

Southern Water Accredited Entities Agreement

Date April 2021
Version 1.5



from
**Southern
Water** 

[A signed agreement between Southern Water Services Limited and the Accredited Entity in respect of Temporary Disconnection, Reconnection and Meter Installation Activity under an accreditation scheme administered by Lloyds Register (Accreditation Scheme). Work on Southern Water’s assets by a third party (other than a Retailer who has a Wholesale Contract in place with Southern Water) cannot be undertaken under the Accreditation Scheme without this agreement being in place.]

THIS AGREEMENT is made on[DATE] between:

Southern Water Services Limited (company number 2366670) whose registered office is at Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX (“**Contracting Wholesaler**” or “**SWS**”) and
[full company name] (company registered number [insert]) whose registered office is at [insert] (the “**Company**”)

WHEREAS:

- A. SWS holds an Appointment under the Water Industry Act 1991.
- B. SWS is a party to Wholesale Contract with certain Retailers under which those Retailers are entitled to provide specified water metering services and/or water supply disconnection services in respect of their customers' eligible premises.
- C. In providing those services, such a Retailer must (if not itself appropriately Accredited) engage a third party Accredited Entity which is suitably Accredited to carry out the necessary work activities.
- D. The Company is an Accredited Entity, and intends to undertake works as permitted by the SWS Addendum and the WIRSAE Generic Code of Practice for Metering and Disconnection Activities.
- E. It is a requirement of SWS and WIRSAE that each Accredited Entity enters into an agreement with SWS before commencing any works.

NOW IT IS AGREED as follows:

1. Definitions

1.1 For the purposes of this agreement (including the recitals), in addition to the terms defined in Part 1 of Schedule 1 of the Wholesale Contract, the following terms have the meanings specified:

Act means the Water Industry Act 1991;

Accredited means independently evaluated and accredited by Lloyd’s Register under WIRSAE as competent to carry out AE Works or certain categories of AE Works;

Accredited Entity means a company which is Accredited;

AE Works means all or any activities relating to Metering and Disconnection Activity or which a person can be Accredited, and all works ancillary to, or associated with, such activities;

Codes means the Wholesale-Retail Code and all documents referred to therein;

Commencement Date means the date on which the Company first carried out AE Works for SWS or the date of this Agreement, whichever is the earlier;

Damage to Property has the meaning specified in clause 2.2(c);

Defect has the meaning specified in clause 4.2;

Disconnections Document means Part I (Disconnections) of the Operational Terms as in force from time to time and supplemented by any disconnections guidance published by the Market Operator from time to time;

Eligible premises means premises other than Household Premises and which may be identified as eligible premises in light of any Eligibility Guidance;

Forms means those forms and notices which are related to the processes set out in the Market Operator's Operational Terms and which are contained in Schedule 1, Part 6 of the Wholesale Contract'

Generic Code of Practice means the generic code of practice relating to Metering and Disconnection Activities first published by WIRSAE on 30th June 2017 with the title "Generic Code of Practice (Metering and Disconnections)" and as amended from time to time

Good industry practice means the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances;

Market Operator means the company established to exercise certain central market functions in relation to the participation of wholesalers and Retailers in the provision of Water Retail Services and / or Sewerage Retail Services;

Metering and Disconnection Activity means activities undertaken by an Accredited Entity relating to revenue meters, as set out in part B (Metering) of the Operational Terms, and Temporary Disconnection and reconnection following Temporary Disconnection as set out in part I (Disconnections) of the Operational Terms, including all associated ancillary activities for which accreditation must be obtained under an accreditation scheme established by the Contracting Wholesaler (being WIRSAE or such other replacement accreditation scheme);

Meter Installation means works comprising the installation of a new water meter, other than an installation carried out as part of, or associated with, provision of a water connection to which Part A of the Operational Terms applied (Meter installation is currently not offered for AE work on SWS infrastructure, but may in the future);

Operational Terms means the procedures, principles terms and conditions set out in Schedule 1, Part 3 of the Wholesale-Contract and where the context requires any or all of the Forms;

Remediation Period means, in relation to any AE Works, a period of two years commencing on the Remediation Period Start-Date;

Remediation Period Start-Date means, in relation to any AE Works, the date on which the carrying out of the work or other activity comprised in such AE Works is substantially completed, except in the case of a Meter Installation), when the Remediation Period Start-Date shall be the later of such date as aforesaid and the date on which SWS takes ownership of the meter under the SWS Addendum and or the Generic Code of Practice;

Retailer means (i) a Water Retailer who is granted a licence under section 17A of the Act and / or (ii) Sewerage Retailer who is granted a licence under section 17BA of the Act; as the context requires;

Standards and guidance has the meaning specified in clause 2.1(b);

Supply system has the meaning specified in section 17B of the Act;

SWS Addendum means the addendum to the Generic Code of Practice covering Disconnection Activities published by SWS on its website and as amended from time to time;

Term means the period during which this Agreement continues in force;

Wholesale Contract means an agreement entered into that constitutes (i) a Section 66D Agreement; or (ii) a Section 117E Agreement; or (iii) both a Section 66D Agreement and a Section 117E Agreement;

WIRSAE means the Water Industry Registration Scheme for Accredited Entities, or other accreditation scheme approved by SWS, as amended from time to time;

WIRSAE Generic Requirements Document means the document of that name setting out (inter alia) the requirements which contractors need to meet for accreditation under WIRSAE.

1.2 In this Agreement:

(a) references to any legislation (including any delegated or subordinated legislation) are to that legislation as amended or re-enacted from time to time; and

(b) the words "include" and "including" are to be construed without limitation to the generality of the preceding words.

1.3 In the event of any conflict between the terms defined in Part 1 of Schedule 1 of the Wholesale Contract, and the terms defined in clause 1.1 above, then the terms defined in the Wholesale Contract shall prevail.

1.4 This Agreement shall commence on the Commencement Date, and shall (except as expressly provided otherwise in this Agreement) continue in force for 3 years from the Commencement Date ("Initial Term"). SWS may renew this Agreement from the end of the Initial Term for a further period of up to 2 years by giving the Company written notice of the renewal not later than one month before the expiry of the Initial Term. Such renewal shall be on and subject to the same terms and conditions as this Agreement unless agreed by the Parties in writing at the time of renewal. For the avoidance of doubt, if there is no such renewal, this Agreement will expire automatically without notice at the end of the Initial Term.

2. General standards for Company's work

2.1 The Company agrees that it shall carry out and complete the relevant work (including the provision of information and data to the Retailer and/or Wholesaler):

(a) in compliance with WIRSAE, including the WIRSAE Generic Requirements Document;

(b) in compliance with all published SWS technical and procedural standards, specifications and codes of practice, including those which have been provided to the Company and as amended from time to time (**standards and guidance**), including without limitation SWS's

Addendum which outlines the requirements for Accredited Entities who are undertaking metering and disconnection service activities in relation to eligible premises in SWS' Area (as defined in the Wholesale Contract) and the Generic Code of Practice;

(c) in compliance with all applicable legal and regulatory requirements (including any requirement regarding the giving of notice and / or the obtaining of any consent or licence);

(d) in a manner consistent with the requirements of the Operational Terms;

(e) in a manner consistent with all British Standards which apply to the AE Works and in particular to ISO14001 and ISO27001;

(f) to ensure that the completion and carrying out of the AE Works: :

(i) avoids danger, and minimises disturbance, to the public;

(ii) is not likely to be injurious to health, or to cause damage to property;

(iii) does not adversely affect the reputation of SWS;

(iv) is not in a manner which is fraudulent or dishonest;

(v) does not include activities which are not authorised by SWS under the WIRSAE;
and

(iii) does not adversely affect the existing supply system or the water therein;

(g) in a manner consistent with SWS discharging its statutory duties and its core functions;
and,

(h) in accordance with good industry practice.

2.2 The Company shall:

(a) not undertake any AE Works which fall within the parameters of a WIRSAE registration scope but for which the Company is not Accredited or SWS does not allow;

(b) inform SWS as soon as reasonably practicable if, at any time, it becomes unable to perform its obligations under clause 2.1 in respect of any AE Works which it is undertaking or due to undertake (including where such inability to perform is caused by the actions or instructions of a Retailer where applicable); and

(c) notify SWS of any damage to property caused by the carrying out of AE Works by the

Company (**Damage to Property**).

3. Suspension of work

3.1 SWS may direct the Company to suspend AE Works if:

(a) the works are not being carried out in accordance with the requirements of clause 2.1 in any material respect, or are being carried out incorrectly as a result of incorrect instructions to the Company by a Retailer;

(b) there is an unplanned interruption to the supply of water through the supply system, and the continuation of the works is likely to delay or prevent the resumption of supplies; or

(c) continuation of the works is likely to be injurious to health or the quality of a public drinking water supply, or likely to cause a failure of, or damage to, the supply system.

3.2 This Agreement may be terminated by SWS with immediate effect by giving no less than 14 business days' written notice to the Company if the Company has committed a material breach of this Agreement. For the avoidance of doubt, a breach of one or more of clauses 2.1(f)(iii), 2.1(f)(iv) and 2.1(f)(v) of this Agreement shall be deemed a material breach.

3.3 SWS may also terminate giving no less than 14 business days' written notice to the Company if the Company has committed a persistent breach (for the purposes of this Clause a persistent breach shall be where the Company commits a breach of any one of the terms or conditions of this Agreement more than three times in three consecutive months during the Term).

3.4 Upon termination SWS shall notify the Retailers that this Agreement has been terminated.

3.5 SWS shall not be liable to the Company for any losses, liabilities or damage (whether direct or indirect) arising from such termination.

4. Correcting damage and defects

4.1 SWS may, by giving notice to the Company, require the Company to make good, at its own cost, any Damage to Property (whether or not notified by the Company under clause 2.2(c)).

4.2 If SWS gives notice to the Company that AE Works which it carried out have a defect or fault which is due to design, materials, goods, equipment or workmanship (a **Defect**), the Company shall correct the Defect at its own cost.

4.3 Any notice under clause 4.1 or 4.2 must specify the period within which the Damage to Property or Defect (as the case may be) must be made good or corrected.

4.4 Where, in respect of any Damage to Property or Defect:

(a) SWS gives notice to the Company under clause 4.1 or 4.2 and the Company fails to comply with the notice within the period specified by SWS under clause 4.3; or

(b) SWS considers it requisite or expedient that the Damage to Property or Defect be made good or corrected (as the case may be) as soon as possible, SWS may have the Damage to Property or Defect made good or corrected by persons other than the Company (and, where clause 4.4(b) applies, may do so without giving notice to the Company under clause 4.1 or 4.2). If SWS exercises its right under this clause 4.4, the Company will pay the reasonable costs incurred by SWS (including reasonable administrative costs and incidental expenses).

4.5 SWS shall not be entitled to give a notice to the Company under clause 4.1 or 4.2 after the expiry of the Remediation Period. If SWS exercises its right under clause 4.4 to have Damage to Property or Defects made good without giving notice to the Company, the Company shall not be liable under clause 4.4 to pay any costs which are incurred by SWS after the expiry of the Remediation Period.

4.6 The Company's obligations under this clause 4 are without prejudice to its liability under clause 5.

5. Indemnity against third party claims

5.1 Subject to clause 5.2, the Company shall indemnify SWS against:

- (a) any claim or action by any third party (including any Retailers) against SWS; and
- (b) liability of every kind for breach of any act, regulation, code, code of practice, byelaw or other requirement, arising out of any failure by the Company to carry out AE Works in accordance with the requirements of clause 2.1.

5.2 The maximum aggregate liability of the Company to SWS under clause 5.1 shall be limited, in relation to any one incident, to the sum of £5,000,000.

5.3 The limitation in clause 5.2 shall not apply to restrict the liability of the Company for death or personal injury resulting from negligence.

5.4 In the event that SWS is entitled to recover any damages, losses, costs and or expenses from either the Company or the Retailer (where the Company is not a Retailer), then SWS may elect to recover such losses either from the Company or the Retailer (at its sole discretion), save that SWS shall not be entitled to recover the same loss twice.

5.5 The Company shall maintain in force (at its own expense) for the Term:

- (a) employer's liability insurance for a minimum amount of Five Million Pounds Sterling (£5,000,000) to cover loss and/or damage for each and every claim relative to the provision of the AE Works to SWS; and
- (b) public and products liability insurance, for a minimum amount of Five Million Pounds Sterling (£5,000,000) to cover loss and/or damage for each and every claim relative to the provision of the AE Works to SWS; and
- (c) professional indemnity insurance for a minimum amount of Five Million Pounds Sterling (£5,000,000) for each and every claim relative to the provision of the AE Works to SWS, and for six years after termination of the Term]

6. Recovery of excess charges

6.1 This clause 6 applies where:

- (a) the Company charges a Retailer for carrying out AE Works as contractor for the Retailer; and
- (b) the Retailer recovers those charges from SWS under the Wholesale Contract between SWS and the Retailer; and
- (c) the extent of the AE Works carried out, and charged for by the Company is greater than the scope of AE Works prescribed in the standards and guidance.

6.2 Where this clause 6 applies, the Company shall be obliged to repay to SWS an amount equal to the difference between (i) the charges recovered by the Retailer from SWS, and (ii) the amount of charges which would have been recoverable from SWS if the extent of the AE Works carried out by the Company had been the same as the scope of AE Works authorised or approved by SWS pursuant to the Operational Terms.

7. Disputes

7.1 All questions, disputes or differences which may arise at any time in relation to this Agreement (**Dispute**) shall be referred in the first instance to a director or senior manager of each party who will attempt in good faith to resolve any issue.

7.2 If the designated representatives have not settled the Dispute within ten business days of their first attempt to resolve the matter, they shall consider whether, and if so how, the Dispute shall be referred to mediation.

7.3 If the parties do not agree upon reference to mediation within a further five business days, they shall have no further obligation to follow the foregoing resolution procedure, and formal court proceedings may be commenced with regard to the Dispute.

7.4 This clause 7 shall not impose any pre-condition on either party or otherwise prevent or delay either party from commencing court proceedings in relation to any Dispute in which that party requires either (i) an order (whether interlocutory or final) restraining the other party from doing any act or compelling the other party to do any act, or (ii) a decree for a liquidated sum to which there is no defence.

8. General

8.1 Any sums due to SWS under this Agreement shall be paid within 30 calendar days of any written notice being received by the Company setting out the details of the sums which are properly due hereunder

8.2 The Company acknowledges that if it is appointed by a Retailer to undertake AE Works and the Construction (Design and Management) Regulations 2015 apply, SWS will not be the employer of the Company, and will not be the Client for the purposes of the Construction Design and Management Regulations 2015.

8.3 The Company must verify that any entity instructing it to carry out AE Works is a Retailer.

8.4 The Company may not bind SWS in any way in its dealings with the Retailer, the Retailer's customer or client, or any other person, and will not hold itself out as acting as agent or contractor for SWS.

8.5 In the event of any unsatisfactory AE Works or any other non-compliance with this Agreement on the part of the Company, SWS shall be entitled to notify the matter to administrators of WIRSAE.

8.6 The indemnity in clause 5 shall survive termination or expiry of this Agreement.

8.7 The provisions of this Agreement are without prejudice to the rights and responsibilities of the accreditation body under WIRSAE in relation to assessing, auditing, monitoring and investigating Accredited Entities and / or any AE Works.

8.8 Any notice to be given under this Agreement shall:

- (a) in the case of notice being given by SWS, be deemed to be duly given if delivered by hand at, or sent by first class registered post or recorded delivery post to the above-mentioned address of the Company or to the registered office address of the Company for the time being; and

(b) in the case of notice being given by the Company, be deemed to be duly given if it is addressed to the Company Secretary and delivered by hand at, or sent by first class registered post or recorded delivery post to the above-mentioned address of SWS or to the registered office address of SWS for the time being.

Such notices shall, if sent by first class registered post or recorded delivery post, be deemed to have been received 48 hours after being posted.

8.9 In the event that the Company is a Retailer and is also an Accredited Entity, this Agreement shall be construed and interpreted accordingly.

8.10 The construction, validity and performance of this agreement shall be governed by English law, and, subject to clause 7 (Disputes), the parties submit to the exclusive jurisdiction of the English courts.

IN WITNESS WHEREOF, this agreement executed as follows:

Signed by a duly authorised
representative for and on behalf of
Southern Water Services Limited

Signature:

Name:

Title:

Date:

Signed by a duly authorised
representative for and on behalf of
The Company

Signature:

Name:

Title:

Date: