comply with good industry practice

22.4 Provided always WU shall have no obligation to compensate the LWS for the cost or expense of any Modification required to be made by the LWS as a result of any WU Modification under clauses 22.1.5 and 22.1.6 where WU confirms in writing to the LWS that such Modification is essential in order to;

satisfy the requirements of another Licensed Water Supplier; or

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

### **23. GENERAL**

- 23.1 This Agreement sets out the entire agreement between the Parties and supersedes all prior representations, arrangements, understandings and agreements between the parties relating to the subject matter hereof and subject to clause 23.2 sets forth the entire complete and exclusive agreement and understanding between the Parties hereto relating to the subject matter hereof Neither Party has relied on any representation, arrangement, understanding or agreement (whether written or oral) not expressly set out or referred to in this Agreement
- 23.2 Nothing contained in a document or referred to in this Agreement, beyond what is expressly contemplated by this Agreement as being contained in such document or is necessary for the purposes of giving effect to a provision of this Agreement, shall modify or have any effect for the purposes of this Agreement or be construed as relevant to the interpretation of this Agreement
- 23.3 No failure to exercise nor any delay in exercising on the part of a Party to this Agreement any right of termination or any other right or remedy under this Agreement or otherwise howsoever arising shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy The rights and remedies provided herein

are cumulative and not exclusive or any rights or remedies provided by law

- 23.4 Nothing herein contained shall be construed as giving rise to the relationship of principal and agent (save as otherwise expressly provided herein) or partnership or joint venture
- 23.5 No alternative or variation of the terms of this Agreement shall be effective unless agreed to by both Parties in writing expressed to be a variation to this Agreement and signed by a director on behalf of both Parties WU and the LWS acknowledge that, because of the novel nature of this Agreement the provisions of Schedule 1 may be inaccurate or deficient in some manner Accordingly, each WU and the LWS undertake to discuss in good faith the correct identification of the details of Schedule 1 with a view to amending the same as necessary to reflect the correct position To the extent that agreement on the proposed alternative, variation or amendment cannot be reached within 3 months the matter shall be referred to Dispute Resolution in accordance with clause 10 of this Agreement and such details shall be amended accordingly following such agreement or determination (as the case may be)
- 23.6 If any term or provision of this Agreement shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Agreement but the validity and enforceability of the remainder of this Agreement shall not be affected
- 23.7 Subject and without prejudice to the provisions of Schedule 3 the parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (collectively “proceedings”) arising out of or in connection with this Agreement may be brought in such courts
- 23.8 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any proceedings in any such

court in the jurisdiction as is referred to in clause 23.10 and any claim that any such proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any proceedings brought in the English courts shall be conclusive and binding upon such Party and may be enforced in the courts or any other jurisdiction

- 23.9 Unless a right of enforcement is expressly provided for in this Agreement it is not intended that a third party shall have the right to enforce any term of this Agreement pursuant to the Contract (Rights of Third Parties) Act 1999.
- 23.10 The construction, validity and performance of this Agreement shall be governed in all respects by exclusive Jurisdiction of the law of England and Wales.