

Water today, water tomorrow

Access codes guidance

Contents

1. Introduction	2
2. Wholesale supplies	3
3. Combined supplies	50

1. Introduction

This Access Codes Guidance covers supplies of water made under section 66A ('wholesale supplies') and 66B ('combined supplies') of the Water Industry Act 1991 (as amended) (WIA91)¹.

It is issued in accordance with section 66D(4) and (6) WIA91 which require Ofwat to issue guidance in accordance with which the terms and conditions of access agreements must be made, and for it to include guidance with respect to the fixing of charges in accordance with the costs principle set out in section 66E WIA91.

Before issuing this guidance, Ofwat has consulted such persons as it considers appropriate, in accordance with section 66D(5) WIA91.

Ofwat has also published this guidance in such a manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it, in accordance with section 66F(5) WIA91.

¹ Supplies of water made under section 66C WIA91 ('secondary supplies') are covered by our Guidance on Secondary Supplies (July 2007) (available at http://www.ofwat.gov.uk/competition/wsl/wslpublications/gud_pro_secsuppguid.pdf).

2. Wholesale supplies

This section contains the operational code and common contract for wholesale supplies under section 66A WIA91.

In accordance with Condition of Appointment R (Provision of combined and wholesale water supplies), appointed water companies must include the operational code and common contract set out in this section within their access codes.

For completeness, we note the following:

- Condition of Appointment R requires an appointed water company's access code to set out its procedure (including timetables) for dealing with a request made to it by a licensed water supplier ('licensee') under sections 66A, 66B or 66C WIA91. It also requires an appointed water company's access code to set out the types of feasibility studies which the appointed water company may undertake in response to any of those possible applications, including the method of calculation of any costs associated with any such study with a view to recovering them from the licensee. The operational code set out in this section contains the relevant procedure (including timetables) for dealing with a request made by a licensee under section 66A WIA91. It does not address the issue of feasibility studies as we do not envisage the need for such studies in the context of a request for a wholesale supply under section 66A WIA91.
- Condition of Appointment R requires an appointed water company's access code to set out the terms upon which the appointed water company will offer to perform each duty under sections 66A to 66C WIA91 and indicative charges for performing each duty under sections 66A and 66B WIA91. The relevant terms in respect of the appointed water company's duty under section 66A WIA91 are those set out in the common contract (unless the licensee wishes to negotiate a wholesale supply on different terms), and the operational code provides guidance with respect to the fixing of charges for performing that duty in accordance with the costs principle set out in section 66E WIA91.

Each appointed water company must comply with its access code. It must also provide a wholesale supply of water to a licensee on the terms set out in the common contract, if requested to do so by the licensee.

Operational code

1. Overview

1.1 Order of precedence

If there is any conflict between the following, the order of precedence shall be:

- (a) Any law;
- (b) The Access Codes Guidance, incorporating the operational code and common contract.

1.2 Definitions

- (a) References to 'the Act' are to the Water Industry Act 1991 (as amended) unless otherwise specified.
- (b) References to an 'appointed water company' are to an undertaker appointed under the Act to provide water services to a defined geographic area.
- (c) References to a 'licensee' are to a company holding a water supply licence under the Act.
- (d) References to 'the parties' are to the licensee and appointed water company that have an agreement, or are seeking to enter into an agreement, for the wholesale supply of water under section 66A of the Act, unless the context requires otherwise.
- (e) References to 'the operational code' are to this document as amended from time to time.
- (f) References to 'the common contract' are to the common contract for wholesale supplies under section 66A of the Act as amended from time to time.

1.3 Objectives and purpose

The operational code establishes rules for the wholesale supply of water under section 66A of the Act and the entry into an agreement for such supply.

1.4 Status and enforceability

- (a) Under section 66D(4) of the Act, Ofwat is required to issue guidance in accordance with which the terms and conditions of agreements under sections 66A-66C of the Act must be made.
- (b) The operational code forms part of Ofwat's guidance and applies to wholesale supplies of water by an appointed water company to a licensee under section 66A of the Act.
- (c) Each appointed water company is required by Condition of Appointment R (Provision of combined and wholesale water supplies) to publish an access code which conforms to Ofwat's guidance, and to comply with it.
- (d) In accordance with these requirements, the operational code must be included in an appointed water company's access code, and the appointed water company must comply with its provisions.

1.5 Ofwat's role

- (a) Ofwat shall ensure the effective implementation and operation of the operational code.
- (b) In so doing, Ofwat shall:
 - (i) Act independently of the interests of any market participant or group of market participants;
 - (ii) Act impartially and show no undue preference in its relationship with market participants; and
 - (iii) Act with appropriate speed in taking any necessary action.
- (c) Ofwat has the power under section 18 of the Act to issue enforcement orders to secure compliance with appointed water companies' Conditions of Appointment (for example, Condition of Appointment R (Provision of combined and wholesale water supplies) and Condition of Appointment S (Customer transfer protocol)) and licensees' standard licence conditions.

- (d) Ofwat has the power under sections 66D, 66G and 66H of the Act to make determinations on aspects of the water supply licensing framework.
- (e) Ofwat shall chair an industry forum established under the terms set out in the Customer Transfer Protocol to discuss any proposed changes to the operational code and common contract.
- (f) Ofwat may from time to time revise its guidance under section 66D of the Act, in accordance with section 66F of the Act.

1.6 Duties of appointed water companies and licensees to other bodies

Appointed water companies and licensees shall respond promptly to any requests for information and comply with any relevant guidance from:

- (a) Consumer Council for Water;
- (b) Environment Agency (including Environment Agency Wales); and
- (c) Drinking Water Inspectorate.

1.7 England and Wales

Appointed water companies and licensees shall have regard to any differences in the relevant laws in England and Wales.

2. Applying for access

- 2.1 This section sets out the process which shall be followed when an eligible customer wishes to be supplied by a licensee and the licensee wishes to purchase a wholesale supply of water from an appointed water company under section 66A of the Act in order to supply that customer. For a wholesale supply, the licensee is entitled to use the common contract as the access agreement between the parties unless it wishes to negotiate a supply on different terms.
- 2.2 If a licensee wishes to use the common contract as the access agreement between the parties, the application process is as follows:

- (a) Licensee submits its application to the appointed water company. That application shall comprise:
 - (i) a copy of the customer's consent to switch supplier (see further sections 2.4 and 2.5 below); and
 - (ii) a completed copy of the common contract (see further section 2.6 below).
- (b) The appointed water company shall offer an access price for the licensee's customer and provide a signed copy of the common contract within 10 working days of receiving the licensee's application. The access price offered by the appointed water company shall remain valid for six (6) months and shall specify the discount in p/m³ from the standard retail tariff. The offer shall also explain:
 - (i) the basis of the discount from the standard retail tariff; and
 - (ii) any difference between the indicative discount for such a customer and the discount in the customer-specific offer.
- (c) If the licensee accepts the access price offered by the appointed water company, the Customer Transfer Protocol process will switch the customer to the licensee. If the licensee is unable to agree an access price with the appointed water company, the parties shall follow the dispute resolution procedure set out in section 4 below.

2.3 If a licensee has chosen not to use the common contract as the access agreement between the parties, the application process is as follows:

- (a) Licensee submits its application to the appointed water company. That application shall comprise:
 - (i) a copy of the customer's consent to switch supplier (see further sections 2.4 and 2.5 below); and
 - (ii) any contract or terms that is/are proposed or agreed between the parties.
- (b) The appointed water company shall contact the licensee within two (2) working days of receiving the licensee's application to discuss that application and commence any negotiation.

- (c) The appointed water company shall offer an access price for the licensee's customer and provide a signed copy of an agreed contract within 10 working days of receiving the licensee's application (or such longer period as the parties may agree). The access price offered by the appointed water company shall remain valid for six (6) months and shall specify the discount in p/m³ from the standard retail tariff. The offer shall also explain:
 - (i) the basis of the discount from the standard retail tariff;
 - (ii) any difference between the indicative discount for such a customer and the discount in the customer-specific offer; and
 - (iii) any specific terms agreed by the parties.
 - (d) If the licensee accepts the access price offered by the appointed water company, the Customer Transfer Protocol process will switch the customer to the licensee. If the licensee is unable to agree an access price with the appointed water company, the parties shall follow the dispute resolution procedure set out in section 4 below.
- 2.4 The customer's consent to switch supplier shall include the following information:
- (a) Contact name(s) for the customer;
 - (b) Full contact details for the customer;
 - (c) Any customer reference number provided by the existing supplier;
 - (d) Meter serial number(s), if known; and
 - (e) Previous three (3) years' water consumption, if available.
- 2.5 The customer's consent to switch supplier shall be dated no more than two (2) months before the licensee submits its application to the appointed water company, or otherwise verified by the customer as being in force as at the date of the licensee's application.
- 2.6 If the licensee has chosen to use the common contract as the access agreement between the parties and provided all of the information required of
-

it by that contract, the appointed water company shall not reject the licensee's application on the grounds of insufficient information.

- 2.7 An appointed water company shall not recover from a licensee any costs of processing an access application.
- 2.8 An appointed water company shall not charge the licensee for providing copies of any documents relating to the transfer of a customer or for clarifying its policy and information requirements.
- 2.9 A licensee shall not charge the appointed water company for providing any information which is necessary for the carrying out of the appointed water company's functions.
- 2.10 The parties shall comply with any reasonable request for information received from each other.

3. Access pricing

- 3.1 This section provides guidance with respect to the fixing of access charges, in accordance with section 66D(6) of the Act.
- 3.2 Appointed water companies shall publish indicative charges for the wholesale supply of water. These charges shall be published in such manner as may be specified by Ofwat.
- 3.3 Appointed water companies operating wholly or mainly in England shall, as a minimum, publish indicative wholesale supply charges for customers consuming 5MI, 25MI, 50MI and 500MI per year. If an appointed water company has a tariff with a threshold between 5MI and 50MI per year, it may publish indicative wholesale supply charges relevant to that tariff instead of for customers consuming 25MI per year. An appointed water company must publish indicative wholesale supply charges for at least one consumption point between 5MI and 50MI per year.
- 3.4 Appointed water companies operating wholly or mainly in Wales shall, as a minimum, publish indicative wholesale supply charges for customers consuming 50MI and 500MI per year.

- 3.5 The indicative charging information published by an appointed water company shall clearly show the difference between its standard retail charge and the wholesale supply charge it has calculated.
- 3.6 The indicative charging information published by an appointed water company shall include:
- (a) Charging data for a period of five (5) years, starting with the current charging year;
 - (b) The difference in wholesale supply charge where:
 - (i) the licensee pays its charges in arrears; and
 - (ii) the licensee pays its charges in advance.

Charges at (b)(ii) shall be calculated in accordance with paragraph 4 of schedule 2 to the common contract; and
 - (c) The discounts for the first and second customer of a specific licensee.
- 3.7 Indicative wholesale supply charges published by an appointed water company shall be for the service defined in clause 2 of the common contract.
- 3.8 When publishing or amending any indicative charging information, an appointed water company shall explain any assumptions it has made for the purpose of calculating that information.
- 3.9 Indicative charging information shall be reviewed by an appointed water company every year by 15 October. This information may also be reviewed at any other time. An appointed water company shall notify Ofwat and publish updated information on its website within seven (7) days of making any modifications to its indicative charging information.
- 3.10 If requested, an appointed water company shall provide Ofwat with information to explain how it has calculated its indicative wholesale supply charges. Such information shall be provided in such manner, and by such time, as Ofwat may specify.
- 3.11 Nothing in this operational code limits an appointed water company's ability to publish indicative charging information for supplies and in respect of circumstances which are not specified in this section.
-

- 3.12 If a licensee has made an application to an appointed water company in respect of the supply to a particular customer, the appointed water company may offer its published indicative wholesale charge for such supply if it considers that charge to be appropriate.

4. Dispute resolution procedure

- 4.1 This section sets out the dispute resolution procedure applicable to all disputes and differences arising out of or in connection with this operational code.
- 4.2 The parties shall, in the first instance, attempt to resolve any dispute or difference using the following procedure:
- (a) Either party may serve a notice on the other party which expressly refers to this section and provides sufficient information to enable the other party to understand the nature of the dispute or difference. Following service of such a notice, the parties shall each use reasonable endeavours to resolve the dispute or difference by prompt discussion in good faith at a level appropriate to the dispute or difference in question.
 - (b) If the dispute or difference remains unresolved after 10 working days (or such other period as agreed by the parties) of the notice being served, an appropriate representative of each party's senior management shall attempt to resolve the dispute or difference by prompt discussion in good faith.
 - (c) If the dispute or difference remains unresolved after 10 working days (or such other period as agreed by the parties) of such referral to senior management then, unless the parties agree otherwise, this initial procedure shall be treated as having been exhausted.
- 4.3 For any dispute or difference which has not been resolved through the initial procedure in section 4.2, either party may:
- (a) refer it to such alternative dispute resolution process as agreed by the parties; or
 - (b) refer it to a competent authority, provided that such authority has specific powers to resolve the dispute or difference.
-

Common contract

Contents

	Clause	Page
1	Definitions and Interpretation.....	14
2	Water Supply.....	16
3	Term.....	17
4	Warranties.....	17
5	Compliance with Relevant Laws.....	18
6	Supply System.....	18
7	Meters.....	18
8	Supply Interruptions.....	19
9	Information and Notification of Supply Interruptions and Supply Changes....	19
10	Special Consumers.....	20
11	Unmeasured Takes.....	20
12	Licensee Equipment.....	21
13	Charges and Payment.....	22
14	Change Control Process.....	22
15	Adding Premises.....	22
16	Switching Premises.....	22
17	Termination.....	23
18	Exit Arrangements.....	24
19	Force Majeure Event.....	25
20	Dispute Resolution.....	26
21	Limitation of Liability.....	27
22	Intellectual Property Rights.....	28
23	Assignment.....	29
24	Notices.....	29
25	Relationship of the Parties.....	31
26	Third Party Rights.....	31
27	Entire Agreement.....	31
28	Survival of Rights.....	32
29	Waiver.....	32
30	Rights Cumulative.....	32
31	Severance.....	33
32	Counterparts.....	33
33	Governing Law.....	33

Schedule

1	Definitions.....	34
2	Charges.....	41
3	Change Control Process	46

Appendix

Data Sheet

This Contract is made on

20[]

Between

- (1) [], a company incorporated in England and Wales (No. []) whose registered office is at [] (the **Undertaker**); and
- (2) [], a company incorporated in England and Wales (No. []) whose registered office is at [] (the **Licensee**).

Whereas

- (A) The Undertaker holds an Instrument of Appointment under the Act and the Licensee holds a Water Supply Licence under the Act.
- (B) Where the Licensee requests a supply of water under section 66A of the Act and the Undertaker is required by the Act to make such supply, the Undertaker shall, unless the Licensee wishes to negotiate a supply on different terms, offer the supply to the Licensee on the terms set out in this Contract and in accordance with the Operational Code.
- (C) The Undertaker and the Licensee shall enter into a separate Contract for each Customer. Where a Customer has multiple Premises in the Undertaker's Area of Appointment, one Contract may govern all of those Premises.

It is agreed

1 Definitions and Interpretation

1.2 In this Contract the definitions in schedule 1 (**Definitions**) shall apply.

1.3 In this Contract:

- (a) the recitals, schedules and appendix form part of this Contract and references to this Contract include the recitals, schedules and appendix;
- (b) references to '**recitals**', '**clauses**', '**schedules**' and '**appendix**' are to recitals and clauses of and schedules and the appendix to this Contract; references in a schedule or appendix to paragraphs are to the paragraphs of that schedule or appendix; and a reference to a

clause or paragraph number is, unless otherwise specified, a reference to all its sub-clauses or sub-paragraphs;

- (c) words imparting a gender include every gender and references to the singular include the plural and vice versa;
- (d) words denoting persons include individuals and bodies corporate, partnerships, unincorporated associations and other bodies (in each case, wherever resident and for whatever purpose) and vice versa;
- (e) references to this Contract or any other document are to this Contract or that document as in force for the time being and as amended, supplemented, varied, modified, renewed, replaced or extended from time to time in accordance with the requirements of this Contract or that document (as the case may be) including by way of the operation of clause 14.2;
- (f) a reference to any body is:
 - (i) if that body is replaced by another organisation, deemed to refer to that replacement organisation; and
 - (ii) if that body ceases to exist, deemed to refer to that organisation which most substantially serves the same purposes as the original body;
- (g) a reference to a statute or statutory provision shall, unless otherwise stated, be construed as including a reference to any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made from time to time under the statute or statutory provision whether before or after the Commencement Date;
- (h) a reference to a statute, statutory provision or any subordinate legislation shall, unless otherwise stated, be construed as including a reference to that statute, statutory provision or subordinate legislation as in force at the Commencement Date and as from time to time modified or consolidated, superseded, re-enacted or replaced (whether with or without modification) after the Commencement Date;
- (i) references to **'the Parties'** shall, unless otherwise expressly stated, be construed as references to the Licensee and the Undertaker, and the term **'Party'** shall be construed accordingly;

- (j) references to a party shall, except where the context requires otherwise, include its successors in title and permitted assignees; and
 - (k) references to words that are defined in the Act shall have the same meaning as in the Act except where the context requires otherwise.
- 1.4 The headings and contents table in this Contract are for convenience only and do not affect its interpretation.
- 1.5 In this Contract, the word '**Premises**' shall be construed in the singular unless the context requires otherwise.
- 1.6 In this Contract, the words '**other**', '**includes**', '**including**' and '**for example**' do not limit the generality of any preceding words, and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.
- 1.7 In this Contract, the words '**for the time being**' mean at the relevant time now or in the future unless the context requires otherwise.

2 Water Supply

- 2.1 The Undertaker agrees to supply water to the Licensee at the Premises specified by the Licensee in the Data Sheet(s) appended to this Contract or otherwise agreed in writing by the Parties in accordance with the terms of this Contract provided that the Undertaker is obliged by the Act (or other Relevant Law) to supply such Premises. If the Undertaker is not obliged by the Act (or other Relevant Law) to supply one (1) or more of the Premises specified by the Licensee, this shall not relieve the Undertaker of the obligation to supply the remainder of the Premises.
- 2.2 Subject to clause 8, the Undertaker shall supply water to the Licensee at the Premises that:
- (a) is wholesome in accordance with any regulations made pursuant to section 67 of the Act (unless the requirement of the Premises is specified in the Data Sheet to be for non-potable water);
 - (b) is at a level of constancy and pressure that complies with:

- (i) regulation 10 of the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 (SI 2008/594); and
- (ii) section 65 of the Act in respect of water for domestic purposes or water for fire hydrants that have been notified to the Undertaker by the Licensee or the Customer (either pursuant to this Contract or otherwise).

2.3 The Undertaker shall perform the Transfer of any Premises in accordance with the Customer Transfer Protocol.

2.4 The Water Supply shall be made available to the Customer at the Exit Point(s). Title to the Water Supply shall pass to the Licensee at the Exit Point(s).

3 Term

3.1 This Contract shall commence on the Commencement Date and continue with full force and effect unless and until terminated in accordance with its terms.

3.2 The Water Supply to any Premises shall commence on the relevant Transfer Date.

4 Warranties

4.1 The Undertaker warrants and undertakes on the Commencement Date and for the Term that it holds a valid Instrument of Appointment.

4.2 The Licensee warrants and undertakes on the Commencement Date and for the Term that it holds a valid Water Supply Licence.

4.3 The Licensee warrants that it will only use the water supplied by the Undertaker under the terms of this Contract for the purpose of supplying the Premises.

5 Compliance with Relevant Laws

- 5.1 The Undertaker warrants for the Term that it will comply with all Relevant Laws.
- 5.2 The Licensee warrants for the Term that it will comply with all Relevant Laws.
- 5.3 Nothing in this Contract shall be construed to prevent a Party from discharging any duty or obligation which is required by any Relevant Law.

6 Supply System

- 6.1 Nothing in this Contract alters the Undertaker's ownership of the Supply System or its responsibility to manage and operate the Supply System and this Contract does not confer any responsibilities for ownership, maintenance or other use of the Supply System to the Licensee or the Customer.
- 6.2 Subject to clauses 8 and 9, nothing in this Contract shall prevent or restrict the Undertaker from altering, amending, expanding, replacing, developing and/or redeveloping its Supply System.

7 Meters

- 7.1 In respect of any Meter which the Undertaker has installed at the Premises, the Undertaker shall:
 - (a) maintain or replace the Meter (as appropriate);
 - (b) perform tests on the operation and accuracy of the Meter if requested by the Licensee;
 - (c) upsize or downsize the Meter (as appropriate) if requested by the Licensee; and
 - (d) if the Undertaker is implementing a replacement scheme for meters that includes the type, location or any other feature of the Meter, replace the Meter as part of such scheme.
- 7.2 In respect of the Undertaker's obligations under clauses 7.1(b) and 7.1(c), the Undertaker may charge the Licensee provided that such charges are

consistent with the Undertaker's charges to its other customers in comparable circumstances.

- 7.3 The Undertaker shall perform its obligations under this clause 7 to a standard consistent with that which the Undertaker provides to its own customers of comparable size to the Licensee's Customer.

8 Supply Interruptions

- 8.1 Without prejudice to its powers under the Act, the Undertaker may Interrupt the Water Supply to the Premises if:
- (a) it is an Interruptible Supply and the Supply Interruption is performed in accordance with any terms set out in the relevant Data Sheet;
 - (b) the Water Supply is affected by an Emergency Event or any actions to prevent the occurrence or limit the effects of an Emergency Event;
 - (c) the Water Supply is affected by a Force Majeure Event;
 - (d) a Drought Order is made which overrides the terms of this Contract;
 - (e) the Water Supply is affected by a Network Event; or
 - (f) the Undertaker is performing Planned Maintenance, Unplanned Maintenance or Emergency Works.

9 Information and Notification of Supply Interruptions and Supply Changes

- 9.1 Unless the Undertaker has notified the Licensee of a Supply Interruption or a Supply Change under clauses 9.2 to 9.4, the Undertaker shall promptly notify the Licensee and the Customer of the nature or scale of a Supply Interruption or a Supply Change and its estimated duration (provided that such Supply Interruption or Supply Change is material or could reasonably be construed as material).
- 9.2 Subject to clause 10, if any Planned Maintenance by the Undertaker will or is reasonably likely to cause a Supply Interruption, the Undertaker shall provide

the Licensee and the Customer with not less than 48 hours' prior written notice of such Supply Interruption.

- 9.3 In respect of any Planned Maintenance, the Undertaker shall, to the extent reasonably practicable, liaise with the Licensee and its Customer (if requested by the Licensee) to assess the impact of the Planned Maintenance on the Customer and the Undertaker shall use reasonable endeavours to minimise or eliminate the Planned Maintenance (or impact thereof) affecting the Customer.
- 9.4 The Undertaker shall provide the Licensee with information on the Supply System (to the extent that it is applicable to the Licensee's Customer) that is equivalent in terms of content and timeliness as the Undertaker provides to its Large Users.

10 Special Consumers

- 10.1 In respect of any Customer (or any person that may be affected by the Water Supply to the Customer) which is designated a Special Consumer:
- (a) the Licensee shall notify the Undertaker in the Data Sheet or otherwise of the extent of a Supply Interruption or a Supply Change that can be tolerated without materially increasing the risk of harm to a person or property (**Safety Requirements**); and
 - (b) the Undertaker shall take into account the Safety Requirements of the Special Consumer and use its best endeavours to maintain the Water Supply consistent with the Safety Requirements or provide a reasonable alternative Water Supply to the Special Consumer.

11 Unmeasured Takes

- 11.1 The Parties agree that where an illegal connection is made to the Supply System which results in a third party taking water from the Supply System (an **Unmeasured Take**):
- (a) up to the Meter, such Unmeasured Take shall be for the Undertaker's account;
 - (b) at any point from and including the Meter, such Unmeasured Take shall be for the Licensee's account.

- 11.2 Each Party agrees to provide the other with all reasonable assistance in respect of any steps, actions or proceedings against a third party relating to an Unmeasured Take, including disconnecting the illegal connection and seeking compensation.

12 Licensee Equipment

- 12.1 The Licensee may install Licensee Equipment on or after the Exit Point(s) (including on the Meter, notwithstanding that such Meter may be owned or controlled by the Undertaker).
- 12.2 In respect of any proposed installation of Licensee Equipment on a Meter or other equipment owned or controlled by the Undertaker, the Licensee shall give the Undertaker not less than five (5) Working Days' written notice of its proposed installation. Such notice shall specify the nature of the Licensee Equipment to be installed and the proposed installation date.
- 12.3 In respect of any Licensee Equipment installed on a Meter or other equipment owned or controlled by the Undertaker, the Licensee shall ensure that such Licensee Equipment is properly maintained and the Undertaker grants the Licensee such rights of access as are necessary to perform such maintenance or replacement.
- 12.4 Any Licensee Equipment installed on or after the Exit Point(s) shall not form part of the Supply System.
- 12.5 Subject to clause 21.2, in the event that the Licensee suffers or incurs any Losses in relation to the Licensee Equipment which is caused by the Undertaker's act or omission, the Undertaker shall indemnify the Licensee in respect of such Losses provided that such Losses were directly caused by the Undertaker's act or omission, such Losses were reasonably foreseeable when the Licensee Equipment was installed and the Licensee made reasonable endeavours to mitigate such Losses.
- 12.6 Subject to clause 21.2, in the event that the Undertaker suffers or incurs any Losses in relation to the Supply System which is caused by the Licensee Equipment, the Licensee shall indemnify the Undertaker in respect of such Losses provided that such Losses were directly caused by the Licensee Equipment, such Losses were reasonably foreseeable when the Licensee Equipment was installed and the Undertaker made reasonable endeavours to mitigate such Losses.

13 Charges and Payment

- 13.1 In consideration of the provision of the Water Supply under this Contract, the Licensee shall pay the Undertaker the Charges in accordance with the provisions of schedule 2.

14 Change Control Process

- 14.1 Subject to clause 14.2, no variation of this Contract shall have effect unless it is made in accordance with schedule 3.
- 14.2 If Ofwat varies the Guidance then, insofar as such variation relates to the terms of the Common Contract, either Party may request that the terms of this Contract be varied in the same manner (consent to which shall not be unreasonably withheld or delayed). If the Undertaker and the Licensee are unable to agree the variation, either Party may treat the failure to reach agreement as a Dispute and invoke the Dispute Resolution procedure set out at clause 20.

15 Adding Premises

- 15.1 If the Licensee requires any Additional Premises to be supplied by the Undertaker, the Licensee shall notify the Undertaker of such requirement in writing. On receipt of such notice, the Undertaker and the Licensee shall comply with the requirements of the Operational Code and the Customer Transfer Protocol (as applicable) in respect of transferring Additional Premises to the Licensee.
- 15.2 Any Additional Premises shall, on the relevant Transfer Date, become Premises for the purposes of this Contract.
- 15.3 The Undertaker shall supply the Additional Premises unless it is not required to do so under section 66A of the Act.

16 Switching Premises

- 16.1 Subject to clause 17.1, if the Licensee requires the Undertaker to cease supply to any Premises supplied under this Contract it shall notify the Undertaker in writing (a **Switch Notice**) of:

- (a) the relevant Premises; and
 - (b) the planned Switch Date.
- 16.2 The Undertaker and the Licensee shall perform the Switch of any Premises in accordance with the Customer Transfer Protocol.
- 16.3 Subject to clause 28, in respect of any Switch this Contract shall terminate in part in relation to those Premises specified in the Switch Notice on the Switch Date save in respect of clause 13 (and any related provisions or schedules) which shall survive termination until all Charges owed by the Licensee in respect of such Premises have been paid.
- 16.4 In respect of any Switch, the Licensee shall perform and promptly notify the Undertaker of the Switch Read. If the Licensee fails to provide the Undertaker with the Switch Read within five (5) Working Days of the Switch Date, the Undertaker may use an Estimated Read in lieu of the Switch Read for the purposes of the Licensee's final bill in respect of the Premises.
- 16.5 Subject to clause 28, to the extent that a Switch relates to all Premises specified in this Contract, this Contract shall terminate in its entirety on the Switch Date of the last Premises to Switch save in respect of clause 13 (and any related provisions or schedules) which shall survive termination until all Charges owed by the Licensee in respect of the Premises have been paid.

17 Termination

- 17.1 The Licensee may terminate this Contract in whole or in part (for example terminating one (1) or more but not all of the Premises) on not less than 30 days' prior notice in writing subject to its compliance with clause 18.3.
- 17.2 Without prejudice to any other rights or remedies, either Party may terminate this Contract in whole or in part (for example terminating one (1) or more but not all of the Premises) with immediate effect if the other Party commits a material breach of its terms and fails to either remedy such material breach (where capable of remedy) or present reasonable proposals to the other Party for rectification within 30 days of having been notified of the material breach.
- 17.3 For the purposes of clause 17.2, '**material breach**' shall be construed as including without limitation:

- (a) a failure by the Licensee to pay an undisputed amount within 14 days of the date of receipt of the relevant invoice; or
- (b) any breach of the warranties set out at clause 4.

17.4 Without prejudice to any other rights or remedies, the Undertaker may terminate this Contract with immediate effect if the Licensee makes any arrangement or composition with its creditors or is the subject of a winding-up or administration order or passes a resolution for voluntary liquidation (other than a voluntary winding-up or solvent liquidation for the purposes of a scheme of reconstruction or amalgamation) or if a receiver or administrative receiver is appointed over all or any of its assets or a distress, attachment, execution or other legal process is levied, enforced or issued on or against the Licensee or any of its assets or the Licensee enters into or suffers any similar process in any jurisdiction.

18 Exit Arrangements

18.1 In the event of any termination of this Contract by the Undertaker pursuant to clause 17, the Undertaker agrees that it shall notify the Customer in writing or procure the notification of the Customer in writing by the Licensee's administrators or similar (if appropriate). Such notice shall specify that:

- (a) the Undertaker has assumed or will assume supply of the Premises pursuant to its statutory duties under section 63AC of the Act; and
- (b) the Customer must promptly either enter into an agreement with a licensed water supplier to supply the Premises or request that the Undertaker make a supply to the Premises under section 52 or section 55 of the Act (as applicable).

18.2 In the event of any termination by the Undertaker or the Licensee of this Contract, the Undertaker shall perform the Termination Read as soon as reasonably practicable after service or receipt of the notice of termination.

18.3 If the Licensee terminates this Contract (in whole or in part) for any reason and has not entered into alternative arrangements for the supply of water to the Customer (including supply pursuant to section 66C of the Act or a Switch to another party holding a valid Water Supply Licence), the Licensee shall promptly notify the Customer in writing that:

- (a) the Licensee will cease supplying water to the Premises and the date thereof;
- (b) the Customer may either enter into an agreement with a licensed water supplier to supply the Premises or request that the Undertaker make a supply to the Premises under section 52 or section 55 of the Act (as applicable); and
- (c) if the Customer fails to make provision for its water supply as set out in (b) above, the Undertaker shall assume supply of the Premises pursuant to its statutory duties under section 63AC of the Act.

18.4 The Licensee shall promptly notify the Undertaker that it has complied with its obligations under clause 18.3. If the Undertaker has not received notice under this clause 18.4 within five (5) Working Days of the Licensee's termination of this Contract (in whole or in part), the Undertaker may notify the Customer directly of the Licensee's termination.

19 Force Majeure Event

19.1 Subject to the remainder of this clause 19, neither Party shall be liable to the other where it is unable to perform its obligations under this Contract by reason of a Force Majeure Event provided that the Party claiming to be prevented or delayed in the performance of its obligations by reason of a Force Majeure Event (the **Affected Party**) shall use all reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which the obligations contained in this Contract may be performed.

19.2 The Affected Party shall:

- (a) notify the other Party of the Force Majeure Event as soon as reasonably practicable and in any event within 10 Working Days of the Force Majeure Event occurring; and
- (b) upon request, within 15 Working Days of the Force Majeure Event occurring, provide a report containing all relevant available information relating to the Force Majeure Event and details of the measures the Affected Party is taking to overcome or circumvent such Force Majeure Event.

- 19.3 The Parties shall not be relieved by reason of the Force Majeure Event from any obligation to indemnify or make payment.
- 19.4 If the Force Majeure Event does not affect the Water Supply to all of the Premises of the Customer, the Affected Party shall only be relieved of its obligations in respect of those Premises which are affected.
- 19.5 If the Force Majeure Event continues materially to affect the Customer for more than six (6) months, the Licensee may terminate this Contract in whole or in part (as it relates to Premises affected by the Force Majeure Event).

20 Dispute Resolution

- 20.1 All disputes and differences arising out of or in connection with this Contract (each a **Dispute**) shall be resolved in accordance with this clause 20.
- 20.2 Subject to clause 20.4, the Parties shall attempt to resolve any Dispute using the Internal Escalation Procedure set out below and this shall be a pre-condition to the commencement of any alternative dispute resolution process or referral to a Competent Authority under clause 20.3:
- (a) Either Party may initiate the Internal Escalation Procedure by serving a notice on the other Party which refers expressly to this clause 20 and provides sufficient information to enable the other Party to understand the nature of the Dispute. Following service of such a notice, the Parties shall each use reasonable endeavours to resolve the Dispute by prompt discussion in good faith at a level appropriate to the Dispute in question.
 - (b) If the Dispute remains unresolved after 10 Working Days (or such other period as agreed by the Parties) of the notice being served, an appropriate representative of each Party's senior management shall attempt to resolve the Dispute by prompt discussion in good faith.
 - (c) If the Dispute remains unresolved after 10 Working Days (or such other period as agreed by the Parties) of such referral to senior management then, unless the Parties agree otherwise, the Internal Escalation Procedure shall be treated as having been exhausted.
- 20.3 Subject to clause 20.4, in respect of any Dispute which has not been resolved through the Internal Escalation Procedure, either Party may:

- (a) refer the Dispute to such alternative dispute resolution process as agreed by the Parties;
- (b) refer the Dispute to a Competent Authority where appropriate; or
- (c) commence legal proceedings in the Courts.

20.4 Nothing in this Contract precludes legal proceedings by either Party in the Courts at any time:

- (a) for an order (whether interim or final) to restrain the other Party from doing any act or compelling the other Party to do any act; or
- (b) for a judgment for a liquidated sum to which there is no arguable defence; or
- (c) the purpose of which is to prevent a claim from becoming time-barred under any statute of limitations.

However, clause 20.4(a) does not apply to any proceedings from the point at which the Court orders, or the Parties agree, that the defendant should have permission to defend and clause 20.4(c) does not apply to any proceedings after they have been commenced and served.

21 Limitation of Liability

21.1 Save in respect of clauses 12.5 and 12.6, a Party shall only be liable to the other Party in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever arising in connection with this Contract for direct losses. All other losses are expressly excluded (subject always to clauses 21.4 and 21.5).

21.2 Each Party's liability resulting from negligence or any breach or non-performance of this Contract (except for a breach by the Licensee of its obligation under clause 13 to make payment to the Undertaker, or any other breach or non-performance of this Contract arising from a failure by the Licensee to pay for the supply) or any misrepresentation or other tort on the part of that Party or its servants or agents shall be limited in any one (1) calendar year for any one (1) or more incidents or series of incidents whether related or unrelated in that calendar year to the aggregate of the Charges under this Contract in the preceding calendar year (or if in respect of the first

calendar year of this Contract then the amount of charges incurred by the Licensee's customer with the Undertaker in the preceding calendar year). All conditions, warranties or other terms, whether express or implied, statutory or otherwise, inconsistent with the provisions of this clause 21.2 are hereby expressly excluded (subject always to clauses 21.4 and 21.5).

- 21.3 Where either Party becomes aware of any claim, difference, dispute or proceedings (actual or threatened) which it reasonably expects may lead to a liability to the other Party under this Contract, it shall notify the other Party as soon as reasonably practicable and shall provide such information as the other Party may reasonably require and shall consult with the other Party as to the conduct of such claim, difference, dispute or proceedings (whether actual or threatened).
- 21.4 Nothing in this Contract shall operate so as to exclude or limit either Party's liability for fraud, or death or personal injury caused by its negligence or the negligence of any of its officers, or any other liability that may not be excluded or limited as a matter of law in England and Wales.
- 21.5 Save as otherwise expressly provided in this Contract, this clause 21 (insofar as it excludes or limits liability) shall override any other provision in this Contract provided that nothing in this clause 21 shall exclude or restrict or otherwise prejudice or affect any of the rights, powers, duties and obligations of either Party hereto which are conferred or created by the Act, any Instrument of Appointment or Water Supply Licence granted under the Act or any other Relevant Law.
- 21.6 Subject to the rest of this clause 21, any liability under this Contract or otherwise on the part of either Party shall be reduced to the extent that the other Party has itself caused or contributed to the same and, in the event of liability to any third party, the Party who has caused or contributed to that liability shall indemnify the other Party in respect of the same.
- 21.7 The Parties agree to use all reasonable endeavours to mitigate any loss, damage or injury to which they might be subject as a result of a breach of this Contract or any Relevant Law by the other Party.

22 Intellectual Property Rights

- 22.1 Any Intellectual Property owned or duly licensed by either Party, or developed by either Party during the Term, in relation to the subject matter of this

Contract howsoever arising shall remain vested in that Party and the other Party shall acquire no proprietary rights in or licence to use such Intellectual Property without the express written agreement of the Party in which it is vested.

- 22.2 Any disclosure or provision of Intellectual Property by either Party to the other Party shall be solely for the purposes of the performance of its obligations under this Contract.

23 Assignment

- 23.1 Neither Party may assign any rights or obligations under this Contract without the prior written consent of the other Party (not to be unreasonably withheld or delayed) save that:

- (a) The Licensee may assign its rights and/or obligations under this Contract in whole or in part at any time and on more than one (1) occasion provided that such assignee holds a Water Supply Licence.
- (b) The Undertaker may assign its rights and/or obligations under this Contract in whole or in part at any time and on more than one (1) occasion provided that such assignee holds an Instrument of Appointment.

24 Notices

- 24.1 All notices to be given to a Party under this Contract shall be in writing in English and shall be marked for the attention of the person, and delivered by hand or sent by first class pre-paid post, facsimile transmission or e-mail to the address, detailed for the Party below:

- (a) in the case of the Undertaker:

Address: •

E-mail: •

Facsimile No: •

Attention: •

(b) in the case of the Licensee:

- Address: •
- E-mail: •
- Facsimile No: •
- Attention: •

A Party may change the details recorded for it in this clause by notice to the other Party in accordance with this clause 24.1.

24.2 A notice shall be treated as having been received:

- (a) if delivered by hand between 9.00 am and 5.00 pm on a Working Day (which time period is referred to in this clause as **Working Hours**), when so delivered; and if delivered by hand outside Working Hours, at the next start of Working Hours;
- (b) if sent by first class pre-paid post, at 9.00 am on the Working Day after posting if posted on a Working Day, and at 9.00 am on the second Working Day after posting if not posted on a Working Day;
- (c) if sent by facsimile transmission, upon receipt by the sender of the facsimile transmission report that the facsimile has been transmitted to the addressee; and
- (d) if sent by e-mail, upon receipt by the recipient's receiving equipment.

In proving that a notice has been given it shall be conclusive evidence to demonstrate that delivery was made, or that the envelope containing the notice was properly addressed and posted (as the case may be).

24.3 In the case of a notice purporting to terminate this Contract, the Parties agree that notwithstanding such notice may have been sent by facsimile or e-mail, the terminating Party shall also, on the same day as the facsimile or e-mail notice is sent, send a copy of the notice by first class pre-paid post to the other Party.

25 Relationship of the Parties

- 25.1 Nothing contained in this Contract shall be construed as giving rise to the relationship of principal and agent (save as otherwise expressly provided in this Contract) or partnership or joint venture between the Parties.

26 Third Party Rights

- 26.1 Unless a right of enforcement is expressly provided for in this Contract, it is not intended that a third party shall have the right to enforce any term of this Contract under the Contracts (Rights of Third Parties) Act 1999.
- 26.2 If a person who is not a Party to this Contract is stated to have the right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999, the Parties may rescind or vary this Contract without the consent of that person.

27 Entire Agreement

- 27.1 This Contract, together with the confidentiality agreement entered into by the Parties in connection with this Contract, 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.
- 27.2 Each Party acknowledges that in entering into this Contract it does not rely on any representation, warranty, collateral agreement or other assurance of any person (whether a Party to this Contract or not) that is not set out in this Contract or the documents referred to in it. Each Party waives all rights and remedies which, but for this clause, might otherwise be available to it in respect of any such representation, warranty, collateral agreement or other assurance. The only remedy available to any Party in respect of any representation, warranty, collateral agreement or other assurance that is set out in this Contract (or any document referred to in it) is for breach of contract under the terms of this Contract (or the relevant document). Nothing in this Contract shall, however, limit or exclude any liability for fraud or fraudulent misrepresentation.

28 Survival of Rights

28.1 Termination of this Contract for any reason shall not affect any rights or liabilities that have accrued prior to termination or the coming into force of any term that is expressly or by implication intended to come into force or continue in force on or after termination. Without limitation, the Parties intend that the following provisions shall survive termination:

- (a) Exit Arrangements (clause 18);
- (b) Dispute Resolution (clause 20);
- (c) Limitation of Liability (clause 21); and
- (d) Governing Law (clause 33).

29 Waiver

29.1 Delay in exercising, or failure to exercise, any right or remedy in connection with this Contract shall not operate as a waiver of that right or remedy. The waiver of a right to require compliance with any provision of this Contract in any instance shall not operate as a waiver of any further exercise or enforcement of that right and the waiver of any breach shall not operate as a waiver of any subsequent breach. No waiver in connection with this Contract shall, in any event, be effective unless it is in writing, refers expressly to this clause, is duly signed by or on behalf of the Party granting it, and is communicated to the other Party in accordance with clause 24 (Notices).

30 Rights Cumulative

30.1 The rights and remedies of the Parties in connection with this Contract are cumulative and, except as expressly stated in this Contract, are not exclusive of and may be exercised without prejudice to any other rights or remedies provided in this Contract by law or equity or otherwise. Except as expressly stated in this Contract (or in law or equity in the case of rights and remedies provided by law or equity) any right or remedy may be exercised wholly or partially from time to time.

31 Severance

- 31.1 If any term or provision of this Contract is 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 Contract but the validity and enforceability of the remainder of this Contract shall not be affected.

32 Counterparts

- 32.1 Each Party shall do and execute, or arrange and procure for the doing and executing of, any act and/or document reasonably requested of it by the other Party to implement and give full effect to the terms of this Contract.
- 32.2 This Contract may be entered into in any number of counterparts and by the Parties on separate counterparts, all of which taken together shall constitute one and the same instrument.

33 Governing Law

- 33.1 This Contract and any non-contractual obligations arising out of or in relation to this Contract shall be governed by and interpreted in accordance with the laws of England and Wales and, subject to clause 20 (Dispute Resolution), each Party agrees to submit to the exclusive jurisdiction of the English and Welsh Courts as regards any claim or matter arising under this Contract.

Signed by the Parties or their duly authorised representatives on the date of this Contract.

Signed by

duly authorised for and on behalf of

Signed by

duly authorised for and on behalf of

Schedule 1

Definitions

Act means the Water Industry Act 1991.

Additional Premises means premises which are owned or controlled by the Customer other than Premises.

Advance Payment Discount means the percentage discount published by the Undertaker on its website and notified to Ofwat from time to time.

Affected Party has the meaning given to it in clause 19.1.

Area of Appointment means the area of England and Wales for which an Instrument of Appointment is granted.

Billing Period means, subject to the provisions of paragraph 2.1 and 2.2 of schedule 2, the billing period specified by the Licensee in the Data Sheet.

Change Proposal has the meaning given to it in paragraph 1 of schedule 3.

Charges means the charges calculated in accordance with schedule 2.

Charges Adjustment means any adjustment to charges pursuant to paragraph 3 of schedule 2.

Charges Terms means the charges terms set out in the Data Sheet.

Commencement Date means the date of this Contract or such other date as agreed by the Parties.

Competent Authority means any body that has a relevant regulatory or supervisory role including the Secretary of State for Environment, Food and Rural Affairs, Ofwat, the Drinking Water Inspectorate, the Environment Agency and the Health and Safety Executive.

Customer means the customer specified in the Data Sheet(s).

Customer Transfer Protocol means Ofwat's customer transfer protocol from time to time in effect.

Data Sheet means the data sheet(s) set out in the Appendix to this Contract.

Dispute has the meaning given to it in clause 20.1.

Drought Order has the same meaning as in section 221 of the Water Resources Act 1991.

Due Date has the meaning given to it in paragraph 2.4 of schedule 2.

Emergency Event means any event which is causing or is likely to cause danger to persons or property and, in respect of the latter, the Undertaker believes on reasonable grounds such danger to be existing or imminent.

Emergency Works has the meaning given to it in section 52 of the New Roads and Street Works Act 1991. For information purposes only, the current version on the date of issue of the Common Contract is set out below:

- (1) In this Part 'emergency works' means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.
- (2) Where works comprise items some of which fall within the preceding definition, the expression 'emergency works' shall be taken to include such of the items as do not fall within that definition as cannot reasonably be severed from those that do.
- (3) Where in any civil or criminal proceedings brought by virtue of any provision of this Part the question arises whether works were emergency works, it is for the person alleging that they were to prove it.

Estimated Read means an estimation of the Meter Read by the Undertaker in accordance with good industry practice (meaning all relevant practices and professional standards that would be expected of an Undertaker in these circumstances).

Exit Point means the point on the Supply System where the Licensee is permitted to draw off an agreed supply to service Premises (for example the stop valve).

Fire-Fighting Offtake has the meaning given to it in paragraph 3.3 of schedule 2.

Force Majeure Event means any act of God, adverse weather conditions (excluding any serious deficiency in supplies caused by an exceptional shortage of rain), strike, lockout or other industrial disturbance or dispute (other than one affecting only the Party in question or its parent company or other companies in its group or otherwise associated with it), war, threat of war, act of terrorism, blockade, revolution, riot, civil commotion, public demonstration, sabotage, earthquake, or other event or circumstance which is beyond the reasonable control of the Party in question to the extent that it causes or results in an inability to perform obligations under this Contract.

Guidance means the Access Codes Guidance issued by Ofwat from time to time under section 66D of the Act which includes the Common Contract and the Operational Code.

Instrument of Appointment means an appointment granted to a company under Chapter 1 of the Act or such other legislation from time to time in effect which grants an appointment that is analogous to that granted by Chapter 1 of the Act and any conditions which are imposed, agreed or determined pursuant to the Relevant Laws.

Intellectual Property means:

- (a) patents (including rights in and/or to inventions);
- (b) trade marks, service marks, trade names and business names (in each case including rights in goodwill attached thereto);
- (c) design rights;
- (d) rights in and/or to internet domain names and website addresses;
- (e) semi-conductor topography rights;
- (f) copyright (including future copyright);
- (g) database rights;
- (h) rights in and to confidential information (including know how and trade secrets); and
- (i) all other intellectual property rights,

in each case subsisting at any time in any part of the world (whether registered or unregistered) and (i) any pending applications or rights to apply for registrations of any of these rights that are capable of registration in any country or jurisdiction and (ii) any similar or analogous rights to any of these rights, whether arising or granted under the laws of England and Wales or in any other jurisdiction.

Internal Escalation Procedure means the procedure set out in clause 20.2.

Interruptible Supply means a supply of water which may be interrupted by the Undertaker in accordance with the interruptible supply terms set out in the Data Sheet.

Large User means a customer of the Undertaker or the Licensee (as the context requires) that has an annual consumption greater than the threshold level specified in section 17D of the Act.

Leakage Adjustment means the amount that the Undertaker allowed for leakage allowances to its non-household customers in the preceding charging year (if any) divided by the aggregate of the charges for water supplied to its non-household customers multiplied by 100.

Licensee Equipment means any equipment attached to the Supply System by the Licensee including, for example, data logging equipment.

Losses means damage, losses, expenses or costs.

Meter has the same meaning as in section 219(1) of the Act and, in the context of this Contract, means the meter installed at the Premises.

Meter Read means a read of the Meter by physical or electronic inspection.

Network Event means an unforeseen and reasonably unforeseeable event which prevents or materially restricts the ability of the Supply System to provide the Water Supply to Premises.

Ofwat means the Water Services Regulation Authority or such other body as is created by statute with the purpose of carrying out the functions conferred on or transferred to it by the Act or under or by virtue of any other enactment.

Operational Code means the operational code published by Ofwat in the Guidance from time to time in effect.

Planned Maintenance means any maintenance requirement which:

- (a) is identified in the Undertaker's maintenance plans as notified to the Licensee in accordance with clause 9; or
- (b) was a reasonably foreseeable maintenance requirement.

Premises means any eligible premises specified in a Data Sheet or otherwise agreed by the Parties in writing to be supplied under this Contract (with eligibility determined in accordance with the requirements of section 17A(3) of the Act).

Provisional Monthly Charge means the charge calculated pursuant to paragraph 4.2 of schedule 2 in accordance with the Guidance from time to time in effect.

Reconciliation Period has the meaning given to it in paragraph 5.1 of schedule 2.

Reconciliation Report has the meaning given to it in paragraph 5.1 of schedule 2.

Relevant Law means:

- (a) any statute, regulation, by law, ordinance or subordinate legislation which is in force for the time being or which may be introduced from time to time to which a Party is subject;
- (b) the common law as applicable to the Parties (or any one of them);
- (c) any binding Court order, judgment or decree applicable to the Parties (or any one of them);
- (d) any binding order, decision, determination or direction of a Competent Authority which applies generally or applies to the Parties in respect of their rights or obligations concerning this Contract;
- (e) any and all relevant licences, consents or permissions, including the Undertaker's Instrument of Appointment and the Licensee's Water Supply Licence; and
- (f) any applicable industry code, policy, guidance, standard or accreditation terms enforceable by law.

Safety Requirements has the meaning given to it in the Data Sheet or as otherwise notified to the Undertaker by the Licensee pursuant to clause 10.

Special Consumer means any Customer that:

- (i) the Undertaker and the Licensee agree; or
- (ii) a Competent Authority specifically or generally determines by relevant notice,

regularly requires water urgently on medical or other grounds.

Supply Change means a change to the Water Supply (for example changes to the source, colour or specific identified qualities of the Water Supply) other than a Supply Interruption.

Supply Interruption means any failure in whole or in part to provide a Water Supply other than a Supply Change for a period of four (4) or more hours where such failure relates to a reduction in the constancy or pressure of the water supplied to the Premises and then only to the extent that such reduction is material (and **Interrupt** and **Interruption** shall be construed accordingly).

Supply System means the supply system of the Undertaker by reference to the meaning given to the supply system of a water undertaker in section 17B(5) of the Act.

Supply System Change Proposal has the meaning given to it paragraph 2 of schedule 3.

Switch means the switch of responsibility for the supply of water to Premises from the Licensee to the Undertaker or a third party.

Switch Date means the date a Switch occurs pursuant to clause 16.

Switch Notice has the meaning given to it in clause 16.1.

Switch Read means the Meter Read performed on the Switch Date.

Term means the period commencing on the Commencement Date and expiring on the date on which this Contract terminates pursuant to any provision of this Contract.

Termination Read means the Meter Read performed on the termination of this Contract.

Transfer means the transfer of Premises from the Undertaker or a third party to the Licensee.

Transfer Date means the date the provision of the Water Supply commences for Premises.

Transfer Read means the Meter Read performed on the Transfer Date.

Unmeasured Take has the meaning given to it in clause 11.1.

Unplanned Maintenance means any maintenance which is not Emergency Works and that is undertaken:

- (a) to rectify an unforeseen (and reasonably unforeseeable) Supply Interruption;
- (b) to avoid a Supply Interruption provided that such Supply Interruption was not reasonably foreseeable; or
- (c) in good faith, to avoid or limit an Emergency Works situation arising.

VAT means value added tax.

Water Supply means water supplied pursuant to the Undertaker's obligations set out in clause 2.

Water Supply Licence means a water supply licence granted to a company pursuant to Chapter 1A of the Act or such other legislation from time to time in effect which grants an appointment that is analogous to that granted by Chapter 1A of the Act and any conditions which are imposed, agreed or determined pursuant to the Relevant Laws.

Working Day means a day other than a Saturday, Sunday or public holiday in England and Wales.

Working Hours has the meaning given to it in clause 24.2(a).

Schedule 2

Charges

1 Calculation of Charges

- 1.1 The Undertaker shall calculate the Charges in accordance with the Charges Terms set out in the relevant Data Sheet.

2 Payment of Charges

- 2.1 The Licensee shall at its discretion determine the Billing Period for the Premises, and the date on which it wishes to receive invoices, provided that the Billing Period is no greater than one (1) month in duration (unless consented to in writing by the Undertaker).
- 2.2 The Licensee may change the Billing Period for the Premises, and the date on which it wishes to receive invoices, provided that the duration of such changed Billing Period is no greater than one (1) month in duration (unless consented to in writing by the Undertaker) and the Licensee gives the Undertaker not less than three (3) months' prior written notice of such change.
- 2.3 The Licensee shall perform (or shall procure the performance of) the Meter Read (or Transfer Read) for the Premises on the last day of the relevant Billing Period. The Licensee shall notify the Undertaker in writing of the Meter Read (or Transfer Read) not more than five (5) Working Days after the expiry of the relevant Billing Period. If the Undertaker has not received the relevant Meter Read (or Transfer Read), the Undertaker may raise an invoice on the basis of an Estimated Read.
- 2.4 The Undertaker may raise an invoice after the expiry of the relevant Billing Period for the Premises in accordance with the date determined by the Licensee under paragraph 2.1 or 2.2 above. Such invoice shall be due and payable by the Licensee within 14 days of receipt of the invoice (**Due Date**).
- 2.5 Any invoice issued by the Undertaker pursuant to paragraph 2.4 above shall detail (if applicable):
- (a) the Premises;

- (b) the Charges;
- (c) the Charges Terms;
- (d) For each Meter –
 - (i) the Transfer Read, preceding Meter Read or preceding Estimated Read (as appropriate);
 - (ii) the present Meter Read, present Estimated Read or the Termination Read (as appropriate);
- (e) any adjustments from previous Billing Periods;
- (f) any Charges Adjustment; and
- (g) any VAT payable.

2.6 Without prejudice to any other rights or remedies available to the Undertaker, the Undertaker may add interest at the rate of three (3) percent per annum above the current official Bank Rate (as published by the Bank of England from time to time) to any amounts not paid by the Licensee on or before the Due Date (to be calculated on a daily basis).

2.7 All amounts expressed as payable pursuant to this Contract are expressed to be exclusive of any applicable VAT and accordingly VAT shall be payable in addition to the amounts expressed at the rates from time to time in effect against a valid VAT invoice.

3 Charges Adjustments

3.1 If the Licensee is making payment in advance (see paragraph 4 below) for the Water Supply, the Undertaker shall deduct the Advance Payment Discount from the Charges.

3.2 If the Undertaker has in effect at any time during the Billing Period a policy of providing a reduction in charges to non-household customers where such customers incur or suffer a leakage, the Undertaker shall reduce the Charges to the Licensee in the relevant Billing Period by the Leakage Adjustment.

- 3.3 If the Licensee uses water that is supplied pursuant to this Contract for the purposes of fire-fighting or testing fire-fighting equipment (**Fire-Fighting Offtake**) in any Billing Period, the Undertaker shall make an adjustment to the Charges for such Billing Period equivalent to the proportion of the Charges incurred that relate to the Fire-Fighting Offtake provided that the Licensee notifies the Undertaker in writing:
- (a) within 30 days if the Fire-Fighting Offtake occurred for the purpose of fire-fighting or, if impracticable, as soon as is reasonably practicable after the date of the Fire-Fighting Offtake; or
 - (b) no later than 30 days after the date of the Fire-Fighting Offtake if the Fire-Fighting Offtake occurred for the purposes of testing fire-fighting equipment.

4 Payment in Advance

- 4.1 If requested by the Licensee, the Undertaker may charge the Licensee in advance for the provision of the Water Supply. In such circumstances, the provisions of paragraphs 2.3 to 2.6 above shall be disapplied and the provisions of this paragraph 4 applied.
- 4.2 In respect of any payment that is made in advance, the Undertaker shall calculate the Provisional Monthly Charge in accordance with the Guidance.
- 4.3 The Parties shall perform the following in respect of any payment in advance:
- (a) The Licensee shall pay the Provisional Monthly Charge no later than five (5) Working Days prior to the commencement of the relevant Billing Period;
 - (b) At the end of the relevant Billing Period, the Licensee shall perform (or procure the performance of) the Meter Read (or Transfer Read) and notify the Undertaker in writing of the Meter Read (or Transfer Read) not more than five (5) Working Days after the expiry of the relevant Billing Period;
 - (c) The Undertaker shall thereafter issue an invoice for the Charges for the relevant Billing Period to the Licensee in accordance with the date determined by the Licensee under paragraph 2.1 or 2.2 above and with paragraph 4.4 below.

- 4.4 Any invoice issued by the Undertaker pursuant to this paragraph 4 shall detail (if applicable):
- (a) the Premises;
 - (b) the Charges;
 - (c) the Charges Terms;
 - (d) For each Meter –
 - (i) the Transfer Read, preceding Meter Read or preceding Estimated Read (as appropriate);
 - (ii) the present Meter Read, present Estimated Read or the Termination Read (as appropriate);
 - (e) any adjustments from previous Billing Periods;
 - (f) any Charges Adjustment;
 - (g) any VAT payable;
 - (h) a credit for the amount of the Provisional Monthly Charge for the relevant Billing Period; and
 - (i) the amount of the Provisional Monthly Charge for the following Billing Period.
- 4.5 If the Provisional Monthly Charge for a Billing Period is greater than the amount owing to the Undertaker for such Billing Period, the Undertaker shall deduct such amount from the Provisional Monthly Charge for the following Billing Period or, if requested by the Licensee, reimburse the Licensee such amount within 10 Working Days of receiving such request.
- 4.6 If the Provisional Monthly Charge for a Billing Period is less than the amount owing to the Undertaker for such Billing Period, the Undertaker may add such amount to the Provisional Monthly Charge for the following Billing Period.
- 4.7 If the Provisional Monthly Charge over any consecutive three (3) month period is either materially greater or materially less than the actual Charges for the Water Supply in the same period, either Party may require the other Party to

agree to a recalculation of the Provisional Monthly Charge in accordance with the Guidance on not less than one (1) month's notice in writing.

5 Reconciliation

- 5.1 No later than 20 Working Days after the first (1) anniversary of the Commencement Date and each anniversary thereafter during the Term, the Undertaker shall provide the Licensee with a report in writing of all payments made, all amounts paid or owing, and meter readings performed or estimates made (the **Reconciliation Report**) in the preceding 12 month period (the **Reconciliation Period**).
- 5.2 Insofar as the Reconciliation Report shows that there is a discrepancy between payments made and amounts owing and this amount is undisputed then:
- (a) if there has been an undercharge over the Reconciliation Period, the Licensee shall make a payment of such undercharge within 30 Working Days of receipt of the Reconciliation Report; or
 - (b) if there has been an overcharge over the Reconciliation Period, the Undertaker shall make a payment of such overcharge within 30 Working Days of issue of the Reconciliation Report.

Schedule 3

Change Control Process

- 1 If either Party requires a change to the terms of this Contract other than one relating to adding or switching Premises, it shall submit to the other Party a written proposal outlining its change requirements (a **Change Proposal**).
- 2 In respect of any Change Proposal which would require the Undertaker to perform works or make changes to the Supply System (a **Supply System Change Proposal**), the Undertaker shall notify the Licensee within 20 Working Days of receipt that it regards the Change Proposal as a Supply System Change Proposal.
- 3 In respect of any Supply System Change Proposal:
 - 3.1 The Licensee may require the Undertaker to provide it with a report that details the costs of the Supply System Change Proposal provided that the Licensee reimburses the Undertaker's reasonable costs of providing such report. The Undertaker shall provide the Licensee with such report in such time period as is reasonable taking into account the work required by the Undertaker to compile it.
 - 3.2 The Undertaker may reject a Supply System Change Proposal if:
 - (a) the Licensee has not requested the Undertaker to provide a report pursuant to paragraph 3.1 above and in the Undertaker's opinion (acting reasonably) such a report is necessary considering the nature of the Supply System Change Proposal.
 - (b) the Licensee does not agree to pay the Undertaker's reasonable costs of performing works or making changes to the Supply System;
 - (c) the Undertaker considers that the Supply System Change Proposal would or would be likely to put it in breach of any Relevant Law; or
 - (d) the Undertaker considers that the Supply System Change Proposal would put at risk its ability to meet any of its existing or probable future obligations to supply buildings or parts of buildings with water for domestic purposes.

- 4 Subject to paragraph 5 below, in respect of any Change Proposal other than a Supply System Change Proposal the receiving Party shall notify the requesting Party within 20 Working Days of receipt of the Change Proposal that it:
 - 4.1 agrees to the Change Proposal;
 - 4.2 rejects the Change Proposal and proposes alternative terms; or
 - 4.3 rejects the Change Proposal and provides reasons for its rejection.
- 5 If a Change Proposal relates to a request by the Licensee to change its payment terms, the Undertaker shall agree to such Change Proposal provided that the Licensee meets any conditions set out in this Contract relating to such a change.
- 6 In respect of any rejection of a Change Proposal pursuant to paragraphs 3 or 4 above, the Parties shall thereafter negotiate in good faith the terms of such Change Proposal. If agreement cannot be reached within 60 Working Days, either Party may treat the failure to reach agreement as a Dispute and invoke the Dispute Resolution procedure set out at clause 20.

Appendix

Data Sheet

One (1) Data Sheet to be completed for each Premises to be supplied under this Contract.

Name of Customer:	
Customer Account Number:	
Address of Premises:	
Meter Details: Meter Type: Meter Serial Number: Meter Size: Meter Location: Last Meter Reading: Date of Last Meter Reading:	
Transfer Date and Time:	
Potable Supply:	Y/N (delete as appropriate)
Interruptible Supply :	Y/N (delete as appropriate)
Interruptible Supply Terms (if applicable):	
Special Consumer:	Y/N (delete as appropriate)
Safety Requirements (if applicable):	

Charges Terms:	
Billing Period (and the date on which the Licensee wishes to receive invoices):	
Operational Contact Information for Licensee: Name: Telephone: Email: Fax:	

3. Combined supplies

This section provides guidance in relation to combined supplies under section 66B WIA91.

In accordance with Condition of Appointment R (Provision of combined and wholesale water supplies), appointed water companies must have an access code which conforms to the guidance in this section.

Condition of Appointment R requires an appointed water company's access code to set out:

- the appointed water company's procedure (including timetables) for dealing with a request made to it by a licensee under section 66B WIA91;
- the types of feasibility studies which the appointed water company may undertake in response to an application under section 66B WIA91, including the method of calculation of any costs associated with any such study with a view to recovering them from any such applicant; and
- the terms upon which the appointed water company will offer to perform its duty under section 66B WIA91 and indicative charges for performing such duty.

An appointed water company must comply with, and provide a combined supply of water to a licensee on the terms set out in, its access code.

1. Application procedure

1.1 The application procedure for a combined supply may consist of the following stages:

- **introduction stage** – at which the combined supply licensee may contact the appointed water company with an initial expression of interest to negotiate terms for access;
- **application stage** – at which the combined supply licensee makes a formal application to the appointed water company; and
- **negotiation stage** – which may begin at the application stage. It is at this stage that terms and conditions are discussed and agreed or rejected.

- 1.2 The Drinking Water Inspectorate ('DWI') will be involved as appropriate during the application procedure. For combined supply applications, the DWI will:
- review the appointed water company's assessment report for any key water quality omissions at the start of the application stage;
 - assess compliance with the relevant regulatory requirements;
 - identify any issues arising from its guidance on common carriage; and
 - review against industry best practice.
- 1.3 The DWI has requested that it be given between two (2) and three (3) months' warning prior to its involvement in a combined supply application. Licensees and appointed water companies are encouraged to inform the DWI as early as possible of a proposed combined supply.
- 1.4 Both parties may agree to omit some stages of the application procedure. The timescales expressed in this guidance are intended as limits, but should not stop the application procedure from being completed sooner where that is possible. Where technical information is required from other parties such as the DWI or the Environment Agency, the appointed water company and the licensee may agree to 'stop the clock' until the relevant information is received.

2. Combined supply stage 1 – introduction

Initial contact

- 2.1 The licensee should inform the appointed water company of the type of licence it holds and its contact details. The appointed water company will confirm the basic information requirements outlined in its access code. The appointed sewerage company should also be able to confirm its information requirements at this stage, either directly to the licensee or via the appointed water company.
- 2.2 If the licensee requires a meeting with the appointed water company to discuss its request for a combined supply, the appointed water company will arrange a meeting within 10 working days of the request. At this stage, the licensee will not be expected to reveal the identity of its customers, their consumption or location.

- 2.3 Appointed water companies and licensees should only proceed to the next stage of negotiations once the relevant parties have signed a mandatory confidentiality agreement.

3. Combined supply stage 2 – application stage

- 3.1 The application should include a signed consent form from each customer, stating that the named customer has expressed an interest in the licensee becoming its new supplier. Only customer consent forms dated no more than two (2) months before the licensee’s initial application, or otherwise verified by the customer as being in force as at the date of the licensee’s initial application, shall be accepted. This is to ensure that the customer is still interested in switching supplier.
- 3.2 The licensee should set out in detail what it will require from the appointed water company in order to provide its specified level of service to its customers. Where facilities need to be constructed, the licensee should prepare an outline scheme of the proposed design.
- 3.3 The appointed sewerage company should have the opportunity to comment on aspects of the proposal that could affect its ability to acquire details for billing, or that may have an impact on its other operational processes.
- 3.4 If the appointed water company considers that the supply is likely to constitute a strategic supply, it should discuss this with the licensee at this stage. This does not stop the appointed water company from applying to us for a strategic supply designation at a later date. Please see our separate [‘Guidance on strategic supplies’](#).

Appointed water company feedback

- 3.5 The appointed water company should comment on the licensee’s application and specify any further information it needs. The appointed water company should, as far as possible, confirm or deny the basic feasibility of the licensee’s proposal. The appointed water company may find that a feasibility study at the application stage is not necessary if the information provided is sufficient. If an appointed water company believes that a licensee’s proposal is not feasible at this stage, it should set out its reasons for this belief in writing. If the licensee does not agree with the appointed water company’s reasons, it can refer the matter to be resolved by us as part of a determination under section 66D(1) WIA91.

- 3.6 Any feedback on the licensee's application must include the preliminary price and non-price terms proposed by the appointed water company.

Feasibility study and testing

- 3.7 On the basis of a detailed application, the appointed water company should be able to carry out any feasibility studies and testing required to determine proposed terms for access. Due regard should be given to the DWI's guidance on common carriage, and any updated versions of that or other relevant guidance that the DWI may produce.
- 3.8 To assess the technical feasibility of an application for a combined supply, the appointed water company may require the following information (this is not an exhaustive list), as far as it is available:
- the location of each customer's premises;
 - estimates of each customer's demand;
 - forecasts of each customer's demand for the duration of the proposed contract or some other agreed duration;
 - the location of the points of entry and exit, and hydraulic requirements;
 - supply and demand data – which might include average and peak deployable outputs of the licensee's source, the supply pattern and variations in demand, details of any supply or demand management contingency arrangements for drought periods;
 - water resource details – which might include the type of water resource being used, its reliability and any back-up mechanisms which may exist; a thorough risk assessment by the licensee of any proposed source, that is an assessment of exposure to pollution incidents, vandalism and other risks; evidence of abstraction licence including any associated conditions;
 - water quality assessments – which might include the predicted quality of water entering the system, history of contamination (where available) of the raw water source; the level of treatment proposed, with particular attention to disinfection practices and any additional treatment requirements such as plumbosolvency control and fluoridation, details of the licensee's cryptosporidium testing process; the safeguards and procedures in the event of treatment failure; the water quality requirements of the potential customer(s); proposals for monitoring to ensure compliance with water quality regulations; and
 - evidence to demonstrate the licensee's systems for informing customers of emergencies.

- 3.9 Appointed sewerage companies may also require information from the licensee.
- 3.10 The licensee should keep the appointed water company informed if any of the information supplied at the initial application stage has changed, or if further relevant information becomes available. If the appointed water company considers the changes require further investigation and may require modification of the price or non-price terms previously quoted, it shall inform the licensee as soon as possible.
- 3.11 Parties should agree the scope for any feasibility studies or tests before they are started. The appointed water company shall provide the licensees with a copy of all findings, if the licensee requests them, and set out the decision on feasibility and the reasoning behind it before discussing what action is needed to take an application forward.
- 3.12 After the appointed water company has carried out the necessary investigations in response to an application and reported the results, including confirming the feasibility of the licensee's proposals (with any necessary modifications), it should make a firm offer of access (price and non-price terms) in writing to the licensee, within 10 working days. The offer should be subject to the execution (or modification in writing) by both parties of a formal written combined supply access agreement.
- 3.13 Appointed water companies should complete an assessment of the application for a combined supply within 50 working days of receiving the required information from the licensee and other parties, such as the DWI and Environment Agency.

4. Combined supply stage 3 –negotiation stage

Combined supply contract

- 4.1 The contract will include clauses dealing with:
- payment terms including frequency;
 - arrangements for dealing with any outstanding debt;
 - a service level agreement setting out the specific support services to be provided by the appointed water company to the licensee; and
 - water quality issues.

- 4.2 The contract should comply with the appointed water company's access code and with this Access Codes Guidance. At this stage, a unique premises reference number should be generated by the appointed water company; and a transfer date should be agreed and included in the contract, making due allowance for completion of actions under the Customer Transfer Protocol ('CTP').
- 4.3 The unique premises reference number is assigned to an eligible premises for the purpose of identification when transferring under the CTP. It consists of three (3) letters identifying the appointed water company, followed by a unique five (5) digit number for each eligible premises.

Terms accepted/rejected

- 4.4 The terms offered by the appointed water company should be open to discussion between the parties involved for up to 15 working days. For example, the licensee may wish to change the services requested, which may affect the price or non-price terms. Where a change is agreed, the appointed water company will draft a new contract or modify an existing contract to include the new terms. The offer made to the licensee by the appointed water company shall remain open for acceptance by the licensee for a minimum of six (6) months. The appointed water company can make an offer to another licensee, if requested, during this time. This will allow customers to compare different offers and select the best deal. The appointed water company may vary an offer in the event of a material change in circumstance, in which case any changes to the offer and the reasons for such changes should be communicated to the licensee. A subsequent offer supersedes an earlier offer; a licensee can only accept the most recent offer from an appointed water company at any time.
- 4.5 If the licensee accepts the terms (subject to execution by both parties of a formal written contract), the appointed water company will send the licensee a signed contract within 10 working days. The licensee should sign the contract and return it within 10 working days of receipt.
- 4.6 If, despite negotiations, the parties are unable to agree the period for which and/or the terms and conditions on which the appointed water company is to perform its duty under section 66B WIA91, the licensee may refer the matter to us for determination under section 66D(2) WIA91.
- 4.7 Appointed water companies and licensees should complete detailed contract negotiations within 40 working days, unless otherwise agreed by both parties.

5. Information requirements

- 5.1 Access codes should set out clearly the information required at each stage of the application procedure. Appointed water companies must only ask for the information needed to progress the application at each stage, but should not be expected to process an incomplete application. Appointed water companies should justify instances where they require information that is different from the requirements set out in their access codes.
- 5.2 A licensee should not be asked to resubmit information it has already provided about non-customer specific aspects of an application. This also applies in the context of repeat applications to the same appointed water company, although the appointed water company may require updated information if circumstances have changed.

6. Timescales

- 6.1 Appointed water companies' timescales for each stage of the application procedure should be set out in accordance with this guidance.
- 6.2 Appointed water companies should deal with applications promptly. If any complaint is referred to us about delays during negotiations, we will consider whether and to what extent such delays are the fault of either the appointed water company or the licensee.

7. Reasons for objection to the licensee's proposal

- 7.1 Appointed water companies, licensees (in the case of a customer transferring from one licensee to another), the DWI and other relevant parties may discover during any stage of the application procedure that an application cannot be progressed. As well as the conditions in sections 66A-66C WIA91, the following list provides examples of the types of objection that might arise during the application procedure. (See the CTP for details on customer transfer objections between water suppliers.)
- The incoming supplier has provided insufficient or incorrect details to the relevant parties to allow the customer to transfer.
 - Refusal by the licensee to provide necessary information.
 - The appointed water company or earlier licensee considers that the customer's premises are not eligible.

- An application by another licensee to supply the customer has been accepted.
- The licensee's proposals are impracticable, for example unfeasible hydraulic conditions.
- Unacceptable water quality implications.
- Concerns over source risk assessment.
- National security reasons.

7.2 The person making the objection should give the applicant full reasons for the objection in writing as soon as possible. The appointed water company should comply with any request for a meeting to discuss the objection and parties should seek to negotiate solutions to enable the application to progress where possible.

7.3 The licensee may request details of any outstanding debt owed by customers in relation to the premises identified in the application. The parties should make appropriate arrangements for the repayment of any outstanding water debt before the final change of supplier takes place under the CTP. If a customer has outstanding debt and no arrangement has been made for its repayment or the assignment of the debt to the incoming supplier, it is possible to raise an objection as part of the CTP. Debt to the appointed sewerage company and other debts should not be reasons for objection to a customer transfer. It is for the licensee to decide whether they wish to take on a customer, having considered its credit record.

7.4 If an objection is made to an access application and agreement cannot be reached, the licensee may refer the matter to us for a determination. Please see our 'Procedure for handling water supply licensing determinations' (November 2005) for further information.

8. Application fees and other costs

8.1 An appointed water company may not recover from a licensee any costs of processing a combined supply application. These include the costs related to discussing, negotiating and agreeing the terms and conditions of a combined supply contract or confidentiality agreement and any costs related to processing premises-specific applications for combined supplies, including any costs for feasibility studies.

8.2 An appointed water company may not charge for providing a copy of its access code or for clarifying its policy and information requirements.

9. Operational issues

- 9.1 Appointed water companies' access codes should provide enough information to allow licensees to assess the operational viability of their proposals and give them a broad indication of whether their proposals are viable.

10. Water quality and sampling

- 10.1 Combined supply licensees must ensure that the water they introduce into the appointed water company's supply system is compatible with the water already in supply. This includes factors such as taste, smell, appearance and hardness. Licensees' water must also comply with the appointed water company's procedures for plumbosolvency control as appropriate.
- 10.2 If the quality of water in distribution changes significantly after a scheme goes 'live', licensees must change their inputs to ensure compatibility. The licensee should bear any associated costs. The appointed water company should tell the licensee during the application procedure about known forthcoming changes to operational standards that might affect compatibility. If the appointed water company does not communicate that information properly and, as a result, the licensee incurs unnecessary costs, the appointed water company shall bear those costs.
- 10.3 Appointed water companies and licensees shall have regard to the DWI's guidance on common carriage and the maintenance of drinking water quality and any updates that the DWI might produce. They shall also comply with the DWI's advice when resolving disputes between themselves.
- 10.4 An appointed water company should permit a licensee to carry out its own monitoring and testing activities, as long as it uses a laboratory that meets legal requirements.
- 10.5 Appointed water companies should use network modelling to assess the potential effects of a proposed combined supply on water quality and should follow the DWI's guidance.
- 10.6 If, after the network modelling exercise, the parties are still in doubt about the effect of a proposed combined supply on water quality issues, they should consult the DWI.

11. Supply system management and control

- 11.1 The appointed water company retains responsibility for the operation, maintenance and control of its supply system in its Area of Appointment.
- 11.2 The licensee should comply with the appointed water company's monitoring requirements to ensure that the safe and efficient management of the supply system is maintained. It may be appropriate for the parties to link their telemetry to enable the appointed water company to monitor on the licensee's behalf. Where this is not appropriate the licensee should provide information as set out in the access code, which might fall into the following categories for combined supplies:
- daily monitoring information;
 - planned maintenance/interruption arrangements;
 - ongoing system balancing;
 - emergencies and incident management;
 - metering information;
 - water quality data as appropriate, including contamination issues;
 - levels of service feedback from the customer; and
 - notice of changes in operation or water quality at the licensee's plant and any failures or out of specification performance.
- 11.3 The access agreement should set out the specific information flows required in each case.

12. Maps and plans

- 12.1 It is important for the licensee and the appointed water company to share relevant maps and plans, normally at the detailed application stage (subject to reasonable and objectively justifiable conditions about security and copyright). The parties should share information from supply system modelling, for example, to clarify the negotiation of connection costs, such as mains reinforcement. Operational practices such as regular flushing programmes should be agreed. It will be important to highlight known areas at risk of discolouration incidents owing to flow or pressure fluctuations during routine and non-routine use of the system, for example, fire-fighting.

13. Fire-fighting

- 13.1 Arrangements for the provision of water for fire-fighting and fire hydrant flushing should be made clear in access terms, and allow for appropriate adjustments in the demand balance. Maintaining pressure in the system during such incidents is a consideration where the licensee's source has a significant impact on the supply system.

14. Unauthorised use of water

- 14.1 Potential unauthorised standpipe use (and theft of water) should be addressed, in terms of both water usage and of possible discolouration and safety hazards.

15. Drought and resource planning

- 15.1 As part of their applications, licensees must provide a thorough outage risk assessment of any proposed source and the criteria by which any risks are assessed, such as an assessment of exposure to pollution incidents, vandalism and other risks. Access terms should set out the information requirements for the outage risk assessment and appointed water companies should provide further clarification where necessary. The abstraction licensing process for a new source includes the requirements for providing information to the Environment Agency on the environmental impact of the proposed abstraction and on the prospective water demand (as part of the test of 'reasonable requirement') under the licence. Appointed water companies' water resources management plans describe the risk assessment criteria they use when developing a new source.
- 15.2 Risk assessment of water resource reliability is also important. Access terms should set out the information required in order to carry out a risk assessment. Licensees must comply with reasonable requests for information that are necessary for the appointed water company to fulfil its statutory duty to supply.
- 15.3 Appointed water companies also retain responsibility for drought planning and the ability to apply for drought orders and hosepipe bans restricting non-essential use. However, it will be for both parties to agree whether their customers within the same class of customer will be subject to the same risk of interruptions to supply. This is subject to non-discrimination requirements.

- 15.4 Licensees should notify appointed water companies promptly of any changes to their demand and resources plans.
- 15.5 Licensees' negotiations with their customers, and subsequently with appointed water companies as part of the access application, should cover the degree of resource reliability and drought protection required. It should be clear to the customer how they will be treated in such circumstances compared with other water customers in the locality.

16. Maintenance and serviceability of assets

- 16.1 The access agreement should cover the enabling of maintenance of the licensee's assets. This is so that the appointed water company can be assured those assets meet the optimum standards of maintenance necessary to maintain a suitably reliable supply, and to enable the appointed water company to set out in the access code how planned and unplanned supply interruptions or a reduced service will be managed between the parties.
- 16.2 The appointed water company may not insist on the licensee providing a bond to cover the cost of repairs. The parties should:
- identify the relevant assets required for access;
 - agree the performance standards those assets must meet; and
 - agree arrangements for regular review of those assets, to ensure they are maintained properly.
- 16.3 Access agreements need to define the procedures to follow (as well as each party's role) during planned and unplanned supply system maintenance, including meter installation and essential repairs. Agreements should contain a minimum notification period for planned work. This should include a process for notifying customers of a reduced supply or interruptions and, where appropriate, confirmation of the return to normal service. The appointed water company must set the notice period, because it knows its own planning process and therefore how much notice it can give. The notice period shall have due regard to the nature of the supply, for example quality, quantity, pressure, interruptability, storage and the alternative supply arrangements available to either party.
- 16.4 The appointed water company must inform the licensee when it will carry out work on assets within those parts of the supply system used by both parties and whether this will affect supplies to the licensee's customer's premises or

use of its sources. The appointed water company should arrange to discuss with the licensee regularly its planned maintenance programme and should co-ordinate with the licensee on how to minimise disruption to customers and/or water sources. Similarly, the licensee must inform the appointed water company of any planned maintenance to its water sources.

- 16.5 The appointed water company and licensee should seek to agree when the maintenance is to be carried out. They should also agree timescales for notifying each other of their intentions to carry out work that will disrupt the operation of the supply system, the licensee or its customers.
- 16.6 The appointed water company will agree with the licensee what to do if planned maintenance overruns (that is it becomes unplanned), and whether compensation may be payable to the licensee if this happens. The appointed water company should set out in its access code the circumstances in which it shall pay compensation and the amounts, although it may agree different compensation arrangements with licensees in specific access agreements.
- 16.7 The access agreement should include circumstances in which the licensee must pay compensation to the appointed water company.

17. Metering and flow balancing

- 17.1 An appointed water company is likely to require a licensee who plans to introduce water into its supply system to install a meter at the entry point. Such meter should meet the appointed water company's specification. It is reasonable for an appointed water company to measure the licensee's flows into and out of its supply system. This does not imply that only customers currently charged on a measured basis are eligible to switch supplier.
- 17.2 The licensee should own (and retain ownership of) the meter, which should be on its own infrastructure at the entry point into an appointed water company's supply system. The licensee may wish to incorporate the meter into the process monitoring system of its treatment plant. There may be situations where, by agreement between the licensee and appointed water company, it is more practical for the latter to own and maintain the source meter.
- 17.3 A meter on an appointed water company's supply system will remain the property of the appointed water company. Ordinarily, the appointed water company should retain ownership of the meter (or meters) at a customer's

premises. The appointed water company is not required to sell or lease its meter to the licensee.

- 17.4 The licensee should be responsible for reading meters on its customer's premises, but will share meter and meter reading information with the appointed water company (section 205 WIA91). An appointed water company should have access to the meter and will be responsible for maintenance (as it is part of the supply system). Meter maintenance and reading can, however, be outsourced as part of the access agreement.
- 17.5 The access agreement should set out the process for dealing with disputes about meter readings.
- 17.6 Appointed water companies and licensees should agree case-specific arrangements in access agreements on how to balance water flows over time. The agreement should also specify the information that each party will provide, depending on the method of balancing in each case. Appointed water companies should specify in their access codes which of the following will be included in access agreements:
- forecasts of supply and demand, including planned outages and maintenance;
 - notification of deviation from forecasts;
 - a requirement for the licensee to introduce a volume of water, equivalent to its customer's exact demand, into the appointed water company's supply system at agreed intervals and disregarding the customer's actual consumption;
 - reconciliation of input and demand at periods agreed between the appointed water company and the licensee;
 - financial adjustments for over-supply and under-supply as agreed between the appointed water company and the licensee.
- 17.7 The licensee must introduce into the appointed water company's supply system only sufficient water to meet the exact demand of its customer, taking no account of potential leakage in the supply system. As the customer is responsible for on-site leakage, this is counted as part of its supply.

18. Emergency procedures and contacts

- 18.1 If the appointed water company has reasonable cause to suspect that an incident has occurred or is likely to occur it should stop the further introduction

of water by the licensee until the incident is over. Supplies to the licensee's customer should continue under the interim supply duty in section 63AC WIA91 where it applies.

- 18.2 The licensee should be thoroughly briefed by the appointed water company on any relevant emergency action plans before a live connection is made. The appointed water company can reasonably expect the licensee to provide details of its emergency procedures and to demonstrate them. It is up to the licensee and appointed water company to agree appropriate testing procedures if they are required. Responsibilities and procedures for local incident management teams also need to be defined in the access agreement.
- 18.3 Subject to statutory directions, and before live connection, the parties should agree responsibilities and procedures for:
- security of supply;
 - failure of plant and machinery;
 - hydraulic incidents;
 - pressure incidents, such as depressurisation;
 - water for fire-fighting purposes and fire hydrant flushing; and
 - contamination or pollution incidents.
- 18.4 The appointed water company and the licensee must both liaise with the Environment Agency for pollution control and proper management of water resources. They should also work together to comply with nationally agreed security standards and, where appropriate, those measures required for specific local circumstances.
- 18.5 Access agreements need to identify the procedures to follow (as well as each party's role) during periods of unplanned interruptions to supply and whether compensation may be payable to either party. Access codes should also address this in general terms.

19. Access pricing

- 19.1 Appointed water companies shall publish indicative charges for the combined supply of water. These charges shall be published in such manner as may be specified by Ofwat.

- 19.2 Appointed water companies operating wholly or mainly in England shall, as a minimum, publish indicative wholesale supply charges for customers consuming 5MI, 25MI, 50MI and 500MI per year. If an appointed water company has a tariff with a threshold between 5MI and 50MI per year, it may publish indicative charges relevant to that tariff instead of for customers consuming 25MI per year. An appointed water company must publish indicative charges for at least one consumption point between 5MI and 50MI per year.
- 19.3 Appointed water companies operating wholly or mainly in Wales shall, as a minimum, publish indicative wholesale supply charges for customers consuming 50MI and 500MI per year.
- 19.4 The indicative charging information published by an appointed water company shall clearly show the difference between its standard retail charge and the combined supply charge it has calculated.
- 19.5 The indicative charging information published by an appointed water company shall include:
- (a) Charging data for a period of five (5) years, starting with the current charging year and access starting in each of the next five (5) years;
 - (b) The difference in combined supply charge where:
 - (i) the licensee pays its charges in arrears; and
 - (ii) the licensee pays its charges in advance.
 - (c) Data for each water resource zone; and
 - (d) Supply deficit information for each water resource zone.
- 19.6 When publishing or amending any indicative charging information, an appointed water company shall explain any assumptions it has made for the purpose of calculating that information.
- 19.7 Indicative charging information shall be reviewed by an appointed water company every year by 15 October. This information may also be reviewed at any other time. An appointed water company shall notify Ofwat and publish updated information on its website within seven (7) days of making any modifications to its indicative charging information.

- 19.8 If requested, an appointed water company shall provide Ofwat with information to explain how it has calculated its indicative combined supply charges. Such information shall be provided in such manner, and by such time, as Ofwat may specify.



Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA

Phone: 0121 644 7500
Fax: 0121 644 7699
Website: www.ofwat.gov.uk
Email: enquiries@ofwat.gsi.gov.uk
September 2011

ISBN 978-1-908116-09-3

© Crown copyright 2011

You may reuse this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or email psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information, you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at enquiries@ofwat.gsi.gov.uk.

This document is also available from our website at www.ofwat.gov.uk.