

DATED

20[ ]

**CAMBRIDGE WATER PLC**

**and**

**[ • ] LIMITED/PLC**

*Draft 2: 05 March 2006*

**MASTER ACCESS AGREEMENT: WHOLESALE SUPPLIES**

**WATER ACT 2003: WATER SUPPLY LICENSING**

\*berwin leighton paisner

Berwin Leighton Paisner LLP  
Adelaide House London Bridge London EC4R 9HA  
tel +44 (0) 20 7760 1000 fax +44 (0) 20 7760 1111

## CONTENTS

### CONTRACT SCHEDULE

### CLAUSES

#### PART 1 : STANDARD TERMS AND CONDITIONS

1	Definitions and interpretation .....	3
2	Conditions Precedent.....	7
3	Permission to access the Supply System .....	7
4	Acceptance of the Access Code .....	7
5	Modifications .....	7
6	Ownership of Supply System and Vesting.....	8
7	Material Change.....	8
8	Liability .....	9
9	Force Majeure .....	9
10	Exclusions .....	10
11	Indemnity .....	10
12	Duration.....	10
13	Termination.....	11
14	Emergency Suspension.....	13
15	Supplier of Last Resort .....	13
16	Payment .....	14
17	Dispute Resolution .....	14
18	Notices .....	15
19	Assignment and Alienation.....	16
20	Variations.....	17
21	Waiver .....	17
22	Severability .....	18
23	Entire Agreement.....	18
24	Confidentiality, Use of Trademarks and Publicity .....	18
25	Jurisdiction .....	20
26	Insurance.....	20
27	Third Party Rights .....	20
28	Compensation.....	20
29	Provision of Bonds and Guarantees.....	21
30	Relationship of the Parties .....	21

#### PART 2 : NON-STANDARD TERMS AND CONDITIONS

31	Strategic Supplies .....	22
32	Customer Protection.....	22
33	Customer Contact – Queries and Complaints .....	22
34	Billing and Debt Collection .....	24
35	Termination of Supply .....	24
36	Water Quality and Sampling.....	25
37	Supply System Management and Control .....	26
38	Drought and Resource Planning .....	27
39	Maintenance and Serviceability of Assets.....	27
40	Metering and Flow Balancing.....	28
41	Emergency Procedures and Contacts .....	29
42	Contract changes .....	29

APPENDIX 1 .....	30
Protocol .....	30





<i>"the Licensee's Licence"</i>	means the Licensee's water supply licence giving a retail authorisation pursuant to Section 17A of the Act and dated [ • ];
<i>"Force Majeure"</i>	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 or terrorist activities (whether actual, threatened or suspected) to the extent that such event or circumstance could not have been prevented by 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;
<i>"the Initial Period"</i>	means the initial period of [•] years of the Agreement calculated from the Commencement Date;
<i>"OFWAT"</i>	means the Office of Water Services;
<i>"OFWAT Guidance"</i>	means the OFWAT Access Codes Guidance of June 2005 together with any amendments or additions thereto from time to time;
<i>"Secondary Period"</i>	means each additional period of [•] years of this Agreement after the expiration of the Initial Period and, thereafter, the immediately preceding Secondary Period;
<i>"Secretary of State"</i>	means the Secretary of State for the Department for Environment, Food and Rural Affairs;

<i>"Special Consumer"</i>	means any Licensee's Customer within the definition of a special consumer for the purpose of paragraph 5 of the Licensee's Licence;
<i>"Supply System"</i>	means part of the Company's water supply and distribution system for the Area of Supply which will be used to supply water to the Licensee under the Agreement;
<i>"the Water Supplies"</i>	means the quantities of water required by the Licensee's Customers set out in the Contract Schedule;
<i>"the Wholesale Price"</i>	means the price payable from time to time by the Licensee to the Company for the Water Supplies as set out in the Contract Schedule;

## 1.2 *Interpretation*

- 1.2.1 Words and expressions defined in the Interpretation Act 1978 shall have the same meaning in this Agreement.
- 1.2.2 The clause headings and list of contents are for convenience and reference only and shall not be taken into account in construing the terms of this Agreement.
- 1.2.3 References to clauses, sub-clauses and annexes are to clauses and sub-clauses of and annexes to this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement.
- 1.2.4 Words importing the masculine gender include the feminine and vice versa and words in the singular include the plural and vice versa.
- 1.2.5 References to any enactment include any subordinate legislation made from time to time under it and are to be construed as references to that enactment as for the time amended or modified and to any enactment for the time being replacing or amending it.

2           **Conditions Precedent**

It is a condition precedent to the entering into and continuance of this Agreement that the Licensee holds a water supply licence giving a retail authorisation pursuant to s.17A of the Act and in the event of any such licence ceasing to be held for any reason this Agreement shall terminate in accordance with the provisions of clause 13 hereof.

3           **Permission to access the Supply System**

3.1        In consideration of the agreements on the part of the Licensee herein contained the Company, with effect from the Commencement Date and on the terms and conditions of this Agreement:

3.1.1       grants the Licensee permission to have access to and use the Supply System; and

3.1.2       agrees to provide the Licensee with the Water Supplies

in each case for the purpose of enabling the Licensee to supply water to the Licensee's Customers.

3.2        Save as expressly provided herein the obligations of the Company hereunder shall impose no greater obligations upon the Company than are imposed upon it by any provisions of the Act and, save as aforesaid, in the event of any conflict between the provisions of this Agreement and the provisions of the Act, the latter shall prevail.

4           **Acceptance of the Access Code**

The Licensee confirms that it is fully conversant with the Access Code and agrees to comply with the provisions thereof at all times during the continuance of this Agreement including any revisions thereto from time to time which comply with any applicable OFWAT Guidance or DWI Guidance and subject to any modifications thereto under the provisions of clause 20 hereof and to any determinations by the Director made in exercise of any powers of dispute resolution in relation thereto.

5           **Modifications**

In the event of there being any variations to this Agreement pursuant to clause 20 hereof, the parties shall discuss and agree between them in good faith and in a timely manner all such modifications to their respective obligations hereunder as

shall be necessary or desirable to ensure that the variations are effected and managed in an economical, efficient and effective manner having regard to their respective statutory and licence obligations.

## **6 Ownership of Supply System and Vesting**

The Licensee acknowledges and confirms that:

- 6.1 the access to the Supply System granted to the Licensee hereunder grants an entitlement to use the Supply System only for the purpose of and in accordance with the terms and conditions of this Agreement;
- 6.2 the Supply System is owned by the Company at the date hereof and shall remain in the ownership of the Company at all times during the continuance of this Agreement;
- 6.3 in the event that any additions to the Supply System are made at any time by the Company for any purpose in connection with the access granted hereunder, all such additions shall vest solely in the Company whether or not the whole or any part of the cost thereof is paid by the Licensee and such additions shall thereafter comprise part of the Supply System owned by the Company as acknowledged and confirmed by this clause.

## **7 Material Change**

In the event that at any time during the continuance of this Agreement any change shall occur in:

- 7.1 any applicable legislation;
- 7.2 the OFWAT Guidance;
- 7.3 the DWI Guidance;
- 7.4 the Access Code;
- 7.5 the circumstances of the Company or the Licensee

in relation to the purpose or operation of this Agreement and which is material thereto, the party affected thereby shall immediately provide full information regarding such change to the other party and the parties hereto shall thereafter meet together to consider whether any variations of this Agreement are justified thereby. Any such variations agreed between the parties in consequence thereof

shall be implemented in accordance with clause 20 hereof. Any disputes between the parties in consequence thereof shall be dealt with in accordance with clause 17 hereof.

## **8 Liability**

The parties acknowledge that they each have statutory and regulatory obligations under the Act and their respective licences which are personal to them and which cannot be affected by the provisions of this Agreement and each party undertakes to the other that in performing its obligations under this Agreement it will do so in a manner best suited to facilitating the discharge of such obligations by the other but subject thereto, neither party shall have any liability to the other in consequence of their carrying out any such obligations in accordance with the relevant provisions of the Act and their respective licences.

## **9 Force Majeure**

Subject to the provision of clause 10 hereof, 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:

- 9.1 the Affected Party gives the other party prompt notice describing the circumstances of Force Majeure, including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports to the other party with respect thereto during the period of Force Majeure;
- 9.2 the suspension of performance is of no greater scope and of no longer duration than is strictly required by the circumstance of Force Majeure;
- 9.3 the Affected Party uses all reasonable efforts to mitigate the impact of the circumstance of Force Majeure and to remedy its inability to perform as quickly as possible; and
- 9.4 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.

10      **Exclusions**

For the avoidance of doubt the parties each acknowledge that any suspensions under the provisions of clause 9 hereof shall apply only between the parties hereto as a term of this Agreement and that the performance of their respective statutory and regulatory obligations under the Act and their respective licences are excluded from such provisions and shall continue to apply in circumstances of Force Majeure save only to the extent that the Act or licences otherwise permit or provide.

11      **Indemnity**

In the event that the Licensee shall be in breach of:

- 11.1      the terms and conditions of this Agreement;
- 11.2      its statutory duties under the Act;
- 11.3      the conditions of the Licensee's Licence;
- 11.4      it's service obligations to the Licensee's Customers

as a result of which the Company incurs costs, charges or expenses in carrying out any statutory duties of supply or providing any related services to the Licensee's Customers, the Licensee shall indemnify and keep indemnified the Company from and against all such reasonable costs, charges and expenses so incurred and shall reimburse the same to the Company on demand (subject to the provision of reasonable supporting evidence therefore).

12      **Duration**

This Agreement shall continue for the Initial Period unless terminated prior to the expiration of such period in accordance with the provisions of clause 13 hereof provided that:

- 12.1      in the event that the Licensee wishes the Agreement to continue on the same terms and conditions as are contained herein for a Secondary Period after the expiration of the Initial Period, it shall be entitled to give not less than twelve months' notice of such wish to the Company prior to the expiration of the Initial Period;
- 12.2      on receipt of the notice referred to in sub-clause 12.1 hereof the Company shall within 28 days of such receipt either give notice to the Licensee that it agrees to the Agreement continuing for the Secondary Period on the same terms and

conditions as are contained herein in which event the Agreement shall so continue or shall give notice to the Licensee that it wishes the terms and conditions of the Agreement to be varied for the Secondary Period as indicated in such notice ("Variation Notice");

12.3 on receipt of a Variation Notice under sub-clause 12.2 hereof the Licensee shall within 28 days of such receipt either give notice to the Licensee that it agrees to the Agreement continuing for the Secondary Period on the varied terms and conditions contained therein in which event the Agreement shall so continue or give notice to the Company that the terms and conditions set out in the Variation Notice are not accepted in which event the provisions of clause 17 Dispute Resolution shall apply for the purpose of setting the disputed items;

12.4 the provisions of this clause shall apply in relation to any and each Secondary Period that may follow the Initial Period in the same way that they apply to the Initial Period.

### 13 **Termination**

13.1 The Company may, without prejudice to any of its other rights arising hereunder, terminate this Agreement by notice with immediate effect to the Licensee if:

13.1.1 the Licensee ceases to be the holder of the Licensee's Licence;

13.1.2 the Licensee shall be in serious breach of the terms or conditions hereof and such breach (if capable of remedy) shall continue thirty (30) days after notice in writing, specifying the breach and requiring the same to be remedied, has been given;

13.1.3 the Licensee relies on the existence of the circumstance of Force Majeure to excuse performance under this Agreement for a continuous or cumulative period of more than 90 days;

13.1.4 an order is made or a resolution is passed for the winding up of the Licensee except in the case of a voluntary winding up for the purposes of a scheme of reconstruction or amalgamation the terms of which have previously been approved in writing by the Company;

13.1.5 an administrative order is made in respect of the Licensee or a petition for such an order is presented;

- 13.1.6 a receiver (which expression shall include an administrative receiver) is appointed in respect of the Licensee or all or any of its assets;
- 13.1.7 the Licensee is unable to pay its debts within the meaning of s.123 of the Insolvency Act 1986; or
- 13.1.8 there is a material change in the ownership or control of the Licensee, except where full details of any such proposed change have been provided to the Company not less than 28 days prior to the proposed date for the same to take effect and the Company has not unreasonably refused its consent thereto.

Provided that any such termination of this Agreement by the Company shall be without prejudice to any statutory duties of supply the Company may have to continue the supply of water to the Licensee's Customers on an interim or permanent basis.

13.2 The Licensee may, without prejudice to any of its other rights arising hereunder, terminate this Agreement:

- 13.2.1 in whole, by not less than 6 months notice to the Company;
- 13.2.2 in relation to any one or more of the Licensee's Customers by not less than 6 months notice to the Company

Provided that any such termination of this Agreement by the Licensee shall be without prejudice to any statutory duties of supply the Company may have to continue the supply of water to the Licensee Customers on an interim or permanent basis.

13.3 In the event of any termination of this Agreement by either party hereunder, the Company shall be entitled to recover from the Licensee its reasonable costs, charges and expenses in taking over responsibility from the Licensee for the supply of water to the Licensee's Customers and the provision of related services thereto, on an interim or permanent basis, save only to the extent that and such costs, charges or expenses are properly payable to the Company by such Licensee's Customers in accordance with any statutory provisions applicable thereto.

13.4 Except where expressly stated to the contrary, the rights and obligations of the parties under this Agreement shall cease immediately upon its termination. However, termination shall not affect any rights, obligations or remedies which have

accrued on or before the date of termination and this clause 13 shall continue to apply to such rights, obligations and remedies.

- 13.5 The Company shall have no liability for any costs, charges, expenses, claims, losses, damages or liabilities whatsoever of the Licensee, the Licensee's Customers or any assignee, sub-contractor or delegatee of the Licensee, in consequence of any termination of this Agreement in accordance with this clause.

[NB: *Refer to any special termination arrangements if appropriate – see clause 35*]

#### 14 **Emergency Suspension**

The Licensee acknowledges the Company's entitlement to suspend access and use of its Supply System and the provision of the Water Supplies to the Licensee in the event that the Company considers, in its absolute discretion, that such suspension is necessary to avoid any risk of the Company or the Licensee supplying water which is unwholesome or unfit for human consumption within the meanings of s.67 and s.70, respectively, of the Act, such entitlement to apply at all times during the continuance of this Agreement.

[NB: *In the event that the water supplies are to be of particular specification to meet the requirements of any of the Licensee's Customers e.g. for the purpose of an industrial process that has particular requirements, this clause will need to be supplemented by an additional provision to deal with suspension in the event of any risk arising that such specification cannot be adhered to*]

#### 15 **Supplier of Last Resort**

In the event that the Licensee shall fail to supply water to the Licensee's Customers in circumstances in which the statutory interim duty of supply upon the Company under s.63AC of the Act arises, the Company confirms to the Licensee that it will fulfil such duty as the supplier of last resort to such Licensee's Customers in accordance with and subject to the limitations set out in such section. The charges for any such supply by the Company shall be determined in accordance with s.63AC of the Act and shall be payable by the Licensee's Customers to the Company.

[NB: *In the event that the Licensee wishes the Company to accept a greater supplier of last resort obligation than is specified in s.63AC of the Act, this clause will require amendment to provide for this and*

*clause 16 will require amendment to provide for payment to the Company of the additional costs resulting therefrom.]*

**16 Payment**

- 16.1 With effect from the Commencement Date the Licensee shall pay the Company [the Wholesale Price] for the Water Supplies provided by the Company to the Licensee hereunder.
- 16.2 The quantity of water supplied by the Company to the Licensee hereunder shall be determined in accordance with the provisions of clause 40 hereof.
- 16.3 The Company shall invoice the Licensee for the Water Supplies at the Wholesale Price on a [monthly/six monthly] in arrear (other than for any appropriate proportion of any standing charges which shall be payable in advance) basis and the Licensee shall pay such invoices without any deductions whatsoever within 30 days of the date thereof.
- 16.4 Payment by the Licensee to the Company hereunder shall be due irrespective of whether the Licensee receives payment from the Licensee's Customers of water charges due to the Licensee therefrom.
- 16.5 Interest shall be payable by the Licensee on any invoices not paid on or before the due date of payment therefor at the rate of 4% per annum above Lloyds TSB Base Rate from time to time, until payment.

**17 Dispute Resolution**

- 17.1 The parties will use their best endeavours, in good faith and in a timely manner, to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement and to such end the Company will comply with any reasonable request for a meeting to discuss the dispute.
- 17.2 In the event of a dispute which cannot be resolved by negotiation:
  - 17.2.1 if the dispute is within the jurisdiction of the Director, either party shall be entitled to refer the same thereto for determination;
  - 17.2.2 if the dispute is within the jurisdiction of the Secretary of State, either party shall be entitled to refer the same thereto for determination;

17.2.3 if the dispute relates to water quality, the same shall be referred to the Chief Inspector of the Drinking Water Inspectorate for determination;

17.2.4 any dispute not falling to be determined under sub-clauses 17.2.1 17.2.2 or 17.2.3, thereof, shall be referred for determination hereof, shall be dealt with in accordance with the following process:

17.2.4.1 the dispute shall be subject to expert determination in accordance with the Arbitration Act 1996 and either party may give notice at any time to the other to commence such determination;

17.2.4.2 the parties shall agree upon the selection of the expert, requesting at that time a scale of fees and in the event of the parties not being able to agree on an appropriate expert, the appointment will be made by the President, or other officers, of the Chartered Institute of Arbitrators, on the application of either party;

17.2.4.3 the parties shall submit to the expert, and to each other, written submissions with supporting documentation in respect of the dispute;

17.2.4.4 the expert shall provide a draft of his determination to the parties which will allow them to clarify issues with the expert before the determination is given

the determination of any such arbitrator both as to the substance of the dispute referred to him and as to the responsibility for costs of the arbitrator's determination, to be binding on the parties unless there is evidence of manifest error.

## 18 Notices

18.1 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, facsimile or e-mail to that party to the address and for the attention of the relevant person set out in sub-clause 18.2 hereof.

18.2 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:

<b>Party, title of contact</b>	<b>Address</b>	<b>Facsimile No.</b>	<b>E-mail Address</b>
The Company			
The Licensee			

or such other persons, addresses, facsimile numbers or e-mail addresses as may from time to time be notified by one party to the other in accordance with this sub-clause (provided such notification shall only be effective five business days from receipt).

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

18.3.1 if delivered personally, on delivery;

18.3.2 if sent by recorded delivery or special delivery, two clear business days after the date of posting;

18.3.3 if sent by facsimile or e-mail, 24 hours after acknowledgement by the recipient party's facsimile or e-mail receiving equipment.

Any notice given under this Agreement outside normal working hours in the place to which it is addressed shall be deemed not to have been given until the start of the next period of normal working hours in such place.

**19 Assignment and Alienation**

The Licensee agrees that it shall not:

19.1 assign all or any part of its rights under this Agreement;

19.2 assign, sub-contract or delegate the performance of all or any of its obligations under this Agreement without the prior consent in writing of the Company; or

19.3 without prejudice to the Company's entitlement to refuse consent to any proposed assignment, sub-contract or delegation, in its absolute discretion, it shall be a

condition of any such consent which may be given that the Company shall be entitled to deal directly with the assignee, sub-contractor or delegatee at all times and for all purposes and that notwithstanding any such consent and any such direct dealing, the Licensee shall at all times remain liable to the Company in relation to all such assigned, sub-contracted or delegated obligations.

## 20 **Variations**

20.1 This Agreement may only be varied in writing signed by each of the parties. Either party shall at any time be entitled to propose amendments to this Agreement by notice in writing to the other party. The parties shall negotiate in good faith the terms of any such variation.

20.2 If it becomes apparent that a variation or variations to this Agreement have become necessary by virtue of changes to the statutory obligations of the Company or otherwise to give effect to changes to applicable law, 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 and commercial arrangements embodied in this Agreement.

20.3 If the parties cannot agree upon a proposed variation, such disagreement will be regarded as a dispute and settled under the provisions of clause 17 hereof.

## 21 **Waiver**

21.1 No delay or omission by either 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:

21.1.1 affect that right, power or remedy; or

21.1.2 operate as a waiver thereof.

21.2 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.

21.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

22      **Severability**

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 in accordance with the provisions of clause 20 hereof, as shall be necessary to give effect to the spirit of this Agreement so far as reasonably practicable.

23      **Entire Agreement**

23.1      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.

23.2      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 in accordance with the provisions of clause 20 hereof.

24      **Confidentiality, Use of Trademarks and Publicity**

24.1      The Company and the Licensee each hereby agree and undertake to the other of them:

24.1.1      on receipt of any information from the other which is received in any way in connection with this Agreement and is marked as confidential information ("Confidential Information"), to use the same solely in connection with the Agreement and for no other purpose and keep the same confidential and not disclose the whole or any part thereof to any party without the prior consent in writing of the party from whom it is received Provided that the receiving party shall not be prevented by this agreement and undertaking from disclosing the Confidential Information, on the same terms of confidentiality herein contained, to:

24.1.1.1      any of its professional advisers and consultants who it is consulting in relation to the Agreement;

24.1.1.2      any members of its staff who are involved in the Agreement;

- 24.1.1.3 any contractors or other third parties who the disclosing party is using for the purpose of the Agreement;
- 24.1.1.4 any regulatory authority which has responsibility for any part of the subject matter of the Agreement; and
- 24.1.1.5 any sewerage undertaker who provides sewerage services to the Licensee's Customers or the customers of the Company or to any other water undertaker who supplies water to the Company

and the receiving party shall also not be prevented from disclosing the Confidential Information if and to the extent that it is properly required to do so by any such regulatory authority or by any Court, judicial or arbitration tribunal or body or in order to comply with any statutory or regulatory requirement;

- 24.1.2 not to copy or otherwise re-produce the Confidential Information other than is required for any permitted use thereof;
- 24.1.3 not to incorporate the Confidential Information into any information not belonging to the disclosing party so as to prejudice its confidential nature in any way;
- 24.1.4 in the event that the Agreement expires or is terminated for any reason, to return the Confidential Information to the disclosing party forthwith together with all copies thereof in whatever form the same has been supplied or held;
- 24.1.5 to continue to observe the agreements and undertakings set out in this clause, at all times hereafter unless and until any Confidential Information to which they apply enter the public domain other than in consequence of any breach of any such agreements or undertakings.

24.2 The Licensee shall not, without the prior written consent of the Company,

- 24.2.1 use the name, any trade name or any registered trade mark of the Company in any advertising or communications to the Licensee's Customers or to the public, in any format; or

24.2.2 make any publicity releases or announcements regarding the Agreement,

such consent of the Company not to be unreasonably withheld where any such use, release or announcement is necessary to enable the Licensee to perform its statutory or regulatory obligations to the Licensee's Customers.

25 **Jurisdiction**

This Agreement is to be governed by and constructed in accordance with English Law and subject to the exhaustion of the process described in clause 17 hereof the Courts of England are to have jurisdiction to settle any dispute arising out of or in connection with this Agreement.

26 **Insurance**

Without prejudice to the Licensee's liability to indemnify and keep indemnified the Company under the provisions of clause 11 hereof, the Licensee shall carry and maintain in force for the duration of this Agreement with insurance carrier(s) satisfactory to the Company, to be evidenced by a Certificate of Insurance made available to the Company within 15 days of request, Employer's Liability Insurance, Product Liability Insurance and Comprehensive Public Liability Insurance in the amount of at least £5,000,000 for any one occurrence together with confirmation in such form as the Company shall reasonably require that such insurance covers the full extent of any liability the Licensee may have to the Company under the provisions of this Agreement.

27 **Third Party Rights**

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.

28 **Compensation**

In the event that the Company shall be in breach of the terms and conditions of this Agreement as a result of which the Licensee's Customers suffer any loss of or reduction in the services provided to them by the Licensee and the Licensee incurs any liability to the Licensee's Customers to compensate them therefor, the Company shall indemnify and keep indemnified the Licensee from and against such

compensation and shall reimburse the same to the Licensee on demand (subject to the provision of reasonable supporting evidence therefor) Provided that:

28.1 in no circumstances shall the Company's liability to indemnify and keep indemnified the Licensee under this clause exceed:

28.1.1 the amount of the actual compensation the Licensee has a legal liability to pay to the Licensee's Customers as a result of such breach;  
or

28.1.2 the amount of compensation to which the Licensee's Customers would be entitled, in the same circumstances, under the Guaranteed Standards Scheme

whichever is the lesser;

28.2 the Company shall have no liability hereunder whatsoever for any indirect or consequential loss (including loss of profits), damage, costs, charges or expenses howsoever suffered or incurred by the Licensee or the Licensee's Customers in consequence of any such breach.

## 29 **Provision of Bonds and Guarantees**

[NB: *The extent and nature of the bonds or guarantees to be provided by the Licensee to the Company, if any, will depend upon the extent and nature of any financial liabilities which the Company is required to accept in consequence of this Agreement.*]

## 30 **Relationship of the Parties**

It is expressly agreed that:

30.1 in performing any obligations under this Agreement, the Licensee shall be an independent contractor and not the agent or employee of the Company;

30.2 it is not the purpose or intention of this Agreement to create, nor shall the same be construed as creating, any partnership or joint operation between the Company and the Licensee; and

30.3 the Licensee shall not make or permit any representation or make or permit any publication which indicates or implies in any way that the Licensee is an agent, employee, partner or joint operator of the Company.

## **PART 2: NON-STANDARD TERMS AND CONDITIONS**

### **31 Strategic Supplies**

There are no strategic supplies relevant to this Agreement.

### **32 Customer Protection**

[NB: *Specify any arrangements for the provision of customer services to the Licensee's Customers by the Company in the event that the Licensee wishes the Company to provide such services and the Company is happy to provide them.*]

### **33 Customer Contact – Queries and Complaints**

33.1 The Company acknowledges its obligations to the Licensee under the Company's Licence, subject to the limitations therein specified or as otherwise agreed with the Licensee:

33.1.1 to provide to the Licensee such information as the Licensee reasonably requires;

33.1.1.1 to comply with any condition of the Licensee's Licence or any statutory requirement imposed in consequence thereof; or

33.1.1.2 to comply with any reasonable request for information made by the Environment Agency;

33.1.2 to immediately inform the Licensee of relevant details if the Company is or becomes aware that a Special Consumer occupies or is likely to occupy any premises which the Licensee is proposing to supply; and

33.1.3 to immediately inform the Licensee of every actual or potential incident which affects adversely, or is likely to affect adversely:

33.1.3.1 water quality;

33.1.3.2 water pressure;

33.1.3.3 continuity of supply; or

33.1.3.4 any other matter,

relating to the Supply System.

33.2 The Licensee acknowledges its obligations to the Company under the Licensee's Licence, subject to the limitations therein specified or otherwise agreed with the Company:

33.2.1 to provide to the Company such information as the Company reasonably requires:

33.2.1.1 for the purpose of carrying out its functions;

33.2.1.2 to comply with any condition of the Company's Licence;

33.2.1.3 in relation to national security or civil emergencies; or

33.2.1.4 to comply with any reasonable request for information made by the Environment Agency;

33.2.2 to immediately inform the Company of relevant details:

33.2.2.1 if the Licensee becomes aware of any actual or potential incident which affects adversely or is likely to affect adversely:

(a) water quality;

(b) water pressure;

(c) continuity of supply;

(d) any other matter,

relating to the Supply System; or

33.2.2.2 if a Special Consumer occupies or is likely to occupy any premises which the Licensee supplies;

and

33.2.3 to inform the Company as soon as reasonably practicable if:

33.2.3.1 any premises which the Licensee supplies are no longer occupied by any Special Consumers; or

33.2.3.2 the Licensee has any planned interruptions in supply.

33.3 [NB: *Specify any arrangements for:*

(i) *the outsourcing of the provision of information by the Licensee to the Licensee's Customers*

(ii) *the passing on of queries from the Licensee's Customers*

(iii) *any day to day contact requirements between the Licensee's Customers and the Company e.g. in relation to water quality matters*

(iv) *the allocation and transfer of complaints from the Licensee's Customers, the role and responsibilities of the Company and the Licensee with regard thereto and the means by which such arrangements are to be communicated to the Licensee's Customers]*

#### 34 **Billing and Debt Collection**

34.1 The Licensee is solely responsible for the billing and collection of all water charges to the Licensee's Customers which relate to any period from the point at which the change of supplier from the Company to the Licensee takes place.

[NB: *Specify any arrangements for the provision of billing services (with or without debt collection) in relation to the Licensee's Customers by the Company to the Licensee.]*

34.2 The parties hereto acknowledge their respective obligations in relation to the Customer Transfer Protocol under their respective licences.

#### 35 **Termination of Supply**

[NB: *Specify any special termination of supply arrangements which may be appropriate to a particular agreement whether by way of modifications to the standard termination provisions contained in clause 13 hereof or additional provisions.]*

36 **Water Quality and Sampling**

36.1 *Water quality*

The Company retains sole responsibility for the quality of the Water Supplies to the Licensee under this Agreement and for complying with all statutory and regulatory requirements and obligations to OFWAT, the DWI and the EA with regard thereto. Provided that where a particular quality standard is the subject of a relaxation granted by or an undertaking accepted by the Secretary of State under the provisions of the Act, compliance with the terms of the relevant relaxation or undertaking shall be deemed to be compliance with the relevant quality standard imposed by the Act and the Company confirms that [there are no such relaxations or undertakings existing at the date hereof and undertakes to keep the Licensee fully informed of any such discussions which takes place at any time hereafter with the Secretary of State for the proposed grant of any such relaxation or the acceptance of any such undertaking and of the outcome thereof] and the Licensee shall be responsible for providing to the Company, on request, all such information as the Company shall require regarding the supply of water by the Licensee to the Licensee's Customers for the purpose of enabling the Company to carry out its obligations hereunder.

36.2 *Compatibility*

There are no compatibility issues relevant to this Agreement.

36.3 *Suspension of introduction of water*

There are no suspension of introduction of water requirements relevant to this Agreement.

36.4 *Monitoring and sampling*

The Company will carry out all monitoring and sampling of the Water Supplies which are necessary to enable it to carry out its obligations under sub-clause 36.1 hereof.

[NB: (i) *In the event that the Licensee has any particular requirements for the quality of the Water Supplies which are different from those required by the statutory and regulatory requirements, these will have been identified*

*during the application for access process and the agreed arrangements therefor will be set out in this clause.*

*(ii) In the event that the Licensee:*

*- wishes to carry out any monitoring and sampling activities on its on behalf:*

*- wishes the Company to carry out any additional such activities in relation to any particular requirements for the quality of the Water Supplies the Licensee may have; or*

*- wishes to carry out any such additional activities on its own behalf,*

*it shall be entitled to do so and the arrangements therefor shall be set out in this clause.]*

## 36.5 *Fluoride*

The Licensee acknowledges that:

36.5.1 the Licensee shall be bound by any requirement to which the Company is made subject, at any time during the continuance of this Agreement, to fluoridate its water supplies, including the Water Supplies;

36.5.2 that the Licensee shall be solely responsible for securing any indemnity that may be available in relation to any liabilities which the Licensee may incur in supplying water to which fluoride has been added by the Company by virtue of any such requirement; and

36.5.3 that the Company shall have no liability to the Licensee for any loss, damage, injury, costs, charges or expenses whatsoever and howsoever suffered or incurred by the Licensee in relation thereto.

## 37 **Supply System Management and Control**

The Licensee acknowledges that the Company retains sole responsibility for the operation, maintenance and control of the Supply System and agrees:

37.1 to co-operate with the Company at all times for the purpose of enabling the Company to discharge such responsibility;

37.2 carry out the activities authorised by the Licensee's Licence in such manner as shall not actually or potentially jeopardise the proper, efficient and economical performance by the Company of its functions under the Act and the Company's Licence including the operation, maintenance and control of the Supply System.

### 38 **Drought and Resource Planning**

38.1 The Licensee acknowledges that the Company retains sole responsibility for preparing and maintaining drought and water resource management plans, drought planning and the right to apply for drought orders and hose-pipe bans restricting non-essential use and agrees to co-operate with the Company at all times for the purpose of enabling the Company to discharge such responsibilities.

38.2 The Licensee acknowledges that the Licensee's Customers are subject to the same risk of interruptions to their supplies in relation to any such restrictions on water use as the customers from time to time of the Company.

[NB: *In the event that the Company and the Licensee agree arrangements for the Licensee's Customers to have any higher or lower risk of interruptions to their supplies than the Company's customers, such arrangements will be set out in this clause.*]

38.3 The Licensee acknowledges its obligation to advise the Licensee's Customers of the risk of interruption to their supplies compared with the risk of interruption to supplies to the customers from time to time of the Company.

### 39 **Maintenance and Serviceability of Assets**

#### 39.1 *Assets of the Licensee*

The parties acknowledge that the Licensee has no assets which will be connected to the Supply System.

#### 39.2 *Assets of the Company*

The parties agree that the Protocol set out in Appendix 1 will provide for and regulate:

39.2.1 their respective roles in relation to planned and unplanned maintenance of any part of the Supply System which is used to provide the Water Supplies including meter installation and essential repairs;

- 39.2.2 the minimum notice period for planned work;
- 39.2.3 the process and responsibilities for notifying the Licensee's Customers of a reduced supply, of interruptions and, where appropriate, of a return to normal service;
- 39.2.4 the co-operation arrangements between them for the planning of maintenance programmes and the co-ordination of procedures to minimise disruption of supplies to the Licensee's Customers;
- 39.2.5 [*NB: Any requirements for the Company to provide standby supplies for the benefit of the Licensee*];
- 39.2.6 [*NB: Any requirements for the Company to pay compensation to the Licensee in the event that planned maintenance overruns.*]

#### 40 **Metering and Flow Balancing**

##### 40.1 *Metering*

- 40.1.1 The [estimated] quantity of the Water Supplies to be provided by the Company hereunder shall be as set out in the Contract Schedule Provided that the Company's obligation hereunder shall impose no greater obligation upon the Company than is imposed upon it by any provision of the Act and, in the event of any conflict between the provisions of this Agreement and the provisions of the Act, the latter shall prevail.
- 40.1.2 In the event of any known or anticipated increase or reduction in the quantity to be supplied hereunder for any Charging Year of more than [●]%, the Licensee shall notify the Company thereof in writing as soon as practicable.
- [*NB: The percentage here will depend on the size of the supply, as set out in the Contract Schedule.*]
- 40.1.3 The actual quantity of the Water Supplies shall be the aggregate of the quantity supplied to all the Licensee's Customers as measured by the meter[s] of the Company located on the supply pipe to the premises of each such customer.

40.1.4 The Licensee shall read each of such water meters at the end of each calendar month following the Commencement Date and shall supply details of the meter readings to the Company within three days or such readings being taken.

40.1.5 The parties will each comply with all other requirements relating to meter reading and meter reading verification as set out from time to time in the Access Code.

[NB: *In the event that the parties agree any particular arrangements for the metering of the Water Supplies, which are not covered by or vary the standard provisions set out above, such arrangements will be set out in this clause.*]

40.2 *Flow Balancing*

There are no flow balancing issues relevant to this Agreement.

41 **Emergency Procedures and Contacts**

As the Licensee is not introducing water into the Supply System there are no emergency procedures and contacts required in this Agreement in relation to such introduction. Emergency procedures and contacts in relation to the Supply System and the Water Supplies are dealt with in clauses 14 and 33 of this Agreement.

42 **Contract changes**

[NB: *The requirements for contract changes are dealt with in clause 19 Assignment and Alienation of the Standard Terms and Conditions of this Agreement. This clause may be required in the event that any particular arrangements are agreed between the parties as a modification of clause 19*].

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

## **APPENDIX 1**

### **Protocol**

(Maintenance and Serviceability of Assets – Clause 39)

Planned Maintenance (also refer to Section 5.2 of the Access Code)

- 1) The Company will from time to time specify its assets where maintenance activity will be carried out. The identification of maintenance requirements will be in accordance with its approach to Capital Maintenance planning carried out for the latest price review.
- 2) At the commencement of the Agreement, the Company will advise Licensee of known locations where maintenance on assets will be carried out and which may affect the Licensee's Customer. This does not preclude the Company from carrying out other works in the future not specified at that time which might also affect the Licensee's Customer. These will be advised to the Licensee at the time when they become specified in the overall programme.
- 3) The Company will notify the Licensee of its intention to carry out work including date and planned duration in accordance with Company policy, namely for durations greater than 4 hours we will give 48 hours notice.
- 4) Where appropriate and in accordance with requirements of its licence, Licensee to advise Customer of interruption to supply or other impact of maintenance work.
- 5) Where Licensee's Customer supply interruption or other impact exceeds 12 hours, the Company will endeavour to provide alternative means of supply at volume which can reasonably be delivered.
- 6) The Company will ensure the satisfactory restoration of supply to the Licensee's Customer and where appropriate carry out flushing, de-airing or blockage clearance consistent with its service to all its customers.

Unplanned Maintenance (also refer to Section 5.3 of the Access Code)

- 1) Company to advise Licensee of impact of unplanned maintenance on its assets as soon as reasonably practical after it has been identified that works are to be carried out. Under

certain circumstances this may result in the water supply being interrupted or otherwise affected without notice to the Licensee's Customer.

- 2) Where appropriate and in accordance with requirements of its licence, Licensee to advise Customer of interruption to supply or other impact of maintenance work.
- 3) Where appropriate, alternative supplies will be provided by the Company in accordance with the Security and Emergency Measures Direction 2006 (SEMD).
- 4) The Company will ensure the satisfactory restoration of supply to the Licensee's Customer and where appropriate carry out flushing, de-airing or blockage clearance consistent with its service to all its customers.
- 5) The Company will take account of the frequency and duration of unplanned maintenance activities on assets which affect the Licensee's Customer(s) in the development of its planned maintenance schedule.

Signed by:

Signature of witness: .....

Name of witness: .....

Position: .....

duly authorised for and on behalf of  
**CAMBRIDGE WATER PLC** in the presence  
of:

Signature: .....

Name: .....

Signed by:

Signature of witness: .....

Name of witness: .....

Position: .....

duly authorised for and on behalf of [ • ]  
**LIMITED/PLC** in the presence of:

Signature: .....

Name: .....

## CONTRACT SCHEDULE

(Summary of principal Customer/site-specific terms of Agreement. For further details – see clauses/appendices referred to)

Licensee's Customer	Organisation					
	Address					
Customer's Premises	PRN					
	Address					
Water Supplies <small>(ref Clause 40)</small>	Estimated Volume (m <sup>3</sup> /yr)		Proportion non-household			
	Meter Reading / Invoicing Period		Number of Meters			
Summary of Terms	Commencement Date (dd/mm/yy) <small>(ref Clause 3)</small>		Period * <small>(ref Clause 12)</small>		Initial / Secondary	
			Duration (yrs) <small>(ref Clause 12)</small>			
	Wholesale Charge (£/m <sup>3</sup> ) **	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5
Additional Services  <small>(ref Part 2: Non-Standard Terms &amp; Conditions)</small>	Reference	Description of Service				Charge (£/m <sup>3</sup> )
Additional Information						

\* Delete as appropriate

\*\* Subject to application of K for years in subsequent price periods

**In the event of any conflict between the provisions of this Contract Schedule and the provisions of the attached Agreement, the latter shall prevail.**